EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 8000044/2022

Held in Glasgow on 7 June 2023
(Reconsideration Hearing held in chambers by way of written representations from both parties)

Employment Judge Ian McPherson

Mr Hassan Hassan	**Claimant per his Written Representations**
Department for Work and Pensions	**Respondents per Written Representations by: Ms Emily Campbell - Solicitor**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Judgment of the Employment Tribunal, having considered both parties' written representations at this in chambers Reconsideration Hearing, is as follows:

(1) the claimant's opposed application of 4 April 2023 for reconsideration of the Tribunal's judgment dated 20 March 2023, and sent to parties on 21 March 2023, is **refused** by the Tribunal, and that original Judgment is **confirmed**, in terms of the Tribunal's powers under **Rule 70 of the Employment Tribunals Rules of Procedure 2013;** and

(2) parts of paragraph 44 of the Reasons for that original Judgment are **corrected** by the Tribunal**,** in terms of the Tribunal's powers under **Rule 69 of the Employment Tribunals Rules of Procedure 2013,** as set forth in the undernoted Reasons for this Reconsideration Judgment, at paragraph 79 below.

REASONS

Introduction

1. This case called again before me on Wednesday, 7 June 2023 for a Reconsideration Hearing in chambers, as previously intimated to both parties by the Tribunal, by letter dated 9 May 2023, when they were advised that they were not required to attend, given the Tribunal's earlier letter, dated 4 May 2023, advising them that I had directed that the claimant's opposed application for reconsideration of the Tribunal's judgment dated 20 March 2023, and sent to parties on 21 March 2023, would be determined by me, on the papers only, at an in chambers Reconsideration Hearing on a date to be later fixed.

2. On 21 March 2023, my written Judgment and Reasons dated 20 March 2023 was issued to both parties. In the interests of brevity, I refer to that Judgment, for the background to the case, which I do not to repeat here, incorporating it by reference.

3. In summary, in that Judgment, having considered the claimant's application for a preparation time order against the respondents, and the respondents' objection to that application, I refused the claimant's application for the reasons given in the Reasons for that Judgment.

Claimant's application for reconsideration of the Judgment dated 20 March 2023

4. On 4 April 2023, the claimant, then an unrepresented party litigant, acting on his own behalf, submitted to Glasgow ET, by email sent at 15:47, with copy to the respondents' solicitor, his 5-page written application for reconsideration of the Tribunal's original judgment dated 20 March 2023, and sent to parties on 21 March 2023.

5. As a full copy of claimant's application is held on the Tribunal's digital casefile, and I had access to it, and all the documents referred to therein by the claimant, at this in chambers Reconsideration Hearing, and during my private

deliberations, it is not necessary to repeat here the full terms verbatim. That is neither appropriate, nor proportionate.

6. While, since 12 May 2023, the claimant has been legally represented, by Ms Sarah Thompson Robertson, solicitor with Jackson Boyd LLP, Glasgow, she was not previously instructed, and the claimant has pursued this reconsideration application on his own behalf, as also his appeal to the Employment Appeal Tribunal against the Tribunal's original judgment, to which I make reference later in these Reasons, at paragraph 10 below.

7. Intending no disrespect to the claimant, I have summarised the main points arising from his reconsideration application of 4 April 2023, reproducing, where appropriate, certain passages from his application, and omitting his copy and paste from certain parts of the original Judgment and Reasons, and earlier correspondence with the Tribunal, as follows:

    1. The Claimant highlights all claim documents to date list the Claimant as: '***Mr. H. Hassan v Department for Work & Pensions'***. The Claimant has serious concerns about the claim being listed as it is on the 21 March 2023 judgement, namely : "***Mr Hassan Hassan Claimant per his Written Representations",*** particularly in light of the fact there is still an outstanding Rule 50 application.

    2. The Claimant highlights certain underlined points in the final paragraph of the section headed ***Get the tribunal to reconsider the judgment***, within the "***Guidance Employment tribunals: The judgment T426***" document referenced in the the Tribunal's cover letter accompanying the 21 March 2023 judgment.

    3. The Claimant requests written reasons why the Claimant's straightforward Wasted Costs/Preparation Time Order calculations have become confused across a total of three instances in the 21 March 2023 judgement. He refers to previous correspondence, and to parts of the Reasons for the Judgment, specifically "***point 15***" of the respondents' objections of 30 November 2022, dealing with the value of preparation time order (as reproduced by the Tribunal in paragraph

12 of those Reasons, on page 8), and, in summary, he states that : "*It is unclear why the Claimant's '5 hours of preparation time' has ever been erroneously referred to as '5 hours of his salary time'. "*

4. He refers to other parts of the Reasons for the Judgment, specifically what he refers to as "***point 12***", which from its reproduced terms seems to be reference to the Tribunal's narration of the relevant law, at paragraph 21 of those Reasons, on page 12, reproducing **Rule 79** (the amount of a preparation time order), and observes that "*the Claimant's costs' application regarding 5 hours of preparation time at £42 per hour is now no longer considered to be 5 hours of his salary".* He further states that it is "*unclear what changed for the Tribunal to be able to accurately see this point."*

5. The claimant refers to what he cites as "***pages 19 (b) and (d)"*** in the Reasons for the Judgment, and then reproduces their terms, without comment. From what he has copied and pasted in, this seems to be reference to the Tribunal's discussion and deliberation, at paragraph 44(a) to (i) of those Reasons, on pages 18 to 20.

6. Further, the claimant then refers to "***page 19 (e)"*** in the Reasons for the Judgment, which I take to be paragraph 44(e), on page 19 of those Reasons, and reproduces its terms, but with his own further comments:

"This is once again a return to the repeatedly misconstrued point from the Rules of the Tribunal regarding costs. Respectfully: the Claimant has never stated the Rules of the Tribunal help to calculate any hours of his salary. However, it is now surely imperative to gain clarification on how and why the Claimant's points and costs' application has repeatedly been misconstrued in this judgement.

…. At present: the Claimant recognised by the Tribunal as a litigant-in-person. It is surely an oversimplification to imply he somehow already has insights about what to do and how to quickly respond to

the seriousness of the Respondent's Rule 10 application for rejection of the entire claim.

With sincere thanks to the Tribunal's helpful signposting to the University of Strathclyde Law Clinic, the Claimant was indeed able to access brief legal advice about some matters; and he was advised the Respondent's Rule 10 application was perhaps a 'scare tactic', and it was highly unlikely to have any prospect of success.

Nevertheless, the Claimant's entire claim surely rested upon this Rule 10 application; hence the fact the Employment Judge ruled it must be dealt with as soon as possible, and before other matters. To state it is a narrow point of law, does not explain how the Claimant sought to deal with the matter.

Consequently: the Claimant had no alternative other than to engage in preparation time for the 1 December 2022 full-day hearing for the Rule 10 application.

