EMPLOYMENT TRIBUNALS

Claimant: **Mrs M Carroll-Cliffe**

Respondent: **Pembrey and Burry Port Town Council**

RECONSIDERATION DECISION

The claimant's application dated 3 January 2023 for reconsideration of the Judgment dated 30 May 2021 is refused.

REASONS

1. Under Rule 71 an application for reconsideration must be presented in writing within 14 days of the date on which the written record/written reasons of the original decision was sent to the parties. Rule 71 does not contain its own provision for extending time, however, I accept Rule 5 provides a general power to extend any time limit, whether or not it has expired, should I consider it just to do so.

2. The claimant submits it is necessary for the Judgment to be varied in the interests of justice due to the discovery of new evidence that the claimant says significantly impacts upon the credibility of evidence given by the respondents witnesses at the liability hearing.

3. The claimant says that in September 2021 she made a complaint to the police that is still under investigation. She says that it relates to what she terms the fabrication of the amended, shortened version of her grievance letter. The claimant has provided an email sent to her by DC J Harris from Llanelli CID dated 26 August 2022 in which he refers to a production order obtained against the respondent's solicitors DWF. DC Harris says in that email that DWF had received a physical bundle of documents from the respondent which were scanned onto their system on 22 March 2019 which contained the 4 page altered letter and the 9 page original. A further email from DC

Harris also on 26 August 2022 said that a colleague, DC Thomas, would be requesting confirmation about a cover letter. A further email dated 20 September 2022 says that the cover letter has been provided with Councillor Theodoulou's signature on it. An interview with Councillor Theodoulou was to be scheduled. The last enclosure to the claimant's application is an email from Acting Detective Sergeant Harris dated 18 November 2022 saying the interview was arranged for 25 November 2022.

4. The claimant says in her application (albeit not supported by email confirmation from A/DS Harris) that the solicitor in attendance tried to prevent the interview proceeding by arguing the issue of the two versions of the letter had been dealt with at the tribunal final hearing. She says this was rejected by the police and that Councillor Theodoulou gave a no comment interview which he stated was on the advice of his solicitor. She also says, again not supported by documents, that the police have made enquiries with other potential witnesses including the now Deputy Town Clerk, Ms Loudon. The claimant says that very recently Ms Loudon was spoken to about Councillor Theodoulou having said when giving evidence at the liability hearing that he did not know where the 4 page version of letter had come from, and he had made enquiries with Ms Loudon and she could not assist. The claimant says Ms Loudon had said to the police that nobody had asked her to do anything about the letter and she did not know about there being two versions until she was present at the liability hearing. The claimant says the police investigation is ongoing and that A/DS Harris has consented to her bringing this information to the attention of the tribunal.

5. The claimant says that the credibility of Councillor Theodoulou is very relevant. She observes that he filed the ET3 and Grounds of Resistance on behalf of the respondent and was named as their point of contact.

6. The claimant says "*Although the Tribunal Panel chose not to make reference to there being 2 versions of the letter of 12th March 2017 in its Reserved Judgment, it is apparent it believed the evidence of Councillor Theodoulou when he claimed to have no knowledge of the origin of the 4-page letter. As a result it is evident that in its analysis of my protected disclosure (starting at para. 258 of the Judgment) the Tribunal Panel failed to consider:*

i. Why there are two versions of my letter of 12th March 2019.

ii. Why the Respondent felt it necessary to produce a fabricated 4-page version and purport it to be my original letter until forced to accept otherwise.
iii. The credibility of the Respondent's witnesses in the knowledge they had acted in this manner.
iv. Precisely what was removed and why.
v. Why the Respondent took an enormous risk in doing this.

If the Tribunal Panel consider all of the wording that has been removed by the Respondent, it will clearly see that the Respondent must have believed its contents to be a protected disclosure, as otherwise, it would not have felt the need to tamper with this key document.

It also follows that the Tribunal Panel has not considered the credibility, honesty and integrity of the Respondent's other evidence (both written and oral) in the knowledge of the Respondent having produced tampered evidential documentation

The Tribunal Panel will be aware that I also raised concerns regarding some other documents which the Respondent was relying upon at the Final Hearing. I have also included these in my complaint to the Police. In particular these include the Employee Handbook, Councillor Kenneth Edwards' handwritten records and the Final Report of the Investigation Panel. The authenticity of all these documents can be undermined by other evidence already contained within the Final Hearing Bundle.

The Tribunal Panel has already found that my complaints of constructive dismissal and wrongful dismissal have been upheld. However, there has not been a fair hearing in relation to other parts of my claim. Having regard to the new evidence that Councillor Theodoulou and possibly others (on behalf of the Respondent) have been untruthful, it is in the interest of justice to vary the Judgment under rule 70 by setting aside all of the findings in relation to the other parts of my claim (protected disclosure dismissal, protected disclosure detriment and wages breach of contract). These other parts of my claim should be re-heard. I consider that making the order requested would be in accordance with the overriding objective because it would ensure that the parties are on an equal footing."

