EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Miss H Munro	and	Sampson Coward LLP

JUDGMENT ON APPLICATION FOR RECONSIDERATION

The Claimant's application for reconsideration is refused because there is no reasonable prospect of the decision being varied or revoked.

REASONS

1. The Claimant has applied for a reconsideration of the Judgment dated 27 September 2019 which was sent to the parties on 14 October 2019 and the Reasons dated 29 October which were sent to the parties on the 31st. The grounds are set out in her application of 13 November 2019.

2. Schedule 1 of The Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 contains the Employment Tribunal Rules of Procedure 2013 ("the Rules"). Under rule 71, an application for reconsideration under rule 70 must be made within 14 days of the date on which the decision (or, if later, the written reasons) were sent to the parties. The application was therefore received just inside the relevant time limit.

3. The grounds for reconsideration are only those set out within rule 70, namely that it is necessary in the interests of justice to do so. The earlier case law suggested that the 'interests of justice' ground should be construed restrictively. The Employment Appeal Tribunal in *Trimble-v-Supertravel Ltd* [1982] ICR 440 decided that, if a matter had been ventilated and argued at the hearing, any error of law fell to be corrected on appeal and not by review. In addition, in *Fforde-v-Black* EAT 68/80 (where the applicant was seeking a review in the interests of justice under the former Rules which is analogous to a reconsideration under the current Rules) the EAT decided that the interests

of justice ground of review does not mean "*that in every case where a litigant is unsuccessful he is automatically entitled to have the tribunal review it. Every unsuccessful litigant thinks that the interests of justice require a review. This ground of review only applies in the even more exceptional case where something has gone radically wrong with the procedure involving a denial of natural justice or something of that order*". More recent case law has suggested that the test should not be construed as restrictively as it was prior to the introduction of the overriding objective (which is now set out in rule 2) in order to ensure that cases are dealt with fairly and justly. As confirmed in *Williams-v-Ferrosan Ltd* [2004] IRLR 607 EAT, it is no longer the case that the 'interests of justice' ground was only appropriate in exceptional circumstances. However, in *Newcastle Upon Tyne City Council-v-Marsden* [2010] IRLR 743, the EAT stated that the requirement to deal with cases justly included the need for there to be finality in litigation, which was in the interest of both parties.

4. The Claimant's application is in respect of paragraph 2 of the Judgment, relating to the costs award only. She relies upon a number of points set out succinctly within the 10 paragraphs of her application.

5. In essence, her application is an attempt to re-argue her defence to the costs application. A reconsideration application ought not to be an opportunity for the same or similar arguments to be reopened and/or revisited in the hope that a tribunal's discretion will be exercised differently on a second occasion.

6. The key finding which underpinned the costs award was that contained within paragraph 7.11 of the Reasons dated 29 October 2019; the Tribunal concluded that the Claimant had "*artificially attempted to cloak herself with the protection afforded by the whistleblowing legislation by making disclosures which had not been in the public interest*". The claim was a deliberate construct, not one which we considered to have been born out of inexperience, naivety or simple lack of objectivity. The Respondent's offers, set out in detail in paragraph 7.2 of the Reasons, also played a significant part in the exercise of our discretion, as revealed by paragraph 7.12. There was nothing novel within paragraphs 1 to 8 of the Claimant's application. The Tribunal had been alive to those points when the application was initially considered.

7. As to the level of the award, the Claimant alleges that the costs order is punitive and that she has had to suspend her current pension contributions of £80 per month.

8. The Claimant's means had been explored at the hearing on 17 June 2019. At that stage, she said that she had savings of £38,000, with debts which, although large, was still less than her assets. At the final hearing, the Claimant indicated that her credit card bill had actually been reduced a little

since the June hearing. The award that was made was considerably less than that which had been applied for the reasons set out in paragraphs 7.13 and 7.14 of the Reasons.

9. Accordingly, the application for reconsideration pursuant to rule 72 (1) is refused because there is no reasonable prospect of the Judgment being varied or revoked.

_____
Employment Judge Livesey
Dated 3 January 2020