The Claimant wishes to again emphasise it is not at all clear why the Tribunal makes no reference to the Claimant providing both the Tribunal and the Respondent with a PDF file of Home Office official guidance on names and identity. In the Claimant's 1 December 2022 correspondence to the court and to the Respondent, point 4. states: "Claimant's Preparation Time 1. The Claimant wishes to provide insights into the preparation time work which he did as a litigant-in-person for the 1 December 2022 full-day video hearing. Five hours is a somewhat conservative measurement of preparation time for a litigant-in-person, because the reality is the Claimant has spent considerably more time than this in preparation for what was due to happen today."

Furthermore, point 8 of the Claimant's 1 December 2023 correspondence points to the fact the Claimant did include The Home Office official guidance PDF titled: 'Use and change of names', and the Claimant stated: "Secondly: excerpts from Home Office guidance on

names. The full official government PDF file is attached (attention is drawn to the 20:14 hours, 1 November 2022 PDF file properties of the attached Home Office PDF which indicate when the Claimant downloaded this file during his hours of court hearing preparation time):
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/810742/Use-and-change-of-names-v1.0ext.pdf"

7. The claimant refers to his status as an unrepresented, party litigant, In particular, he states as follows:

"As a litigant-in-person, no one casually handed this legal evidence to the Clamant; therefore, it clearly was a part of the preparation time prior to the scheduled 1 December 2022. The Claimant even went as far as to draw attention to the time and date of the downloaded PDF in order to demonstrate the preparation time involved. Even if all of this were to not change the outcome of the judgement, there is no clarification why all of this is completely disregarded; and why the Tribunal now unfairly points to doubts about what the Claimant was doing during '5 hours of preparation time'.

Can the Tribunal at least please acknowledge this evidence/preparation time was ignored/disregarded, because it is particularly unfair to cast doubt over the Claimant's costs' application on the basis he has not been transparent about matters?"

8. Further, the claimant again refers to his status as an unrepresented, party litigant, and then he states as follows:

"Admittedly, as a litigant-in-person, the Claimant did not warn the Respondent of a potential costs' order; however, the Claimant also was not to know the Respondent would wait almost another 2 weeks after the Claimant's 23 November 2022 correspondence to the

court and to the Respondent, before the Respondent suddenly and inexplicably withdrew their application.

Attention is drawn to the Claimant's 23 November 2022 correspondence to the court and to the Respondent. The very last point made is: " 5.1 As a final point: it may by now be evident the Claimant is deeply hurt and distressed by the Respondent's insistence to make an application for the entire claim to be rejected and for this to take up a full-day video hearing. The Claimant will seek legal advice as Judge McPherson advised. However, at this stage the Claimant strongly believes he has sufficient evidence to ensure the Respondent's [Rule 10 (2)] application for rejection is misguided, and it will fail."

8. When the claimant's application was referred to me for preliminary consideration, in terms of **Rule 72 of the Employment Tribunals Rules of Procedure 2013,** I did not refuse it , and the Tribunal's letter to parties, dated 17 April 2023, asked the respondents to provide any response to the reconsideration application by 1 May 2023, and for both parties, by that date, to express a view as to whether the application could be determined without a Hearing.

Claimant's Appeal to the Employment Appeal Tribunal

9. On 3 May 2023, the EAT Registrar, Edinburgh advised the Glasgow ET that they had received a Notice of Appeal from the claimant, dated 2 May 2023, appealing against the Tribunal's Judgment dated 20 March 2023, and sent to parties on 21 March 2023, noting the reconsideration application to the ET made by the claimant.

10. Specifically, the claimant's appeal to the Employment Appeal Tribunal was advanced on the following grounds, namely:

"7. The grounds upon which this appeal is brought are that the employment tribunal erred in law in that (here set out in paragraphs the various grounds of appeal).

The Glasgow Employment Tribunal's 21 March 2023 Judgment on the Claimant's PTO against the Respondent in terms of Rules 75(2) and 79 of the Employment Tribunal Rules of Procedure 2013.

On 4 April 2023, the Claimant made an application for reconsideration; and he requested written reasons why the Claimant's straightforward Wasted Costs/Preparation Time Order calculations have become confused across a total of three instances in the 21 March 2023 judgement, including confusion about the Rules of the Tribunal regarding costs which can be awarded to a litigant-in-person. The Claimant has also highlighted the fact that the Respondent knew their Rule 10 application was defective due to the fact they have accepted the very name for government employment which they insist an Employment Tribunal cannot accept on an ET1.

Please note: a Rule 50 application is still pending with the Glasgow ET.

In addition: the Claimant's reconsideration application for the 21 March 2023 costs' order judgement has not been rejected upon initial consideration by the Glasgow ET; this is therefore also still pending."

11. On my instructions, by letter from the Tribunal clerk to the EAT Registrar, sent on 5 May 2023, and copied to both the claimant, and respondents' solicitor, they were copied into ET correspondence of 4 May 2023 with both parties about the reconsideration application, and arrangements for the CVP Case Management Preliminary Hearing listed for Tuesday, 16 May 2023.

12. For the EAT's further information, the Registrar was informed that, while the claimant's Notice of Appeal referred to his **Rule 50** application being still pending with the Glasgow ET, Judge McPherson's judgment dated 28 April 2023, refusing the claimant's application for private Hearing, and anonymity / privacy orders, was issued to both parties on 4 May 2023.

13. The Tribunal clerk's letter of 5 May 2023 stated that Glasgow ET would update the EAT Registrar, in due course, when a date was assigned for the in chambers Reconsideration Hearing, and again, thereafter, when the Judge had come to his judgment on the opposed application.

14. By letter from the Tribunal to the EAT Registrar, sent on 11 May 2023, the EAT was informed of the date fixed for this Reconsideration Hearing, namely 7 June 2023, by enclosing copy of the Tribunal's letter sent to both parties on 9 May 2023.

Respondents' response to the reconsideration application

15. On 1 May 2023, Ms Emily Campbell, solicitor for the respondents, from Anderson Strathern LLP, submitted to Glasgow ET, by email sent at 10:51, with copy to the claimant, her 2-page written response to the claimant's reconsideration application. Given its brevity, it is reproduced here, in full, in the following terms:

"***Respondent's Response to Claimant's Application for Reconsideration***

Background

1. By letter dated 23 November 2022, the Claimant submitted, amongst various other matters, applications under Rule 79 for an interim preparation time/ wasted costs order against the Respondent. The Respondent provided a written response, on 30 November 2022, and a judgment was then issued by the Tribunal on 21 March 2023. The Judgement dismissed the Claimant's application for preparation time/ wasted costs.

2. By correspondence dated 4 April 2023, the Claimant applied for the Judgment of 21 March 2023 to be reconsidered ("the Application"). This document sets out the Respondent's response to the Application.

Response to the Claimant's Application for Reconsideration

3. The Application appears to centre around the value of the Claimant's preparation time (see for example, paragraphs 3 – 6 of the Application).

4. It is submitted that the value of any preparation time is irrelevant. The Tribunal was not persuaded that an award for preparation time was

warranted in the first place, therefore the value of any preparation time is irrelevant.

