EMPLOYMENT TRIBUNALS

BETWEEN

Claimants		**Respondents**
Mr J Coles and 27 Others	AND	Vibe Marketing Group Limited (1) Mr David Duncan Williams (2)

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD IN CHAMBERS AT Plymouth **ON** 24 October 2018

EMPLOYMENT JUDGE N J Roper

JUDGMENT ON APPLICATION FOR RECONSIDERATION

The judgment of the tribunal is that the second respondent's application for reconsideration is refused because there is no reasonable prospect of the decision being varied or revoked.

REASONS

1. The second respondent has applied for a reconsideration of the judgment with reserved reasons dated 18 September 2018 which was sent to the parties on 8 October 2018 ("the Judgment"). The grounds are set out in his email letter dated 8 October 2018. That letter was received at the tribunal office on 8 October 2018.
2. Schedule 1 of The Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 contains the Employment Tribunal Rules of Procedure 2013 ("the Rules"). Under Rule 71 an application for reconsideration under Rule 70 must be made within 14 days of the date on which the decision (or, if later, the written reasons) were sent to the

parties. The application was therefore received within the relevant time limit.

3. The grounds for reconsideration are only those set out in Rule 70, namely that it is necessary in the interests of justice to do so.
4. The background to this matter is as follows. The Judgment which the second respondent questions is the judgment following a Preliminary Hearing in person over two days on 17 and 18 September 2018. The main purpose of that Hearing was to determine whether there had been a relevant transfer under the TUPE Regulations 2006, and to determine which one or more of a number of respondents would be liable as the correct respondent(s) to the various claims brought by the 28 claimants following their collective dismissals.
5. The second respondent is Mr David Duncan Williams. He was aware of these proceedings from the outset, and entered a response on his own behalf. He was given notice of the Preliminary Hearing in person, and was clearly aware of that Hearing because he corresponded with the Tribunal in connection with that Hearing (for example by email dated 12 September 2018).
6. For reasons which have not been explained the second respondent chose not to attend the Preliminary Hearing on 17 and 18 September 2018. He did not inform the Tribunal that he would not be attending, and did not seek a postponement on the basis that he was unable to attend. As can be seen from the Judgment, the claimants attended and were represented by counsel, and the third and fourth respondents attended in person and/or were represented by counsel. All parties present were able to give oral evidence and/or to make written and oral representations before the Judgment was made. That Judgment found that there had been a TUPE transfer to the second respondent Mr David Duncan Williams.
7. It seems from correspondence received by this Tribunal from the Employment Appeal Tribunal ("the EAT") that the second respondent tried to make an appeal immediately after the hearing, but before the Judgment was sent to the parties. That appeal was rejected by the EAT because it was not properly constituted and did not have the relevant supporting documents. The day after the Judgment was sent to the parties on 8 October 2018, the second respondent sent an email to this Tribunal dated 9 October 2018 wishing to appeal the Judgment.
8. I have taken that email as an application by the second respondent for reconsideration of the Judgment, on the basis that the interests of justice require it. That application was received within 14 days of the date upon which the Judgment was sent to the parties and the application was therefore made within time.
9. The grounds relied upon by the claimant are effectively that he disagrees with the decision. Various supporting emails to the Tribunal then annexed certain documents which the second respondent suggests effectively prove that there was no TUPE transfer to him.

10. There is nothing in the second respondent's email or supporting documents which amounts to cogent evidence which has come to light after the date of the hearing, and which was not available beforehand. There is no new information which has come to light which was not available to the second respondent before the Preliminary Hearing leading to the Judgment. The second respondent was on notice of the hearing and did not comply with orders of the Tribunal to exchange relevant documents and to agree a bundle of relevant documents for the hearing. The second respondent chose not to adduce these documents and chose not to attend the Preliminary Hearing. Neither did he submit written representations or supporting documents for consideration before the Judgment was made.
11. The question arises in short whether it is in the interests of justice to revoke the Judgment and to hold another Preliminary Hearing at which the second respondent might attend and refer to these documents, even though all of the claimants and the third and fourth respondents engaged fully in the process when the second respondent chose not to do so.
12. The earlier case law suggests that the interests of justice ground should be construed restrictively. 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".
13. More recent case law suggests that the "interests of justice" ground should not be construed as restrictively as it was prior to the introduction of the "overriding objective" (which is now set out in Rule 2). This requires the tribunal to give effect to the overriding objective to deal with cases fairly and justly. As confirmed in Williams v Ferrosan Ltd [2004] IRLR 607 EAT, it is no longer the case that the "interests of justice" ground was only appropriate in exceptional circumstances. However, in Newcastle Upon Tyne City Council v Marsden [2010] IRLR 743, the EAT confirmed that it is incorrect to assert that the interests of justice ground need not necessarily be construed so restrictively, since the overriding objective to deal with cases justly required the application of recognised principles. These include that there should be finality in litigation, which is in the interest of both parties.
14. In this case all the claimants and the third and fourth respondents engaged fully in the process, complied with Tribunal orders, attended the Preliminary Hearing, when the second respondent, who was fully aware of

the proceedings throughout, chose not to do so. There is no new evidence which has come to light since that Preliminary Hearing which was not available to the second respondent before that hearing and the Judgment. There must be finality in litigation, and in my judgment it is not in the interests of justice to revoke the Judgment and to hold another Preliminary Hearing over two days to re-argue the same points. To do so would cause unnecessary costs and further delay to the other parties, when the second respondent's predicament is entirely of his own making. It is not in accordance with the overriding objective nor in the interests of justice to incur these further costs and the further delay, and to revoke the Judgment, and to relist and rehear the Preliminary Hearing.

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

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Employment Judge N J Roper

Dated 24 October 2018

Schedule of Claimants

Case no.	Claimant
1400481/2018	Mr J Coles
1400483/2018	Mr O Alner
1400484/2018	Miss K Austin
1400485/2018	Miss L Bright
1400486/2018	Mr R Briggs
1400487/2018	Miss A Budden
1400488/2018	Mr R Coombe
1400490/2018	Mr S Chan
1400491/2018	Mrs C Denslow
1400492/2018	Miss N Edmeades
1400493/2018	Miss L Filtness
1400494/2018	Miss J Glover
1400495/2018	Mrs C Hodges
1400496/2018	Mr P Hodges
1400497/2018	Mr G Kingsley
1400498/2018	Mr B Kirkby
1400499/2018	Miss C Lamb-Wilson
1400500/2018	Mr R Larcombe
1400501/2018	Mr A Larsson
1400502/2018	Miss N Moore
1400503/2018	Mrs L Quick
1400504/2018	Miss C Sutton
1400505/2018	Miss A Taylor
1400506/2018	Mr M Tipping
1400507/2018	Miss C Welch
1400508/2018	Miss R Witt
1400662/2018	Mrs A Routley