



# EMPLOYMENT TRIBUNALS

**Claimant:** Dr G Ijomah

**Respondent:** Nottinghamshire Healthcare NHS Foundation Trust

UPON APPLICATION made by email dated 18 December 2018 to reconsider the judgment dated 4 January 2019 under rule 71 of the Employment Tribunal Rules of Procedure 2013, and without a hearing,

## JUDGMENT

The judgment is confirmed save it is varied as follows.

Further reasons are provided at new sub paragraphs 5 onwards as follows:-

- a) For the avoidance of doubt, these three generic labels purporting to describe the protected disclosures did not in my Judgment sufficiently particularise the information that had been disclosed to individuals or give a clear description of what information was provided on each occasion. There were 21 separate disclosures relied upon all of which quoted the three generic labels set out above to describe the information that was said to have been disclosed. It cannot be said that the same three generic set of words were said or written by the Claimant on each of the 21 occasions. Where verbal disclosures were relied upon the exact words or even the gist of the words used were not set out in the Scott Schedule. This amounted to a material breach of the order.
- b) Where a written disclosure was relied upon the Claimant had attached a letter but not set out the section of the letter upon which he relied. For example Disclosure 1 relied upon a letter to Mike Harris dated 2 September 2011. The information said to have been disclosed was not described. The letter contained seven paragraphs and the Claimant had not confirmed which of the paragraphs was said to have contained the information that amounted to the qualifying disclosure.
- c) EJ Evans had explained this to the Claimant in his Order dated 22 June 2018. At paragraph 12 (a):

*“When he completed Appendix One he needed to describe the information*

*disclosed in sufficient detail for the Respondent to be able to respond. If the information had been disclosed in a letter, he should describe the content of the letter very briefly and provide a copy of the letter”.*

- d) The Claimant had provided copies of some but not all of the written document relied upon. This alone may not have amounted to a material breach of the order. However what did in my view amount to such a breach was where a written disclosure was relied upon the Claimant had not set out what section of the letter he relied upon as disclosing information. Some letters were three or four pages long. Some other written documents were relied upon such as reports which were longer. It was a material breach of the order to have simply provided copy of lengthy documents and not set out which sections of the document were relied upon as information amounting to a qualifying disclosure.
- e) It is not for the Respondent to have to try and guess what part of the written document is relied upon as a protected disclosure.

## **REASONS**

### The Application for reconsideration

1. The Claimant’s application for reconsideration was made on 18 December 2018 following oral Judgment at a Preliminary Hearing on 4 December 2018 that the Claimant’s claims under S47 (B) and Section 103 (A) and his breach of contract claims be dismissed for failing to comply with an Unless Order dated 25 August 2018.
2. The Respondent objected to the application and sent a detailed response dated 20 December 2018. I have determined that it is not in the interests of justice to have a hearing to determine this application given the detailed submissions by both parties which essentially repeat detailed oral submissions made at the Preliminary Hearing.
3. The Claimant’s application was made on a number of grounds. I address these in turn using the same numbered paragraphs as the Claimant’s application for ease of reference.

### Section A

4. Under 2 (a) the Judgment was not proportionate and / or remained focused only on those aspects of the case that were the subject of the objections taken by the Respondent in an email dated 5 October 2018. The Claimant asserts that the Respondent did not extend objection at the hearing to cover objections to all the disclosures detriments and breach of contract claims.
5. The Preliminary Hearing was listed to determine the Respondent’s application for a strike out dated 5 October 2018. At no time either in that application, or in the oral submissions made at the hearing did the Respondent limit their objections to those set out in their email dated 5

October 2018. The Respondent's application was that there had been a material breach of the order in respect of **all** of the disclosures, detriments and breach of contract claim. There are no grounds to conclude that the decision went beyond what was being sought by the Respondent and was therefore not proportionate.

6. Under 2 (a) insufficient reasons. The reason that I decided that there had been a material breach of the Unless Order by Employment Judge Clarke was set out in paragraph 4 of the Judgment dated 4 January 2019. This set out the three generic labels that the Claimant had used to particularise the protected disclosures relied upon. These were explained when giving oral judgment but in the interests of justice I have decided that the written judgment needs to be varied to reflect the reasons given in the oral judgment. Accordingly I vary the judgment as set out above.

Interest of Justice and relief from sanctions submissions

7. The submissions in Sections B and C of the application for reconsideration set out reasons why it would be in the interests of justice to set aside the Order. However as explained in paragraph 9 of the judgment the only relevant matter in question was whether the Claimant was in material breach of the Unless Order. As I have concluded there was such a breach there are no grounds upon which to reconsider the Judgment under Rule 70 of the Employment Tribunal Rules of Procedure 2013.
8. The Claimant's application under Rule 38 (2) to set aside the Unless Order will be determined at a hearing.

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Employment Judge Moore

Date 14 March 2019

JUDGMENT SENT TO THE PARTIES ON

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FOR THE TRIBUNAL OFFICE