5. *Notwithstanding the above, the Respondent did state in its written response of 30 November 2022 that "the Claimant appears to be claiming for 5 hours of his salary". The basis for the claim for costs by the Claimant was unclear. In the absence of information from the Claimant, the Respondent drew an inference from the Claimant's application, that the basis for the calculation was possibly based on his salary. This was never stated as 'fact'. The Claimant was in no way disadvantaged by this statement.*

6. *In the Application, the Claimant states that in his original application of 23 November, he referred to having prepared a PDF document of Home Office guidance which provides an explanation as to what the 5 hours of preparation time was used for. He states that this evidence was ignored or disregarded by Employment Judge McPherson in the Judgment. That evidence was not referred to by the Claimant as something which explained where the 5 hours of preparation time came from. Further, the fact that it was not expressly referred to in the Judgment does not mean that it was not considered. In any event however, in circumstances in which the Tribunal was not granting the Claimant's application, the existence or otherwise of evidence supporting why 5 hours of preparation time was being claimed is irrelevant – if the Tribunal's decision was that no preparation time order should be granted, then the value of any preparation time is of no consequence. Therefore, even if Employment Judge McPherson did omit to consider the PDF file referred to by the Claimant, this does not affect the Tribunal's substantive decision, that no preparation time order ought to be granted.*

7. *Ultimately, it is the role of Employment Judge McPherson to consider all of the relevant factors and exercise discretion when deciding whether to allow the preparation time order or not. The fact that the*

Claimant disagrees with that finding does not give grounds for the decision to be reconsidered.

8. For these reasons, it is submitted that the Application should be refused."

Claimant's reply to the Respondents' response to his reconsideration application

16. By email sent to Glasgow ET, at 23:49 on 1 May 2023, the claimant responded to Ms Campbell's response to his reconsideration application, by a 4-page written submission, reading as follows:

"To enable clarity, the Claimant will respond to the 8 numbered points in the Respondent's 1 May 2023 PDF correspondence sent today to the court and the Claimant:

1. As already stated: the Claimant's 1 December 2022 supporting evidence was previously provided for the Claimant's 23 November 2022 Rule 79 costs' application.

2. The Respondent's point is clear. No response required from the Claimant.

3. The Claimant's application for reconsideration does not 'appear to centre around the value of preparation time' as the Respondent falsely state. The Claimant's reconsideration application highlighted points which he believes illustrate how the costs' application has not been properly considered by the Tribunal – particularly regarding Claimant preparation time supporting evidence.

4. The facts of the Claimant's costs' application are simple and clear, and it is not necessary to respond to point 4 made by the Respondent – which is sadly once again intended to mislead the Tribunal, and to allow the Respondent to falsely control the narrative.

5. The Claimant correctly followed the Rules of the Tribunal in relation to the hourly value of costs which can be awarded to a litigant-in-person.

The Claimant's 23 November 2022 Rule 79 Application, which the Respondent now falsely state is 'unclear' does in fact state as follows:

"6. Rule 79 application for Preparation Time Order/Wasted Costs Order: "The amount of a preparation time order 79.—(1) The Tribunal shall decide the number of hours in respect of which a preparation time order should be made, on the basis of— (a) information provided by the receiving party on time spent falling within rule 75(2) above; and (b) the Tribunal's own assessment of what it considers to be a reasonable and proportionate amount of time to spend on such preparatory work, with reference to such matters as the complexity of the proceedings, the number of witnesses and documentation required. (2) The hourly rate is £33 and increases on 6 April each year by £1. (3) The amount of a preparation time order shall be the product of the number of hours assessed under paragraph (1) and the rate under paragraph (2)."

Claimant's application for an interim Preparation Time/Wasted Costs Order: Pro-rata full day of Claimant's salary: £108.85 approx. 2 Preparing evidence/response for Respondent's Rule 10 application for rejection of entire claim; and preparing for full-day video PH: Approx. 5 hours x £42.00 = £210.00 Total: £ 318.85 (subject to court approval)

In the Respondent's 1 May 2023 correspondence, they provide not one example of what was 'unclear' about the Claimant's costs' application (listed above). Sadly, it is the Respondent who have confused matters. Surely it would be reasonable for the Respondent to accept when they are wrong, and to apologise to the Tribunal and to the Claimant?

The Claimant disagrees with the Respondent's point that he is in no way disadvantaged by the Claimant's persistently false statements. The Tribunal's overriding objective is being deliberately failed by the Respondent; which in turn both harms the Claimant, and also infringes upon the Claimant's rights.

The Respondent have today stated: "In the absence of information from the Claimant, the Respondent drew an inference from the Claimant's application, that the basis for the calculation was possibly based on his salary."

The Claimant copied the Rules of the Tribunal directly before his simple costs' calculations; and he has done so again above. This is clear evidence of the Respondent's unreasonable conduct.

6. *The Tribunal judgement makes repeated reference that it is not known what the Claimant was doing in 5 hours of preparation time; and there is specific reference to relevant Tribunal rules not requiring 5 hours of time to read and understand. Again, the Respondent deliberately attempt to mislead the Tribunal on this point.*

7. *The Claimant provided clear evidence for the costs' order judgement to be reconsidered. The Respondent's request for the judgement not to be reconsidered simply 'because the Claimant disagrees' is disrespectful – and yet again – completely misleading to the Tribunal.*

At the very start of the Claimant's application for reconsideration, the Claimant has quoted verbatim the official gov.uk guidance on making an application for reconsideration. The Claimant believes he has sufficiently provided genuine grounds to make this reconsideration application.

8. *The Claimant will likely make an appeal to the EAT on the costs' order judgement.*

Additional points from the Claimant:

9. *The Claimant's 4 April 2023 application for reconsideration contains a slight error in misquoting the date of Claimant correspondence. The final point number 8 mentions point 5.1 from the Claimant's 23 November 2022 correspondence; however, point 5.1 was in the Claimant's 4 November 2022 correspondence. Fortunately, the meaning and purpose of the Claimant's point is not changed at all; but the Claimant still apologises for this error.*

10. *Attention is drawn to the Claimant's 1 December 2022 correspondence, point 6: "The Respondent is again reminded evidence is available to prove the Claimant made his original DWP job application to join this government department under the name of 'Mr. H. Hassan' – the exact same name as he listed on the original Tribunal court claim – which the Respondent recklessly disputed in their Rule 10 application for rejection of the entire claim."*

11. *The Tribunal's 21 March 2023 costs' order judgement does not make any reference to the fact the Claimant's 1 December 2022 correspondence explains the Respondent knew all along they were falsely making a Rule 10 application.*

The Respondent's Rule 10 application required the Tribunal to reject the Claimant's name when it was presented in the very same manner as it was when he applied for and was accepted for his Government Officer job role with the Respondent.

The Respondent may attempt to argue they had simply forgotten this vital point; however, it is somewhat difficult to accept this for two reasons. Firstly, the Respondent were well aware of how the Claimant presented his name on his original job application – when they responded to the Claimant's SARs in August 2022; and they included his original job application in their SAR response. The Respondent did this just one month prior to their vexatious Rule 10 application in September 2022.

For this reason, along with the overwhelming fact the Respondent has been duplicitous throughout these proceedings, the Claimant asserts the costs' order should be granted.

The value of the order is clearly up to the Tribunal to decide; but unlike the Respondent, the Claimant cannot simply alter true facts of what the Respondent has done, and the harmful impact their actions have had upon the Claimant.

