EMPLOYMENT TRIBUNALS

Claimant: **Mr S Leacy**

Respondent: **The Building Crafts College**

JUDGMENT

1. **The application for a reconsideration of the decision sent to the parties on 27 February 2020 was received more than 14 days after the date on which the decision was sent to the parties. However, having considered the reasons given for the delay, Employment Judge Lewis considers that it is in the interests of justice to extend time.**

2. **The Claimant's application dated 2 April 2020, received by the Tribunal on 6 April 2020, for reconsideration of the judgment sent to the parties on 27 February 2020 is refused. There is no reasonable prospect of the original decision being varied or revoked**

REASONS

1. Following the full merits hearing that took place on the 10-13 and 17 September 2019 the Tribunal reserved its decision and sat in Chambers on 3, 4 and 8th October 2019. The written judgment and reasons which were dated 19 February 2020 were sent to the parties on 27 February 2020.

2. The Claimant had brought two claims containing numerous complaints under the Equality Act 2010 .The claims were consolidated and were subject to case management at two preliminary hearings. An agreed list of issues setting out the issues in respect of both claims was produced and was relied on at the final hearing. Having heard from the Claimant and the witness for the Respondent and having considered the documents we were referred to the Tribunal rejected the claims and gave a reasoned judgment which consisted of 326 paragraphs over 73 pages.

3. The Claimant's application for reconsideration cited six grounds, described as "The current grounds"

   1. Misdirection, 2. Perversity, 3 Lack of evidence. 4 Inadequate Reasoning, 5 Procedural Irregularity and 6 Apparent Bias.

4. Although the Claimant states in his application that he has attempted to keep it as brief as possible, the enclosures described as, Appendix 1 – Notes (Mainly perversity) -consisted of 86 pages; and Appendix 2 – Errors of Law, consisted of a further 28 pages.

5. I have carefully considered the grounds raised. Given the length and detail of the application I consider that it is disproportionate to address each point raised on a line by line basis.

6. Rules 70 to 73 of the Employment Tribunal's Rules of Procedure 2013, make provision for the reconsideration of Tribunal Judgments as follows:

   *"**Principles***
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   A Tribunal may, either on its own initiative (which may reflect a request from the Employment Appeal Tribunal) or on the application of a party, reconsider any judgment where it is necessary in the interests of justice to do so. On reconsideration, the decision ("the original decision") may be confirmed, varied or revoked. If it is revoked it may be taken again.

   Application

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   Except where it is made in the course of a hearing, an application for reconsideration shall be presented in writing (and copied to all the other parties) within 14 days of the date on which the written record, or other written communication, of the original decision was sent to the parties or within 14 days of the date that the written reasons were sent (if later) and shall set out why reconsideration of the original decision is necessary.

   Process

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   (1) An Employment Judge shall consider any application made under rule 71. If the Judge considers that there is no reasonable prospect of the original decision being varied or revoked (including, unless there are special reasons, where substantially the same application has already been made and refused), the application shall be refused and the Tribunal shall inform the parties of the refusal. Otherwise the Tribunal shall send a notice to the parties setting a time limit for any response to the application by the other parties and seeking the views of the parties on whether the application can be determined without a hearing. The notice may set out the Judge's provisional views on the application.

Relevant authorities

7. In *Outasight VB Ltd v Brown UKEAT/0253/14* the EAT held that the Rule 70 ground for reconsidering Judgments, (the interests of justice) did not represent a broadening of discretion from the provisions of Rule 34 contained in the replaced 2004 rules, (at paragraphs 46 to 48). HHJ Eady QC explained that the previous specified categories under the old rules were but examples of where it would be in the interests of justice to reconsider. The 2014 rules remove the unnecessary specified grounds leaving only what was in truth always the fundamental consideration, the interests of justice. This means that decisions under the old rules remain pertinent under the new rules.

8. The key point is that it must be in the interests of justice to reconsider a Judgment. That means that there must be something about the case that makes it necessary to go back and reconsider, for example a new piece of evidence that could not have been produced at the original hearing or a mistake as to the law. It is not the purpose of the reconsideration provisions to give an unsuccessful party an opportunity to reargue his or her case. If there has been a hearing at which both parties have been in attendance, where all material evidence had been available for consideration, where both parties have had their opportunity to present their evidence and their arguments before a decision was reached and at which no error of law was made, then the interests of justice are that there should be finality in litigation. An unsuccessful litigant in such circumstances, without something more, is not permitted to simply reargue his or her case, to have, "a second bite at the cherry", (per Phillips J in *Flint v Eastern Electricity Board [1975] IRLR 277*).

9. The expression 'necessary in the interests of justice' does not give rise to an unfettered discretion to reopen matters. The importance of finality was confirmed by the Court of Appeal in *Ministry of Justice v Burton and Anor [2016] EWCA Civ 714* in July 2016 where Elias LJ said that:

> *"*the discretion to act in the interests of justice is not open-ended; it should be exercised in a principled way, and the earlier case law cannot be ignored. In particular, the courts have emphasised the importance of finality (*Flint v Eastern Electricity Board [1975] ICR 395*) which militates against the discretion being exercised too readily; and in *Lindsay v Ironsides Ray and Vials [1994] ICR 384* Mummery J held that the failure of a party's representative to draw attention to a particular argument will not generally justify granting a review*."*

10. In *Liddington v 2Gether NHS Foundation Trust EAT/0002/16 the EAT per Simler P,* held at paragraph 34 that*:*

> "a request for reconsideration is not an opportunity for a party to seek to re- litigate matters that have already been litigated, or to reargue matters in a different way or by adopting points previously omitted. There is an underlying public policy principle in all judicial proceedings that there should be finality in litigation, and reconsideration applications are a

limited exception to that rule. They are not a means by which to have a second bite at the cherry, nor are they intended to provide parties with the opportunity of a rehearing at which the same evidence and the same arguments can be rehearsed but with different emphasis or additional evidence that was previously available being tendered."

Decision

11. The application is in essence an invitation for the Tribunal to revisit the evidence that we heard and come to different conclusions. The Claimant asks the Tribunal to reach different case management decisions in respect of admitting evidence, different findings of fact, including the drawing of inferences, and to reject evidence that we found to be credible. In his Appendix 1: the Claimant submitted 86 pages setting out where he disputes the Tribunal's findings of fact. In his second appendix which is headed "Case Law & Legislation not applied/mis- applied" the Claimant again addresses the findings of fact at length and seeks to reargue the case on the facts and the law. The carefully crafted and detailed application for reconsideration amounts to detailed submissions on key points on the evidence and the issues, asking the tribunal to take a different view to that which we took in our original deliberations.

12. I am satisfied that the application amounts to a request that the Tribunal allow the Claimant to re-argue his case. The interests of justice are that there be finality in litigation, absent any good reason for a decision to be reconsidered. That a party does not like the conclusions reached by a tribunal and would like a second chance to present his arguments, is not such a reason.

13. On the basis of the application submitted, there is therefore no reasonable prospect of the decision of the tribunal being revoked or varied and for that reason, the application for a reconsideration is refused.

Employment Judge Lewis
Date: 23 July 2020