EMPLOYMENT TRIBUNALS

BETWEEN

Claimant		**Respondent**
Ms J Webster	AND	Kimbardel (Eversfield) Limited

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD IN CHAMBERS AT Bristol **ON** **12 June 2025**

EMPLOYMENT JUDGE J Bax

JUDGMENT ON APPLICATION FOR RECONSIDERATION

The judgment of the tribunal is that there are reasonable prospects of success in the application for reconsideration being granted. In accordance with rule 70 the Respondent may file a response to the application.

ORDERS

1. The Claimant shall on or before 27 June 2025 send to the Tribunal and Respondent an explanation as to when and how she discovered the Respondent was no longer in administration.

2. The Respondent shall, on or before 4 July 2025, send to the Tribunal and Claimant any written response to the application for reconsideration.

3. Both parties shall, on or before 4 July 2025, provide any observation on the application being determined without a hearing.

REASONS

1. The claimant has applied for a reconsideration of the judgment dated 3 March 2025 striking out the claim, which was sent to the parties on 10 March 2025 ("the Judgment"). The grounds are set out in her e-mail dated 33 May 2025.

Background

2. The following background is relevant:

    a. There were two respondents in consolidated proceedings, Eversfield Organic Limited and Kimbardel (Eversfield) Ltd.

    b. At the case management hearing on 23 May 2024, the claims were stayed because both Respondents were in administration. Since that time Eversfield Organic Limited has been dissolved.

    c. It appears that there was a Court hearing on 30 December 2024 in respect of Kimbardel (Eversfield) Ltd in relation to the administration coming to an end.

    d. On 4 February 2025, the Claimant was asked to confirm whether permission had been obtained from the High Court to continue the claim on the basis that consent had not been granted by the Administrator. The same day the Claimant replied that she had not received a response from the administrators and said she would have otherwise liked to continue her case. She asked, if the case was dropped whether she could try again if the company came out of administration.

    e. On 3 March 2025, the claim was dismissed on the basis that it was not being actively pursued.

    f. On 23 May 2025, the Claimant e-mailed the Tribunal and said she had discovered that Kimbardel (Eversfield) Ltd was out of administration and asked if the case could be reinstated.

g. The Judge has checked Companies House and has seen that the administration ended on 9 January 2025.

The law

3. The Employment Tribunal Procedure rules 2024 set out the rules of procedure. Rule 69 provides in respect of an application for reconsideration under Rule 68 that ,

   " Except where it is made in the course of a hearing, an application for reconsideration must be made in writing setting out why reconsideration is necessary and must be sent to the Tribunal within 14 days of the later of—
   (a) the date on which the written record of the judgment sought to be reconsidered was sent to the parties, or
   (b) the date that the written reasons were sent, if these were sent separately.

4. The application was not received within the relevant time limit.

5. Under Rule 5(7) 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.

6. The grounds for reconsideration are only those set out in Rule 68, namely that it is necessary in the interests of justice to do so.

7. The grounds relied upon by the claimant are that she had discovered the Respondent has come out of administration.

8. 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".

9. 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 3). 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.

10. 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'*.

Conclusions

11. When the Tribunal wrote to the Claimant about whether the High Court had given permission for the claim to continue, the Respondent had already come out of administration. This was unknown to the Tribunal at the time. On the basis that the Respondent was no longer in administration there was no longer a bar to the claim continuing. The Claimant also appeared unaware that the Respondent was no longer in administration. There was effectively an incorrect understanding of the true situation by the Tribunal. On 4 February 2025, the Claimant made it clear that if the Respondent was not in administration she wanted to pursue her claim. She has since discovered that it is not in administration. In the circumstances it was just and equitable to extend the time for the Claimant to apply for a reconsideration.

12. It is therefore apparent by reason of the Companies House record that the Respondent was no longer in administration at the time the claim was struck out and that the Claimant did want to actively pursue her claim. Accordingly there are reasonable prospects of success in the Judgment being varied or revoked.

13. The Judge requires some further information by the Claimant as to when and how she discovered the Respondent was no longer in administration. She must send this to the Tribunal on or before 27 June 2025

14. The Respondent shall on or before 4 July 2025 make any representation as to the application.

15. Further both parties shall say on or before 4 July 2025 whether the application can be dealt with without a hearing.

16. The Judge's provisional view on the application is that the e-mail sent to the Claimant on 4 February 2025 was based on an incorrect understanding of the administration status of the Respondent. If the true situation had been known the e-mail would not have been sent and the stay would have been lifted, on the basis that the bar to the claim proceeding no longer existed. The Claimant also did not know of the true situation when she responded to the Tribunal. The cause of the e-mail being sent to the Claimant on 4 February 2025 was not of the Claimant's making. The Claimant on discovering that the Respondent is no longer in administration has sought to re-instate her claim. It is the Judge's provisional view that the decision to strike out the claim was wrong and that it would be in the interests of justice to reconsider the decision and revoke the Judgment. This would meant that the claim is reinstated.

17. The Respondent should take into account this provisional view when responding to the application.

18. For the avoidance of doubt the claim against Eversfield Organic Limited cannot be re-instated on the basis that it has been dissolved.

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Employment Judge J Bax
Dated: 12 June 2025

Judgment sent to Parties on
25 June 2025

Jade Lobb
For the Tribunal

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