The Claimant has not sought to profit out of the Respondent's wrongdoing. Instead, it is imperative some action is taken against the Respondent to address their persistently unreasonable conduct.

12. The Claimant respectfully highlights the judgement states the Respondent's abandoned Rule 10 application involves a narrow point of law. Perhaps an effective question to consider is: Did the Respondent actually know what they were doing was wrong when they made their Rule 10 application in September 2022?

And, even if the Respondent did not know it was wrong – is it still their responsibility to have taken reasonable steps to establish whether it was indeed right or wrong to make their Rule 10 application for rejection of the Claimant's entire claim?

13. The Claimant is presently being told the Respondent are not being unreasonable in attempting to have the Employment Tribunal reject his name being presented in the exact, same manner in which the Respondent recruited him for employment. In other words: the Respondent can call the Claimant "Mr. H. Hassan" but they insist an Employment Tribunal cannot do the same; and the eventual consequence of the Respondent's actions is something of a legal loophole in a Rule 10 application to completely evade accountability for a serious discrimination claim. Is that really the genuine purpose of a reasonably-made Rule 10 application? Particularly when the Tribunal has already accepted and progressed a claim?

14. The Claimant respectfully asks the Tribunal to consider the Respondent's surrounding actions. Have they otherwise been completely helpful and cooperative in matters? Sadly, the Claimant can confirm despite the Respondent confirming they would fully investigate the Claimant's outstanding grievances – they are now refusing to do so on the basis the Claimant has not completed the grievance form correctly.

There clearly is a pattern emerging with the Respondent's misconduct, whereby they wish to pick and choose the rules when it suits them, even in Tribunal matters.

15. The Claimant's costs' application was made due to the overwhelming evidence of the Respondent's unreasonable conduct.

Again, to state the Respondent reasonably withdrew their Rule 10 application 16 days before the hearing date – does not explain how they came to make a deceptive Rule 10 application in the first place?

And, it definitely is an act of deception to try to force an entire Employment Tribunal claim to be rejected on the basis of a name which the Respondent themselves have readily and legally accepted into a government departmental job role.

Add this to the legal advice provided from the University of Strathclyde Law Clinic regarding the Respondent's 'scare tactic' Rule 10 application; and one can clearly see the Respondent likely knew all along their Rule 10 venture had no prospect of success.

This is the irreversible tipping point at which the Respondent casually sending in case law becomes overwhelmingly outweighed by their persistent, relentless intent to mislead both the Tribunal and Claimant.

16. The Claimant respectfully suggests the matter of reconsideration of the judgement should be made on written representations, because this will help to reduce costs and time involved for the Tribunal, and for both parties.

It does, however, remain a difficulty to have to deal with the Respondent – who will likely now respond with complete denial of the simple facts of what is happening here. And perhaps, on that basis, there should be a hearing.

The Claimant will certainly respect the instructions of the Tribunal; but the above point remains in terms of what is most proportionate and reasonable for the amount of the costs' order involved."

Reconsideration Hearing

17. This Reconsideration Hearing took place in my chambers at Glasgow Tribunal Centre. Parties were not required to attend, as it was listed as a Hearing on the papers only. The claimant's reply of 1 May 2023, at his paragraph 16, as just reproduced above, at paragraph 16 of these Reasons, suggested reconsideration of the judgment should be made on written representations.

18. Further, Ms Campbell, solicitor for the respondents, in her email of 2 May 2023, sent at 12:06, and copied to the claimant, stated that, as regards the Tribunal's request for parties' comments on whether a hearing is required to determine the issue, "*the Respondent's view is that a hearing is not required to determine the issue and it would be more proportionate for the Tribunal to determine the matter on the written representations, namely the Claimant's reconsideration application of 4 April 2023 and the Respondent's response of 1 May 2023.*"

19. Following referral of parties' correspondence of 1 and 2 May 2023, I gave directions. As per the Tribunals letter dated 4 May 2023, issued on my instructions, both parties were advised that I had directed that the claimant's opposed application for reconsideration of the Tribunal's judgment issued on 21 March 2023 would be determined by the Judge, on the papers only, at an in chambers Reconsideration Hearing on a date in June 2023 to be thereinafter fixed, and intimated to both parties, for information only, as their attendance will not be required.

20. In that letter from the Tribunal, both parties were informed that, at this in chambers Reconsideration Hearing, I would consider the claimant's reconsideration application dated 4 April 2023, and both parties' written representations of 1 May 2023.

21. Further, as the claimant's email of 1 May 2023 at 23:49 had responded to the respondents' objections, per Ms Campbell's email of 1 May 2023 at 10:51, I ordered that the respondents' solicitor was to provide any final, further written representations for the respondents, by no later than 4pm on Wednesday, 10

May 2023. On receipt thereof, I would then decide whether or not it was necessary to seek a final right of reply from the claimant.

22. On 10 May 2023, Ms Campbell, solicitor for the respondents, submitted to Glasgow ET, by email sent at 16:14, with copy to the claimant, her written response to the claimant's reply of 1 May 2023, stating as follows:

"We refer to the Tribunal's letter of 4 May, inviting the Respondent to make any final response to the Claimant's response of 1 May, before Judge McPherson considers the Claimant's application for reconsideration.

The Respondent relies on the comments already made in its response of 1 May.

The only additional point which the Respondent wishes to make is in relation to paragraph 4 of the Claimant's response of 1 May, in which he states that the Respondent is attempting to "mislead the Tribunal" or "falsely control the narrative". He goes on to state that the Respondent "knew all along they were making a false Rule 10 application." We wished to simply state that these assertions are false and have no basis. The Respondent made a Rule 10 application in good faith and, when it became apparent that its prospects of succeeding in that application were not as good as initially envisaged, it withdrew the application. As outlined in the Respondent's previous submissions and as accepted by the Tribunal in the Judgment, this is not at all unusual in Employment Tribunal litigation and does not indicate any nefarious or inappropriate intent on the Respondent's part such that an award of expenses would be justified.

We would invite the Tribunal, having considered both parties' submissions, to confirm the original Judgment."

23. Although lodged slightly after the 4:00pm time set by the Tribunal for compliance, I have taken this further written representation from the respondents into account, as I consider it in the interests of justice to do so, and, on my own initiative, for no application for an extension of time was made by Ms Campbell, nor was any explanation provided by her for the late reply,

I have granted an extension of time to the respondents, as per my own powers under **Rule 5 of the Employment Tribunal Rules of Procedure 2013,** as the extra time granted is *de minimis*.

24. In an email to Glasgow ET, sent at 17:42 on 12 May 2023, and copied to the respondents' solicitor, the claimant stated that :

"2. Further to the Respondent's 10 May 2023 email correspondence sent to the Tribunal and to the Claimant, the Claimant intends to provide a full, detailed response along with supporting evidence for reconsideration of the costs' order judgement against the Respondent.

3. In addition: the Claimant wishes to share the following. To date: the Claimant has continuously acted as a litigant-in-person. The Claimant is grateful to the Tribunal for helping to ensure the parties both remained on an equal footing at the first PH held on 25 October 2022; and also for signposting the Claimant to access legal advice at the University of Strathclyde Law Clinic.

