THE INDUSTRIAL TRIBUNALS

CASE REF: 5722/18IT

CLAIMANT: **Shauna McFarland**

RESPONDENTS:
1. **Morelli Ice Cream Limited**
2. **Remo Di Vito**

RECONSIDERATION JUDGMENT

CONSTITUTION OF TRIBUNAL

Employment Judge: **Employment Judge Browne**

Panel members: **Mrs C Stewart**
Mr D Walls

JUDGMENT

1. As directed by Her Majesty's Court of Appeal, the Tribunal considered the application of the claimant to revoke its original decision to grant anonymity to the second respondent made under rule 66 of The Industrial Tribunals (Constitution and Rules of Procedure) Regulations (Northern Ireland) 2020, which replaces the legislation under which the original decision was made, namely rule 49 of the Industrial Tribunals and Fair Employment Tribunal (Constitution and Rules of Procedure) Regulations (Northern Ireland) 2005.

THE RELEVANT LEGISLATION

2. The relevant 2020 Industrial Tribunals and Fair Employment Tribunal (Constitution and Rules of Procedure) Regulations are contained in Schedule 1 to the Regulations:

"Reconsideration of judgment

64. *A tribunal may, either on its own initiative or on the application of a party, reconsider any judgment ("the original decision") where it is necessary in the interests of justice to do so.*

Reconsideration on tribunal's own initiative

65. *Where the tribunal proposes to reconsider the original decision on its own initiative—*

(a) it shall inform the parties of the reasons why the decision is being reconsidered; and

(b) the original decision shall be reconsidered in accordance with rule 67(2) (as if an application had been made and not refused).

Application for reconsideration

66. *Except where it is made at a hearing, an application for reconsideration shall be presented in writing (and copied to all the other parties) —*

(a) within 14 days of the date on which the original decision was sent to the parties; or

(b) 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 in the interests of justice.

Consideration of the application

67. *— (1) An employment judge shall consider any application made under rule 66. If the employment 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 parties shall be informed of the refusal."*

ISSUES RAISED AND CONCLUSIONS

3. The parties agreed a proposed redacted wording of the original decision, subject to the approval of the Tribunal.

   The agreed redacted wording was approved in its entirety by the Tribunal, which concluded that the contents of the redacted wording removes any requirement to order anonymity to the respondents; or to the claimant, who in any event was clear in her wish to waive her entitlement to anonymity.

4. The Tribunal therefore concluded, and so orders, that the original anonymity order does not apply except insofar as it relates to the revised wording contained in the redacted decision appended to and forming part of this reconsideration judgment.

5. The parties further agreed, and it is so ordered, that the contents of the Tribunal's unredacted original decision, and the applicability of the anonymity order to those unredacted contents, shall remain unaffected and unchanged, except for the approved redacted version.

Employment Judge: T G Browne

Date and place of hearing: 16 March 2022, Belfast.

This judgment was entered in the register and issued to parties on 19 May 2022

THE INDUSTRIAL TRIBUNALS

CASE REF: 5722/18IT

CLAIMANT: **Shauna McFarland**

RESPONDENTS:
1. **Morelli Ice Cream Limited**
2. **Remo Di Vito**

JUDGMENT

1. The tribunal is unanimously satisfied that the claimant was subjected to harassment by the first respondent.

2. The tribunal is unanimously satisfied that the first respondent is vicariously liable for the acts of the second respondent.

3. The tribunal is unanimously satisfied that the first respondent did not establish a defence.

4. The first respondent is ordered to pay to the claimant the sum of £20,000 for injury to her feelings.

CONSTITUTION OF THE TRIBUNAL

Employment Judge: **Employment Judge Browne**

Members: **Mrs C Stewart**
Mr D Walls

APPEARANCES:

The claimant was represented by Ms S Bradley, Barrister-at-law instructed by the Equality Commission.

The respondents were represented by Mr C Hamill, Barrister-at-law, instructed by O'Reilly Stewart, Solicitors.

