EMPLOYMENT TRIBUNALS

Claimant: **Mrs S Wordsworth**

Respondent: **Medical and Legal Admin Services Limited**

HELD at Sheffield (on the papers) **ON: 19 January 2022**

BEFORE: **Employment Judge Brain**

JUDGMENT ON RECONSIDERATION

The Judgment of the Employment Tribunal is that there is no reasonable prospect of the Judgment promulgated on 16 December 2021 being varied or revoked. Accordingly, the claimant's application for reconsideration fails and stands dismissed.

REASONS

1. After a three day hearing and following deliberations in chambers on 8 December 2021, the Employment Tribunal promulgated a Reserved Judgment in this case. The Judgment was promulgated on 16 December 2021. I shall now refer to the Reserved Judgment simply as *"the Judgment".*
2. On 30 December 2021, the Tribunal received an application from the claimant for reconsideration of the Judgment.
3. Rule 70 of schedule 1 to the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 provides an Employment Tribunal with a general power to reconsider any judgment where it is necessary in the interests of justice to do so. This power can be exercised either on the Tribunal's own initiative or on the application of a party. Rules 71 to 73 set out the procedure by which the power is to be exercised.
4. Rule 70 provides a single ground for reconsideration. That ground is where it is necessary to do so in the interests of justice.
5. This does not mean that in every case where a litigant is unsuccessful, they are automatically entitled to reconsideration. Instead, a Tribunal dealing with the question of reconsideration must seek to give effect to the overriding objective to deal with cases fairly and justly and the Tribunal should be guided by the

common law principles of natural justice and fairness. Tribunals have a broad discretion but that must be exercised judicially, which means having regard to not only to the interests of the party seeking the reconsideration but also the interests of the other party to the litigation and the public interest in the finality of litigation.

6. An application for reconsideration must be presented in writing and copied to all other parties within 14 days of the date upon which the written record of the decision which is the subject of the reconsideration application was sent to the parties. In this case, the Judgment was promulgated on 16 December 2021. The time limit for the making of the reconsideration application therefore expired on 31 December 2021. It follows that the claimant made her reconsideration application in time. She also complied with the procedural requirement to copy her application to the respondent's solicitor. The Tribunal therefore has jurisdiction to consider her reconsideration application.

7. Rule 72 of the 2013 rules sets out the procedure that an Employment Tribunal must follow upon receipt of an application for reconsideration. Firstly, the application is put before the Employment Judge who decided the case (or who chaired the panel hearing the case if the hearing was before a full panel). Plainly, it is the latter situation which applies here. If the Employment Judge considers that there is no reasonable prospect of the original decision being varied or revoked, the application will be refused and the Tribunal will inform the parties accordingly.

8. If the application is not refused, the Tribunal will send a notice to the parties setting a time limit for any response to the application by the other parties and seeking the parties' views on whether the application can be determined without a hearing. That notice may set out the Employment Judge's provisional views on the application although it does not have to do so. The matter will then proceed to a hearing before the panel unless the Employment Judge considers – having regard to any response to the application – that a hearing is not necessary in the interests of justice. If the reconsideration proceeds without a hearing, the parties shall be given a reasonable opportunity to make further written representations.

9. The Employment Appeal Tribunal has recently emphasised the importance of following the Rule 72 procedure in the correct order in **TW White and Sons Limited v White** [UK EAT/0022/21]. The EAT said that the procedure does not allow for the Employment Judge to decide that a hearing is necessary before he or she takes the decision under Rule 72(1) as to whether there is no reasonable prospect of the original decision being varied or revoked. This aspect of the procedure provides an important protection for the party opposing the application, in that the other party should not be put to the time and expense involved in responding to the application if the Employment Judge considers that there are no reasonable prospects of the Judgment being varied or revoked. As I have reached the conclusion that there is no reasonable prospect of the Judgment being varied or revoked, it is my judgment that I am able to consider the application upon the papers without the respondent's input.