The Claimant is pleased to confirm his claim is being supported by the Equality & Human Rights Commission (EHRC); and he will be represented by Sarah Thompson Robertson of Jackson Boyd LLP at the upcoming CVP PH scheduled for 10 a.m. on 16 May 2023."

25. In paragraph (5) of the Tribunal's letter to both parties' representatives, on 16 May 2023, issued on my instructions, parties were informed that I did not require any further reply from the claimant, as suggested by him in his email of 12 May 2023, where he stated that he intended to provide a full, detailed response.

26. Further, at paragraph (6), the Tribunal's letter stated that:

"His email of 1 May 2023 gave the claimant the opportunity to make further written representations on the respondents' objections to his reconsideration application, and the Judge will take them into account on 7 June 2023 at the in chambers Reconsideration Hearing."

27. Finally, at paragraph (7), it was stated that :

"The Judge does not require any further written representations on that opposed reconsideration application from either party."

Relevant Law: Reconsideration

28. The relevant statutory provisions are to be found within **Rules 70 to 73 of the Employment Tribunal Rules of Procedure 2013**, which provide as follows:

"**70 Principles**

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.

71 Application

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.

72 Process

(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.

(2) If the application has not been refused under paragraph (1), the original decision shall be reconsidered at a hearing unless the Employment Judge considers, having regard to any response to the notice provided under paragraph (1), 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.

(3) Where practicable, the consideration under paragraph (1) shall be by the Employment Judge who made the original decision or, as the case may be, chaired the full tribunal which made it; and any reconsideration under paragraph (2) shall be made by the Judge or, as the case may be, the full tribunal which made the original decision. Where that is not practicable, the President, Vice President or a Regional Employment Judge shall appoint another Employment Judge to deal with the application or, in the case of a decision of a full tribunal, shall either direct that the reconsideration be by such members of the original Tribunal as remain available or reconstitute the Tribunal in whole or in part."

73 Reconsideration by the Tribunal on its own initiative

Where the Tribunal proposes to reconsider a decision on its own initiative, it shall inform the parties of the reasons why the decision is being reconsidered and the decision shall be reconsidered in accordance with rule 72(2) (as if an application had been made and not refused).

29. The claimant's application for reconsideration did not cite any relevant case law for consideration by the Tribunal, but he did quote and provide an excerpt from the Tribunal's cover letter accompanying the 21 March 2023 judgment, where a government information weblink was provided.

30. He focused on ***"something having gone wrong"*** at or in connection with that previous in chambers Hearing on 1 and 2 March 2023, that led to the original Judgment now the subject of the present reconsideration application. In particular, he referred to his correspondence to the Tribunal, and respondents, on 23 November and 1 December 2022, having been left out of consideration by the Tribunal.

31. At paragraph 2 of his reconsideration application of 4 April 2023, the claimant stated, as follows:

"Attention is drawn to the gov.uk webpage: Employment tribunals: The judgment T426 - GOV.UK (www.gov.uk) Guidance Employment tribunals: The judgment T426 Updated 15 September 2022

The Claimant highlights the following underlined points in the final paragraph of the section headed Get the tribunal to reconsider the judgment:

"The interests of justice do not mean a judgment or decision will be reconsidered just because you disagree with it. Something must have gone wrong at or in connection with the hearing or something has happened since the hearing which makes the judgment or decision unjust. If you apply for a reconsideration based on new evidence you must explain why the evidence was not available before and include a full statement of the evidence which you want to introduce. The tribunal has the power to refuse to reconsider the judgment, confirm it, vary it or revoke it. An application for reconsideration does not change the time limit for making an appeal and you may appeal while waiting for the result of the application."

32. The claimant, as an unrepresented, party litigant, has perhaps, unsurprisingly, not made any reference to case law on this particular subject, although, in earlier correspondence, on other aspects of this case, he has cited case law and statutory provisions in support of his case. I make this comment, as an observation, and not as a criticism of the claimant as a then, unrepresented, party litigant.

33. Ms Campbell's response of 1 May 2023, on behalf of the respondents, was similarly devoid of any reference to the relevant statutory provisions, or any applicable case law authorities on how an Employment Tribunal should deal with a reconsideration application. Given she is a professional, legal representative, that may seem odd, but that is the situation.

34. In these circumstances, I have given myself a self-direction on the relevant law, as follows:

35. As this was an application for reconsideration by the claimant, **Rule 73**, relating to reconsiderations by the Tribunal on its own initiative, does not fall to be further considered. Further, as always, there is the Tribunal's overriding objective, under **Rule 2,** to deal with the case fairly and justly.

36. The previous Employment Tribunal Rules 2004 provided a number of grounds on which a judgment could be reviewed (now called a reconsideration). The only ground in the current 2013 Rules is that the judgment can be reconsidered where it is necessary "***in the interests of justice"*** to do so. That means justice to both sides.

37. However, it was confirmed by Her Honour Judge Eady QC (as she then was, now Mrs Justice Eady, High Court judge in England & Wales, and the current EAT President) in **Outasight VB Limited v Brown [2014] UKEAT/0253/14/LA,** as reported at **[2015] ICR D11**, that the guidance given by the Employment Appeal Tribunal in respect the previous Rules is still relevant guidance in respect of the 2013 Rules and, therefore, I have considered the case law arising out of the 2004 Rules.

38. At paragraphs 27 to 38, the learned EAT Judge reviewed the legal principles. I have considered that guidance and in particular have noted what is said about the grounds for a reconsideration under the 2013 Rules, at paragraph 48 of the **Outasight** judgment, as follows:

"In my judgment, the 2013 Rules removed the unnecessary (arguably redundant) specific grounds that had been expressly listed in the earlier Rules. Any consideration of an application under one of the specified grounds

would have taken the interests of justice into account. The specified grounds can be seen as having provided examples of circumstances in which the interests of justice might allow a review. The previous listing of such examples in the old Rules - and their absence from new - does not provide any reason for treating the application in this case differently simply because it fell to be considered under the "interests of justice" provision of the 2013 Rules. Even if it did not meet the requirements laid down in Rule 34(3)(d) of the 2004 Rules, the ET could have considered whether it should be allowed as in the interests of justice under Rule 34(3)(e). There is no reason why it should then have adopted a more restrictive approach than it was bound to apply under the 2013 Rules".

39. The approach to be taken to applications for reconsideration was also set out in the case of **Liddington v 2Gether NHS Foundation Trust [2016] UKEAT/0002/16/DA** in the judgment of Mrs Justice Simler, then President of the EAT. The Employment Tribunal is required to:

"1. identify the Rules relating to reconsideration and in particular to the provision in the Rules enabling a Judge who considers that there is no reasonable prospect of the original decision being varied or revoked refusing the application without a hearing at a preliminary stage;

2. address each ground in turn and consider whether is anything in each of the particular grounds relied on that might lead ET to vary or revoke the decision; and

3. give reasons for concluding that there is nothing in the grounds advanced by the (applicant) that could lead him to vary or revoke his decision."

