



EMPLOYMENT TRIBUNALS

Claimant: Mr A Simpson

Respondent: Provide CIC

JUDGMENT ON APPLICATION FOR RECONSIDERATION

The claimant's application dated **17 December 2019** for reconsideration of the judgment sent to the parties on **5 December 2019** is refused.

REASONS

There is no reasonable prospect of the original decision being varied or revoked, because:

The Tribunal has considered the grounds for reconsideration set out by the Claimant in his applications dated 12 and 17 December 2019.

It is this Tribunal's judgment that the Claimant has no reasonable prospects of success. The Tribunal will now address some of the grounds for reconsideration referred to by the Claimant in his applications. The Tribunal will use the paragraph numbers used by the Claimant in his application.

Firstly, in his letter of 12 December: -

1. It is correct that in his live evidence the Claimant stated that Anne Ellis was married to the Respondent's Finance Director. However, there was no evidence that Mr Atienza-Hawkes was assisted in his decision by Ms Ellis' husband. The name 'Phillip Richards' was not mentioned in the hearing. The panel that conducted the disciplinary case review was made up of Mr Atienza-Hawkes and the Respondent's HR Business Partner, who was not Phillip Richards. There was no evidence that Mr Richards assisted or was involved in Mr Atienza-Hawkes' decision at the end of that panel meeting on 19 December 2018. This was not a matter that the Claimant raised in the hearing.

Secondly, in the letter dated 17 December: -

1. Paragraph 34 -The Claimant confirmed in his evidence in the hearing that he sent the patient list for re-booking to his Hotmail account where it remained for

two weeks before it was sent to his NHS account and to the CCG. There was no mention of a 'cache' in the hearing.

2. Paragraph 35 – Ms Hearne was the Claimant's witness at the hearing. He was therefore not allowed to challenge her evidence but he was allowed to ask her supplementary questions and questions in re-examination.
3. Paragraphs 41 – 43 – The Tribunal had evidence that the information in the 'patients' list for rebooking' included sensitive data. Paragraph 115 of the judgment and reasons set out the sensitive data included in the list and recorded that the Claimant agreed with Counsel on two occasions during the hearing that all that information on patients was contained in the list. Having heard both parties' evidence, it was this Tribunal's judgment, that the information had included sensitive data.
4. The issue for the Tribunal was about the Claimant's possession of the data and not just about who it had been sent to.
5. In the application for reconsideration the Claimant discussed his disagreement with paragraphs 56, 58, 60, 64 and 65 of the judgment and reasons. In doing so, the Claimant has included matters that were not part of the evidence that the Tribunal heard. These are all new matters that he could have put before the Tribunal in the hearing but failed to do so.
6. In discussing paragraph 61 of the judgment and reasons, the Claimant stated that the Respondent has failed to bring evidence to the Tribunal to prove that the appointments had been rebooked. As explained to the Claimant in the hearing, this was an employment tribunal. The issues for us were simply related to whether he was subjected to detriment for making public interest disclosures. The Tribunal is not equipped with the specialist knowledge to be able to assess the Respondent's performance as a healthcare provider. It was not our function to check on the Respondent's compliance with its legal and other commitments.
7. In the points he made regarding paragraphs 71 and 72 of the judgment and reasons the Claimant does not challenge the findings made by the Tribunal as they relate to his complaints. He wants to add more detail. The findings made by the Tribunal are correct and are what was necessary to address the Claimant's case. We were not conducting a review of the Respondent's procedures and the Respondent's services. The Tribunal's job, which the Claimant was reminded of at various times in the hearing, was to determine whether he was subjected to detriment done on the grounds that he made protected disclosures.
8. In the application for reconsideration he referred to paragraph 80 of the judgment and reasons and to his NHS email account being blocked. We did not make findings about that. The issue we had to decide on was what the Claimant had done with the patient list for rebooking which he had in his personal, Hotmail email account from a date before his dismissal. That was the issue and it was fully discussed and addressed in the findings. The detriment complaint about the references did not include a complaint that the Respondent blocked his NHS email address.
9. In the points he made in relation to paragraph 102 he referred to matters that he had not raised at the hearing. This can be said of most of the points made in this application for reconsideration. The Tribunal accepted the Respondent's evidence that 205 patients were on the patient re-book later list and that it contacted them to inform them of the data breach and the steps taken to address it. The point the Claimant makes is a separate point as to whether those patients were re-booked. That was not a matter that the Employment Tribunal had

jurisdiction to consider. We had verbal evidence that they had all been re-booked but we did not require documentary evidence of that as it was not a matter for us to decide. It was not necessary to decide that issue in order to conclude whether the Claimant had made protected disclosures.

10. In conclusion, in his application for reconsideration the Claimant does not present any new evidence or evidence that he could not have produced during the hearing. He does not provide any evidence that challenges or directly contradicts the Tribunal's conclusion that the references that the Respondent produced on 7 February 2019 were factually correct. He does not produce new evidence or any evidence to support his case that the references were written to his detriment because he made protected disclosures. These were the issues that the Tribunal had to decide.
11. The Tribunal's judgment was based on the evidence that it had at the final hearing. On some issues it accepted the Claimant's evidence and on other issues it accepted the Respondent's evidence. It was entitled to do this.
12. The Tribunal's judgment was that the Claimant had made protected disclosures. At the same time, it judged that the references provided by the Respondent were factually correct. The wording used in the references were taken directly from the decision of the disciplinary case review and that of the appeal panel. The Respondent made those decisions on the basis that the Claimant had in his possession at the time he left the Respondent's employment, a list of patient identifiable data which he did not have the authority or the permission to have. Even if it was his intention to keep the list to support a case, having it was still in breach of the Respondent's policies. He did not have authorisation to hold that data in his possession. The indisputable fact is that he had that data in his possession, in his personal Hotmail account, for two weeks before he transferred it to his NHS account in his new employment.
13. There is nothing in the Claimant's application for reconsideration that challenges our judgment on these issues in this case. For those reasons, the Tribunal will not go through every other point in his application for reconsideration, contained in 21 pages. The Tribunal has read all the Claimant's points in his application for reconsideration.
14. Having considered the application, the Tribunal's judgment is that it is refused for the reasons stated above. The judgment promulgated to the parties on 5 December 2019 is confirmed.

Employment Judge **Jones**

Date: 12 February 2020