# EMPLOYMENT TRIBUNALS

**Claimant:** **Mrs A Owen**

**Respondent:** **Ashfield Effluent Services Limited**

**Heard at Nottingham via CVP before Employment Judge Butler (sitting alone)**

**Representation**

**For the Claimant: in person**
**For the Respondent: Mr R Quickfall, Counsel**

***Covid-19 statement:***
***This was a remote hearing. The parties did not object to the case being heard remotely. The form of remote hearing was V – video. It was not practicable to hold a face-to-face hearing because of the Covid-19 pandemic***

## JUDGMENT ON A RECONSIDERATION

The Claimant's application dated **30 June 2021** for reconsideration of the judgment sent to the parties on **25 June 2021** is refused.

## REASONS

1. By a judgment dated 22 June 2021, which was sent to the parties on 25 June 2021, I struck out all of the Claimant's claims as they were not being actively pursued. This action was taken pursuant to an Unless Order sent to the parties on 20 April 2021. This followed the Claimant's representative, Mr Grant Egan, failing to attend previous hearings. There was no reply to the Unless Order and, in addition to the claims being struck out, I made a wasted costs order against Mr Egan who, the Claimant tells me, was acting for profit on a no win, no fee arrangement.

2. The Claimant told me that Mr Egan did not tell her about the progress, or lack of it, with her claims. She first had concerns about his representation of her in April 2021 and then he did not respond to her calls or emails. In My 2021 she contacted ACAS who had no information and she discovered her claims had been struck out in June when she again contacted ACAS. At this point, she applied for a reconsideration.

3. Rule 70 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 ("the Rules") provides:

*A Tribunal may …. on the application of a party reconsider any judgment where it is necessary in the interests of justice to do so*

4. Under Rules 72(1) and (2), if the Judge considers there is a reasonable prospect of the original decision being varied, a hearing can be listed to hear the application. Thus this matter came before me today.

5. The principal issue for me to decide is whether it is in the interests of justice to vary or revoke the original decision. The parties had helpfully set out their arguments and agreed a bundle of documents.

6. The Claimant's argument was essentially that she had been let down by Mr Egan and it was in the interests of justice to revoke my earlier judgment and allow her claims to proceed. Mr Quickfall essentially argued that the failings of a representative did not mean that it was in the interests of justice to revoke an earlier judgment unless there were exceptional circumstances.

7. I do, of course, have a discretion in such matters but that should not be exercised without an examination of the facts and the law. I must also consider the overriding objective in Rule 2, the principle of maintaining the finality of litigation and must balance the interests of the parties.

8. Two decisions of the EAT have assisted me in my deliberations. They are **Lindsay v Ironsides Ray and Vials 1994 ICR 384** and **Newcastle upon Tyne City Council v Marsden 2010 ICR 743.**

9. In Marsden, the EAT noted that the Claimant's counsel had been guilty of misconduct by misleading the Employment Tribunal. It was accordingly the proper course of action to reconsider the original judgment which went against the Claimant. Maintaining the finality of litigation was held to be outweighed outweighed by the injustice to the Claimant.

10. In Lindsay, the EAT held that the failings of a party's representative – professional or otherwise – would not normally constitute a ground for review and finding otherwise would send the Tribunal down a path of investigating the representative's competence in their absence. Such matters should not be dealt with by way of tribunal proceedings.

11. Thus the two cases can be distinguished. In Marsden, there was an exceptional circumstance in that the Tribunal had been misled by a representative. In Lindsay, there was no such exceptional circumstance.

12. In this reconsideration, Mr Egan seems to have been incompetent and I do not consider such incompetence to amount to exceptional circumstances requiring the original decision to be revoked. Further analysis of the level of his incompetence should not be examined further. The finality of litigation should be maintained as the balance of prejudice to the Respondent is greater than any injustice to the Claimant. The claims were submitted ten months ago based on events which occurred over a year ago and the process has been prolonged through no fault of the Respondent. Further, in my view, the overriding objective

is best served by refusing the application, especially in relation to avoiding delay and saving expense.

13. Accordingly, while I have sympathy for the Claimant's predicament, I find that the interests of justice do not require me to reconsider my earlier judgment and the application is refused.

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Employment Judge **Butler**

Date 22 September 2021

JUDGMENT SENT TO THE PARTIES ON

23 September 2021

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FOR THE TRIBUNAL OFFICE