40. In paragraph 34 and 35 of the **Liddington** Judgment, the learned EAT President, Mrs Justice Simler, stated as follows:

"34. In his Reconsideration Judgment the Judge identified the Rules relating to reconsideration and in particular to the provision in the Rules enabling a Judge who considers that there is no reasonable

prospect of the original decision being varied or revoked refusing the application without a hearing at a preliminary stage. In this case, the Judge addressed each ground in turn. He considered whether was anything in each of the particular grounds relied on that might lead him to vary or revoke his decision. For the reasons he gave, he concluded that there was nothing in the grounds advanced by the Claimant that could lead him to vary or revoke his decision, and accordingly he refused the application at the preliminary stage. As he made clear, 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 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. Tribunals have a wide discretion whether or not to order reconsideration, and the opportunity for appellate intervention in relation to a refusal to order reconsideration is accordingly limited.

35. Where, as here, a matter has been fully ventilated and properly argued, and in the absence of any identifiable administrative error or event occurring after the hearing that requires a reconsideration in the interests of justice, any asserted error of law is to be corrected on appeal and not through the back door by way of a reconsideration application. It seems to me that the Judge was entitled to conclude that reconsideration would not result in a variation or revocation of the decision in this case and that the Judge did not make any error of law in refusing reconsideration accordingly."

41. There is a public policy principle that there must be finality in litigation and reviews or reconsiderations are a limited exception to that principle. In the

case of **Stephenson v Golden Wonder Limited [1977] IRLR 474** it was made clear that a review (now a reconsideration) is not a method by which a disappointed litigant gets a "***second bite of the cherry***". Lord Macdonald, the Scottish EAT Judge, said that the review provisions were *"not intended to provide parties with the opportunity of a rehearing at which the same evidence can be rehearsed with different emphasis, or further evidence produced which was available before".*

42. The Employment Appeal Tribunal went on to say in the case of **Fforde v Black EAT68/80** that this ground does not mean "*that in every case where a litigant is unsuccessful 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 even more exceptional cases where something has gone radically wrong with the procedure involving the denial of natural justice or something of that order."*

43. "***In the interests of justice***" means the interests of justice to both sides. The Employment Appeal Tribunal provided further guidance in **Reading v EMI Leisure Limited EAT262/81** where it was stated "*when you boil down what it said on [the claimant's] behalf it really comes down to this: that she did not do herself justice at the hearing so justice requires that there should be a second hearing so that she may. Now, "justice", means justice to both parties. It is not said, and, as we see it, cannot be said that any conduct of the case by the employers here caused [the claimant] not to do herself justice. It was, we are afraid, her own inexperience in the situation."*

44. The 2013 Rules came into force on 29 July 2013 and introduced the new concept of reconsideration of judgments rather than a review of judgments as it was entitled under the previous 2004 Rules of Procedure. In the 2004 Rules there were five grounds on which a review could be sought and the last of the five was the single ground that now exists for a reconsideration under the 2013 Rules namely that the interest of justice render it necessary to reconsider.

45. I consider that any guidance on the meaning of "***the interests of justice***" issued under the 2004 Rules (and the earlier Rules) is still relevant to reconsiderations under the 2013 Rules. I also remind myself that the phrase "***in the interests of justice***" means the interests of justice to both sides.

46. Further, I have also reminded myself of the guidance to Tribunals from the Employment Appeal Tribunal, in **Newcastle upon Tyne City Council – v-Marsden [2010] ICR 743,** and in particular the words of Mr Justice Underhill, then EAT President, at paragraph 17, when commenting on the introduction of the overriding objective (now found in **Rule 2** of the 2013 Rules) and the necessity to review previous decisions and on the subject of a review:

"But it is important not to throw the baby out with the bath-water. As Rimer LJ observed in Jurkowska v Hlmad Ltd. [2008] ICR 841, at para. 19 of his judgment (p. 849), it is "basic" "… that dealing with cases justly requires that they be dealt with in accordance with recognised principles. Those principles may have to be adapted on a case by case basis to meet what are perceived to be the special or exceptional circumstances of a particular case. But they at least provide the structure on the basis of which a just decision can be made.

*The principles that underlie such decisions as **Flint** and **Lindsay** remain valid, and although those cases should not be regarded as establishing propositions of law giving a conclusive answer in every apparently similar case, they are valuable as drawing attention to those underlying principles. In particular, the weight attached in many of the previous cases to the importance of finality in litigation – or, as Phillips J put it in **Flint** (at a time when the phrase was fresher than it is now), the view that it is unjust to give the losing party a second bite of the cherry – seems to me entirely appropriate: justice requires an equal regard to the interests and legitimate expectations of both parties, and a successful party should in general be entitled to regard a tribunal's decision on a substantive issue as final (subject, of course, to appeal)."*

47. The EAT President, then Mr Justice Langstaff, in **Dundee City Council v Malcolm [2016] UKEATS/0019-21/15,** at paragraph 20, states that the

current Rules effected no change of substance to the previous Rules, and that they do not permit a claimant to have a second bite of the cherry, and the broader interests of justice, in particular an interest in the finality of litigation, remained just as important after the change as it had been before.

48. Further, I have also taken into account the Court of Appeal's judgment, in **Ministry of Justice v Burton & Another [2016] EWCA Civ.714**, also reported at **[2016] ICR 1128**, where Lord Justice Elias, himself a former EAT President, at paragraph 25, refers, without demur, to the principles "*recently affirmed by HH Judge Eady in the EAT in Outasight VB Ltd v Brown UKEAT/0253/14."*

49. At paragraph 21 in **Burton,** Lord Justice Elias had stated that:

"An employment tribunal has a power to review a decision "where it is necessary in the interests of justice": see Rule 70 of the Tribunal Rules. This was one of the grounds on which a review could be permitted in the earlier incarnation of the rules. However, as Underhill J, as he was, pointed out in Newcastle on Tyne City Council v Marsden [2010] ICR 743, para. 17 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…"

50. Finally, in considering this reconsideration application, I have also taken into account the helpful judicial guidance provided by Her Honour Judge Eady QC, then EAT Judge, now Mrs Justice Eady, EAT President, in her judgment in **Scranage v Rochdale Metropolitan Borough Council [2018] UKEAT/0032/17,** at paragraph 22, when considering the relevant legal principles, where she stated as follows:

"*The test for reconsideration under the ET Rules is thus straightforwardly whether such reconsideration is in the interests of justice (see Outasight VB Ltd v Brown UKEAT/0253/14 (21 November 2014, unreported). The "interests of justice" allow for a broad discretion, albeit one that 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."

Discussion and Deliberation

51. I turn now to consider each party's competing submissions to me in this opposed reconsideration application.

52. I have proceeded to consider matters, on the papers only, and without the need for an attended Hearing, on the basis of parties' previously given agreement to that course of action, and having careful regard to parties' written representations as available to me, and as detailed earlier in these Reasons.

53. I have carefully considered both parties` written submissions, along with my own obligations under **Rule 2**, being the Tribunal's overriding objective to deal with the case fairly and justly.