10. Rule 70 provides the Tribunal with a general power to reconsider any Judgment where necessary in the interests of justice to do so. A Judgment is defined in Rule 1(3)(b) as a decision made at any stage of the proceedings which (amongst other things) finally determines the claim. It is not open to a party to

seek reconsideration of the reasons for the Judgment as opposed to the Judgment itself.

11. Much of the claimant's reconsideration application takes issue with some of the Tribunal's factual findings. I am satisfied that the factual findings that we made were open to us upon the basis of the evidence which we heard. Accordingly, it is unnecessary for me to deal with every one of the claimant's assertions about the findings of fact which appear in paragraphs 9 to 118 of the reasons which accompanied the Judgment.

12. I shall focus upon the claimant's reconsideration application as it pertains to the Reserved Judgment (as opposed to the reasons for it). She appears to ask for reconsideration of our finding that the respondent failed to make reasonable adjustments throughout her employment.

13. The Tribunal was satisfied upon the evidence that the claimant saw the email of 24 October 2019. From that day, it was clear to her (and all the respondent's staff) that they were at liberty to use the stairlift. I agree with what the claimant says in her reconsideration application that the issue of the key to the stairlift featured during the hearing. This feature in fact serves to strengthen the respondent's case. If the claimant had needed to use the stairlift and was unable to access it because of operational issues with the stairlift key or otherwise we may have expected the claimant to have taken the matter up with the respondent. There is no evidence that she did so. Our finding that she did not use the stairlift is unassailable, as is our finding that she knew that she was able to use it from the end of October 2019 but still did not do so.

14. There is therefore no reasonable prospect of the Judgment being varied or revoked in the claimant's favour upon this issue. As the claimant had no need of the stairlift, it follows that our conclusion that the requirement to use the stairs as part of her duties for a short period of time each day did not have a substantial adverse impact upon her. I am satisfied that this was a finding open to the Tribunal upon the evidence.

15. As the respondent only applied the disadvantaging requirement for her to use the stairs without permitting her to use the stairlift until 24 October 2019 it follows that the complaint about a failure to comply with the duty to make reasonable adjustments was presented outside the relevant time limit. At the case management preliminary hearing before Employment Judge Morgan on 30 October 2020, it was made clear that an issue of jurisdiction arose upon the claimant's complaints brought under the 2010 Act. The claimant advanced no explanation for presenting the reasonable adjustments complaint out of time. She appears not to have sought advice about matters until 11 June 2020. It being for the claimant to convince the Tribunal that it is just and equitable to extend time, I am satisfied that there is no reasonable prospect of this aspect of the Judgment being varied or revoked. The finding which we made upon the limitation issue was plainly one open to the Tribunal taking into account the evidence which we heard.

16. In any case, the Tribunal determined that the reasonable adjustments complaint failed upon the facts. The convening of a reconsideration hearing to look again at the question of the time limits will not avail the claimant as the claim failed upon the merits. It is not in the interests of justice for there to be a reconsideration hearing upon the time limits issue alone as that will not avail the claimant in any case given that the substantive complaint failed upon the

facts and would result in an injustice to the respondent, as a convening of such a hearing would be to put the respondent to additional expense.

17. It is not appropriate nor a proportionate use of the Tribunal's time and resources to respond to the points made by the claimant about our reasons. The Tribunal has made a permissible factual findings upon the basis of the evidence presented to us at the hearing. The relevant law was then applied to those factual findings to arrive at our conclusions upon the issues identified by Employment Judge Morgan. Nothing said by the claimant in her reconsideration application persuades me that there is any reasonable prospect of the claimant prevailing upon the Tribunal at a reconsideration hearing that any of our factual findings were perverse and that our conclusions upon the issues were incorrect.

18. I am therefore satisfied that there is no reasonable prospect of the Judgment or any part of it being varied or revoked. The reconsideration application therefore stands dismissed.

Employment Judge Brain
Date: 25 January 2022