7 The claimant is therefore seeking the rehearing of a substantial part of her claim. There were, for example, 12 whistleblowing detriments relied upon, as well as dismissal.

8 I have undertaken a preliminary consideration of the claimant's application for reconsideration of the liability judgment. I reject the reconsideration application because I do not believe there is a reasonable prospect of the original decision being varied or revoked on the substance

of the reconsideration application as it stands at the current time. Furthermore, on what is currently before me, I do not consider, it has been established it would be in the interests of justice to extend the 14 day time limit.

9 In relation to the protected disclosure complaints, the primary reason why the claimant did not succeed was because we found that the claimant had not made protected disclosures. The first protected disclosure relied upon was the claimant's original grievance (ie the longer full version). We found for the reasons set out in our Liability Judgment that the claimant did not believe, when producing that letter, that Councillor James was in breach of the Code of Conduct and therefore in breach of a legal obligation, or that she believed at the time she was making a disclosure in the public interest. We also did not accept that the claimant at the time believed the respondent was failing to comply with any other legal obligation. Those findings are based upon our conclusions about the claimant's beliefs, not about the beliefs or actions of the respondent.

10 Likewise in relation to the claimed protected disclosure of the complaint to the Public Services Ombudsman, we found that the claimant did not believe at the time that her disclosure was made in the public interest. Again, that was a finding based upon our conclusions about the claimant's beliefs, not about the beliefs or actions of the respondent.

11 The simple point that flows is that if the claimant did not establish she made a protected disclosure, (a finding that there is no reasonable prospect of being varied), there is no basis on which there can be a variation of the outcome to her protected disclosure detriment and dismissal complaints. The outcome of the protected disclosure complaints would not change.

12 The claimant's first breach of contract claim did not succeed because we did not find there was an express or implied term of the claimant's contract of employment that she would be paid at scale 38 as a result of the evaluation carried out by the County Council. We found that the presentation of the pay evaluation at scale 38 was an offer to vary the claimant's contract of employment which was never accepted. The claimant has not set out how she would say these conclusions would have a reasonable prospect of being varied in her favour by the matters she raises.

13 The claimant's second breach of contract claim did not succeed primarily due to a pleading point as we did not find that it was a term of the claimant's contract that she would be paid at the scale recommended by Mr Egan in his pay evaluation report. Again, the claimant has not set out

how she would say these conclusions would have a reasonable prospect of being varied in her favour by the matters that she raises.

14 I would add that, as set out in my previous Reconsideration Judgment, the Liability Reserved Judgment does not set out every point of deliberation that the Tribunal panel undertook. It sets out our decision on the issues before us in the list of issues and our principal reasoning for those decisions. It is not therefore correct that we for example accepted carte blanche the evidence of Councillor Theodoulou or that we did not consider the two versions of the letter or what was removed or that we did not consider issues of credibility when deliberating the specific issues before us. Making findings on the issues before us was a careful and nuanced task. It is not the case, for example, that a tribunal, because it disbelieves a witness on one point, will necessarily or automatically disbelieve them on all.

15 It would not change the outcome of the case, but the claimant's latest reconsideration application again also does not set out how or why she says that if it is the case that Councillor Theodoulou (or potentially others) have been deliberately untruthful about the provenance of the edited version of the grievance letter (which to be clear is not the only potential conclusion that could be reached on the basis of what the claimant sets out) would alter our analysis on the protected disclosure detriment claims, the time limits relating to that, or the protected disclosure dismissal claim. The same can be said for other documents the claimant touches upon. It does not draw on the actual evidence put before us on the issues in the case, how these were evaluated in the closing submissions put before us, and then within our own decision making on the issues. There is simply a bold assertion that we did not consider the credibility, honesty and integrity of all the respondent's other evidence and that the respondent must have viewed her letter to be a protected disclosure. We undertook a thorough, and careful decision making process, which included a careful analysis of the "reason why" we found the detrimental treatment/conduct breaching trust and confidence occurred, summarised in our reasoned 94 page Judgment.

16 Moreover, the claimant would also have been in a position to provide the kind of reasoning (still missing) set out in paragraph 15 within her original reconsideration application, because her position has always been she considers that we failed to analysis the two versions and that it evidences issues of credibility of the respondent's witnesses. The current reconsideration application is therefore long outside the original 14 day time limit and runs contrary to the important principle of the need for finality in litigation.

17 Finally, I do not consider the claimant has an arguable case that she has not had a fair hearing. She was represented throughout by solicitor and counsel. She would have been at liberty to make whatever application she wished to, if so advised/ if her representative was so instructed, during the course of the hearing. The respondent's witnesses were cross examined by her counsel. There were written and oral closing submissions and we faithfully undertook our decision making on the issues before us on the basis of the evidence and submissions put before us.

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Employment Judge Harfield
Dated: 19 January 2023

JUDGMENT SENT TO THE PARTIES ON

……19 January 2023……..

…… ……..
FOR THE SECRETARY OF EMPLOYMENT TRIBUNALS