54. I consider that both parties have been given a reasonable opportunity, in advance of this in chambers Reconsideration Hearing, and as required by **Rule 72(2),** to make their own representations pursuing, and opposing, as the case may be, the claimant's application for reconsideration of the original Judgment dated 20, and sent to parties on 21, March 2023.

55. There is no dispute that that original Judgment is a Judgment as defined in **Rule 1(3)(b) of the Employment Tribunals Rules of Procedure 2013**. It finally disposed of the claimant's application for a preparation time order against the respondents, and it is therefore a Judgment open to reconsideration on the application of the claimant. He has also appealed it to the Employment Appeal Tribunal, as is his right.

56. On the test of ***"in the interests of justice",*** under **Rule 70**, which is what gives this Employment Tribunal jurisdiction in this matter, there is now only one ground for "***reconsideration***", being that reconsideration "***is necessary in the interests of justice***." That phrase is not defined in the **Employment**

Tribunals Rules of Procedure 2013, but it is generally accepted that it encompasses the five separate grounds upon which a Tribunal could "***review"*** a Judgment under the former **2004 Rules**.

57. While there are many similarities between the former and current Rules, there are some differences between the current **Rules 70 to 73** and the former **Rules 33 to 36**. Reconsideration of a Judgment is one of the two possible ways that a party can challenge an Employment Tribunal's Judgment. The other way, of course, is by appeal to the Employment Appeal Tribunal.

58. **Rule 70** confers a general power on the Employment Tribunal, and it stands in contrast to the appellate jurisdiction of the Employment Appeal Tribunal ("***EAT***"). In most cases, a reconsideration will deal with matters more quickly and at less expense than an appeal to the EAT.

59. After careful consideration of the competing arguments, taking into account the relevant law, as ascertained in the legal authorities referred to earlier in these Reasons, I am not satisfied that it necessary in the interests of justice that I reconsider my original Judgment and vary or revoke it. In these circumstances, I have refused the claimant's reconsideration application, and confirmed the original Judgment. I now explain my reasoning as below.

60. Firstly, at paragraph 1 of his reconsideration application, dated 4 April 2023, the claimant expressed "***serious concerns***" about the claim being listed as it is on the 21 March 2023 judgement, namely: "***Mr Hassan Hassan***", rather than "***Mr H Hassan***", particularly in light of the fact there was still an outstanding **Rule 50** application.

61. In writing up this Judgment and Reasons, I wish to note and record that I instructed the Tribunal administration to hold back the original Judgment dated 20, and sent to parties on, 21 March 202, until <u>after</u> I had decided the claimant's **Rule 50** application, because, as part (2) of that original Judgment made clear, I had continued that matter for determination at a later date to allow the respondents' solicitor to reply to further written representations from the claimant sent, unsolicited by the Tribunal, direct to Glasgow ET, on 1 March 2023.

62. My **Rule 50** Judgment dated 28 April 2023, and sent to parties on 4 May 2023, refused the claimant's application for private Hearing, and anonymity / privacy orders. It was only thereafter that the original Judgment dated 20 March 2023, and sent to parties on 21 March 2023, and that **Rule 50** Judgment, were both uploaded to the ET decisions website on **Gov.UK** and published together there on 22 May 2023. Had I granted an anonymity / privacy order, the public version available on the Internet would, of course, have been re-drafted appropriately before publication on the web.

63. Secondly, I regard as well-founded Ms Campbell's submissions that the fact that the claimant disagrees with my judgment refusing his application for a preparation time order against the respondents does not, of itself, give grounds for that decision to be reconsidered. However, Ms Campbell, at paragraph 6 of the respondents' response to the claimant's application for reconsideration, as reproduced earlier in these Reasons, at paragraph 15 above, makes reference to the claimant's statement that in his original application of 23 November 2022, he referred to having prepared a PDF document which provides an explanation as to what the 5 hours of preparation time was used for. He states that this evidence was ignored or disregarded by Employment Judge McPherson in the Judgment.

64. Ms Campbell founds on the fact that that evidence was not referred to by the Claimant as something which explained where the 5 hours of preparation time came from. Further, she says, the fact that it was not expressly referred to in the Judgment does not mean that it was not considered. In any event however, in circumstances in which the Tribunal was not granting the Claimant's application, she submits that the existence or otherwise of evidence supporting why 5 hours of preparation time was being claimed is irrelevant – if the Tribunal's decision was that no preparation time order should be granted, then the value of any preparation time is of no consequence.

65. Therefore, Ms Campbell submits, even if Employment Judge McPherson did omit to consider the PDF file referred to by the Claimant, this does not affect the Tribunal's substantive decision, that no preparation time order ought to be granted.

66. The claimant argues, in his own reply of 1 May 2023, as reproduced earlier in these Reasons, at paragraph 16 above, that his reconsideration application highlighted points which he believes illustrate how the costs' application has not been properly considered by the Tribunal – particularly regarding Claimant preparation time supporting evidence.

67. Following my careful review of the Tribunal's digital case file, and what I have referred to as being taken into account in coming to my original Judgment, the fact that the claimant's PDF evidence is not expressly mentioned does lend weight to the claimant's belief that it was left out of consideration. It is not referred to in the respondents' objections at that time, and the fact that, at paragraph 44 (d) of the Reasons to my original Judgment, I say no breakdown was given by the claimant of what actually he did in his preparation time of 5 hours, is clearly incorrect, given that his PDF evidence gives some brief explanation, namely that he contacted Strathclyde University Law Clinic and got some brief, informal advice, and he identified and downloaded, on 1 November 2022, the Home Office PDF guidance on use and change of name.

68. While the respondents' solicitor is right to have observed that, if the Tribunal's decision was that no preparation time order should be granted, then the value of any preparation time is of no consequence, the fact remains that the claimant's position has not been properly recorded by the Tribunal, and so I can see why the claimant has pursued this application for reconsideration. However, I am of the view that it is not necessary, in the interests of justice, to reconsider that original Judgment and vary or revoke it.

69. I took into account, in making my original Judgment, all relevant material available to the Tribunal from both parties, as to whether or not it was appropriate to make a preparation time order in favour of the claimant. The claimant is not entitled to a "***second bite of the cherry"*** on that question, as the finality of that decision is an important factor for the Tribunal to take into account.

70. In my original Judgment, I answered that first question, whether I should make such an order, in the negative, and so I did not need to go on and consider

the amount, as I was not making any order for payment. As such, I have confirmed the original Judgment as I believed it then, and again now, to have been the correct decision to make. In paragraph 44 of the Reasons to my original Judgment, I thought it would be helpful for me to make a few additional points for the assistance of both parties, notwithstanding I refused the claimant's application for a preparation time order. I will return to that paragraph 44 in the next section of these Reasons.

Disposal and Further Procedure

71. Having carefully considered the claimant's opposed application for reconsideration of the original Judgment dated 20 March 2023, and sent to parties on 21 March 2023, I have refused it for the foregoing reasons, as set forth at paragraphs 51 to 70 of these Reasons, as above.

72. What I do consider appropriate, however, is that parts of paragraph 44 of the Reasons for that original Judgment should be corrected.

