EMPLOYMENT TRIBUNALS

BETWEEN

Claimant		**Respondent**
Mrs S Glover	AND	Priory Group

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD IN CHAMBERS AT Bristol **ON** 12 May 2022

EMPLOYMENT JUDGE J Bax

JUDGMENT ON APPLICATION FOR RECONSIDERATION

The judgment of the tribunal is that 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, following a reconsideration, revoking the order striking out the response dated 8 April 2022 and sent to the parties on 22 April 2022 ("the Judgment"). The grounds are set out in her correspondence dated 6 May 2022. That letter was received at the tribunal office by e-mail on 7 May 2022 at 0003 hours.

2. The Respondent sought a reconsideration of a default Judgment on 24 March 2022. The Claimant provided written opposition to the application. The Claimant had been asked for any written response and it was proposed

that the application would be determined on the papers, to which neither party objected. The Respondent's application was granted.

3. 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 not received within the relevant time limit.

4. Under Rule 5 the Tribunal may, on its own initiative or on the application of a party, extend or shorten any time limit specified in the Rules or in any decision, whether or not (in the case of an extension) it has expired. In the light of the application being three minutes late it was considered.

5. The grounds for reconsideration are only those set out in Rule 70, namely that it is necessary in the interests of justice to do so.

6. The grounds relied upon by the claimant are these:

    a. The Respondent did not contact the Tribunal for over 6 months after the submission of the response
    b. The Respondent should have notified the Tribunal that it did not have representation
    c. A change of representation was not informed to the Tribunal until 10 March 2022
    d. The prejudice to the Claimant was that she had lost time and exertion into the case management.

7. The earlier case law suggests that the interests of justice ground should be construed restrictively. The Employment Appeal Tribunal ("the EAT") in Trimble v Supertravel Ltd [1982] ICR 440 decided that if a matter has been ventilated and argued then any error of law falls 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".

8. More recent case law suggests that the "interests of justice" ground 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). This requires the tribunal to give effect to the overriding objective to deal with cases 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 confirmed that it is incorrect to assert that the interests of justice ground need not necessarily be construed so restrictively, since the overriding objective to deal with cases justly required the application of recognised principles. These include that there should be finality in litigation, which is in the interest of both parties.

9. In Outasight VB Ltd v Brown [2015] ICR D11, EAT, HHJ Judge Eady QC accepted that the wording 'necessary in the interests of justice' in rule 70 allows the tribunal a broad discretion to determine whether reconsideration of a judgment is appropriate in the circumstances. However, this discretion must be exercised judicially, *'which means having regard not only to the interests of the party seeking the review or reconsideration, but also to the interests of the other party to the litigation and to the public interest requirement that there should, so far as possible, be finality of litigation'*.

10. The majority of the matters raised by the Claimant were referred to in the original opposition to the Respondent's application. The reconsideration procedure is not an opportunity for a second bite of the cherry. The Claimant additionally submitted that she was prejudiced by lost time and exertion. This was not referred to in the original opposition, however the balance of prejudice was something considered when making the original decision. When making the original decision the relevant matters were considered.

11. Accordingly I refuse the application for reconsideration pursuant to Rule 72(1) because there is no reasonable prospect of the Judgment being varied or revoked].

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Employment Judge J Bax
Dated 12 May 2022

Judgment sent to Parties on
06 June 2022 By Mr J McCormick

For the Tribunal Office