73. In his reconsideration application, the claimant has stated that:

"The Claimant wishes to provide insights into the preparation time work which he did as a litigant-in-person for the 1 December 2022 full-day video hearing. Five hours is a somewhat conservative measurement of preparation time for a litigant-in-person, because the reality is the Claimant has spent considerably more time than this in preparation for what was due to happen today."

74. I take that statement by him on board, but note that what the claimant previously provided was only a partial, i.e., an incomplete, insight, and even now, in his reconsideration application, the claimant has provided no further detail or explanation of what exactly he did by way of preparation for what should have been the Preliminary Hearing scheduled for 1 December 2022.

75. While the claimant claimed 5 hours, as a "*somewhat conservative measurement…because the reality is the Claimant has spent considerably more time than this",* **Rule 79(1)** provides that it is for the Tribunal to decide the number of hours in respect of which a preparation time order should be

made, on the basis of (a) information provided by the claimant as time spent falling within **Rule 75(2)**, and (b) the Tribunal's own assessment of what it considers to be a reasonable and proportionate amount of time to spend on such preparatory work, with reference to such matters as the complexity of the proceedings, the number of witnesses and documentation required.

76. The claimant's original application for a preparation time order against the respondents proceeded on an application for 5 hours, but without any detail explanation, or supporting / vouching documentation. On this reconsideration, I have looked at to PDF evidence that the claimant refers to. I see now that it was material before the Tribunal, at the time of the original Judgment, even if it was not specifically flagged up by the claimant in his reconsideration application, and it was not noted nor commented upon by the respondents' solicitor in their objections to the reconsideration application. It is not "new evidence", but a factor inadvertently overlooked by the Tribunal, at the time of making the original Judgment, and for that I apologise to the claimant.

77. However, taken at its highest, all it shows is that the claimant contacted Strathclyde University Law Clinic at some point and got some brief, informal advice, regarding what he refers to as the respondents' "***scare tactic***", and he identified and downloaded, on 1 November 2022, the Home Office PDF guidance on use and change of name.

78. Nothing is provided as to when the claimant contacted the Law Clinic, nor what information he provided to them, nor what advice he received, but it appears to have been sometime in the lead up to the Preliminary Hearing scheduled for 1 December 2022, and presumably before the respondents withdrew their **Rule 10** application, on 15 November 2022. I granted discharge of that Preliminary Hearing on 18 November 2022, so the claimant's preparatory work can only be claimed for the period between 25 October 2022, when I had the first telephone conference call Case Management Preliminary Hearing, and 18 November 2022.

79. In light of this Reconsideration Judgment, that original text in paragraph 44 of the Reasons for the original Judgment is now corrected, in parts, and it should

now read as follows: [**Note by Tribunal** : the corrected text is shown by score through, for deleted words, and by underlining for newly inserted words.]

"That said, I think it would be helpful for me to make a few additional points for the assistance of both parties :

(a) *I agree with Ms Campbell that a claim for 5 hours preparation time is wholly disproportionate, even if I had been minded to grant the claimant's application for a preparation time order against the respondents. Had I granted the claimant's application, I would have restricted the time allowed to 90 minutes, as my assessment of what was reasonable and proportionate, in terms of* ***Rule 79(1)(b)****.*

(b) *The* ***Rule 10*** *point was a relatively simple matter – was there a failure to provide minimum information on the ET1 claim form? As the respondents' solicitor did not submit a written skeleton argument, due one week before the start of the listed Preliminary Hearing, the claimant cannot have spent any time in reviewing that. Looking up the relevant law, in* ***Rules 8 to 13****, would not have taken anything like that period of time.*

(c) *The claimant's application refers to "****Preparing evidence/response for Respondent's Rule 10 application for rejection of entire claim; and preparing for full-day video PH Approx. 5 hours x £42.00 = £210.00"***

(d) *No detailed breakdown is given by him of what actually he did in this preparation time of 5 hours. His application refers to both the* ***Rule 10*** *application and preparing evidence. The* ***Rule 10*** *point was a discreet, and short legal point, and it did not require any evidence other than in the briefest of terms from the claimant, if at all.*

(e) *Even if I had been minded to grant to claimant's application for a preparation time order against the respondents, I could not have awarded 5 hours, based on to lack of any clear and cogent explanation of what he was doing over 5 hours. ~~Further, as Ms Campbell says, in~~*

~~*her paragraph 15, the claimant has provided no evidence that he has, in fact, lost 5 hours salary.*~~

(f) *Where I depart from Ms Campbell's submission is where, at her paragraph 16, she states:* ***"It is an established principle of law that a preparation time order cannot be made in relation to time spent attending the hearing (Rule 75(2) and Andrew v Eden College and others UKEAT/0438/10). Therefore it is submitted that it would not be appropriate to grant a pro-rata full day of the Claimant's salary. "***

(g) *I have located and read the* ***Andrew*** *judgment by Mr Recorder Luba QC at* ***[2011] UKEAT/0438/10****. Having done so, I see that it relates to the wording of the former* ***ET Rules of Procedure 2004****, and not the current* ***2013 Rules****. The current* ***Rule 75(2)*** *refers to "****except for any time spent at any final hearing"****. I lay emphasis on the current word "****final****" – the Hearing listed for 1 December 2022 was not a Final Hearing, but a Preliminary Hearing. In any event, that Preliminary Hearing was discharged, and so nobody attended it.*

(h) *Had I been minded to grant to claimant's application for a preparation time order against the respondents, and had I been able to ascertain an appropriate period for him working on the case, <u>say 90 minutes,</u> which was reasonable and proportionate amount of time for preparatory work, the respondents put no information before the Tribunal about their inability to pay, as per* ***Rule 84****.*

(i) *Given the respondents are an emanation of the State, that is perhaps unsurprising, so had I found grounds to make a preparation time order in the claimant's favour, then I would have done so, and ordered the respondents to pay the claimant ~~whatever~~ <u>the</u> sum I had determined, <u>being £63.00, the product from 90 minutes preparatory work at £42 per hour</u>."*

Intimation to EAT and ACAS

80. In issuing this Judgment and Reasons, I have instructed the clerk to the Tribunal to send a copy to ACAS, and to the EAT Registrar, for their respective information.

81. In doing so, I note that, on 16 June 2023, the EAT Registrar, wrote to both parties, with copy to Glasgow ET, to advise that the EAT sift Judge, Judge Keith, had given an opinion on the claimant's appeal, against the original Judgment issued by this Tribunal on 21 March 2023.

82. I note that the EAT Judge has stated that there are no reasonable grounds of success and that, in accordance with **Rule 3(7) of the Employment Appeal Tribunal Rules 1993** (as amended), no further action will be taken on the claimant's appeal.

Further Procedure

83. The case will now proceed to the 7-day Final Hearing in person ordered by this Tribunal at the CVP Case Management Preliminary Hearing held on 16 May 2023, as per my written Note & Orders issued to both parties' representatives on 18 May 2023.

84. As per the amended Notice of Final Hearing issued by the Tribunal on 16 June 2023, the dates for that Final Hearing are 10, 17, and 20 / 24 November 2023.

Employment Judge: **G. Ian McPherson**
Date of Judgment: **21 June 2023**
Entered in register: **22 June 2023**
and copied to parties