1. Briefly summarised, the case made by the claimant was that she has been verbally sexually harassed while working for the Morelli Ice Cream Limited ("the first respondent") by Remo de Vito, ("the second respondent"), a fellow employee, over a long period of time.

2. The claimant started working for the first respondent when 24 years old, in June 2015, as an administrative assistant. The first respondent is a family-run ice cream business.

3. After she started her employment, the claimant never received a written contract; nor did she ever receive any training or information around the first respondent's grievance or Respect at Work policies or procedures.

4. The second respondent, who is in his forties, is a member of the extended family which owns the first respondent company and had been working for the first respondent for around four years when the claimant started working there. The second respondent is a supervisor in the dispatch section of the business, but has no formal involvement decision-making role in the conduct of the first respondent's business affairs.

5. The claimant gave evidence that she complained in September 2016 to the first respondent about what consisted of the second respondent's sexual harassment of her including that he referred to as "Big Tits", to her face, and in his telephone contacts list. She said that she aired these complaints during a performance review, convened by the first respondent to address issues around the quality of her work.

6. The first respondent conceded that the claimant made a complaint about the second respondent of sexualised verbal harassment.

7. The handwritten notes and typed minutes of the meeting were taken by Edmund Johnston. Mr Johnston is 73 years of age; he has worked for the first respondent as production/quality manager for some nine years and is not connected to the family.

8. It was alleged by the claimant however that he was very close to the management of the first respondent, and that he had deliberately omitted portions of the meeting, including a disputed refusal by the claimant to make a formal complaint. Mr Johnston emphatically denied such allegations. He also refuted the claimant's evidence that he had immediately spread word throughout the workforce about her allegations against the second respondent.

9. To have done so sits uncomfortably with the claimant's allegation that Mr Johnston, by deliberately omitting such allegations from the minutes (presumably in order to suppress them), would then repeat them to the entire workforce.

10. During the September 2016 meeting, and at subsequent meetings, the first respondent stated that the claimant, when taken to task over her performance, became extremely aggressive and defensive. On its case, she accepted little or no criticism, and repeatedly tried to deflect blame on to others.

11. It was the claimant's case that she felt herself to be treated as something of an outsider, excluded from the family members and those close to them, and that she was extremely upset, and felt isolated and picked-upon.

12. The first respondent conducted no actual investigation in to that complaint, other than to issue the second respondent with a verbal warning.

13. It was an integral part of the claimant's case that the first respondent's lack of proper investigation and inadequate penalty issued for her first complaint left her feeling that that her complaint was not taken seriously. In her opinion, the family closed ranks to protect the second respondent, a family member. This was denied by the first respondent, claiming that the second respondent was always treated as an employee, with no extra status or privileges because of his family connection.

14. It further was the claimant's case that such lack of concern resulted not only in a repetition of the second respondent's verbal harassment, but in fact led to an escalation of his behaviour towards her. She considered that the failure of the first respondent to deal appropriately with the matter made the second respondent feel immune from sanction, and that the First Respondent did not really believe her anyway.

15. As a result of the claimant's 2016 complaint, the second respondent was given a verbal warning by the managing director, his second cousin. That warning was recorded in writing on the second respondent's personnel file, but was never communicated to the claimant, who received no Information about it until discovery in these proceedings.

16. It also is of note that the first respondent did not instruct the second respondent to apologise to the claimant, and the second respondent denied the claimant's evidence that he did so voluntarily in December 2016. The second respondent was never required by the first respondent to attend any training or other procedure regarding Respect at Work. There also was no apology to the claimant by the first respondent, or reassurance, or even any informal enquiry as to her welfare.

17. On the claimant's case, the second respondent recommenced his verbal sexual harassment of her within a few weeks.

18. Whilst it was conceded on the part of the respondents that the claimant had made a complaint, the tenor of the evidence on their behalf was that her objections were not genuine or serious, and that she in fact was a willing participant throughout in coarse workplace banter with the Second Respondent.

19. Such attitude was confirmed by the second respondent in his evidence that, when he was told in September 2016 that such "banter" had to stop, it was the first respondent's attitude that this was only because it contravened the first respondent's Respect at Work policy; the first respondent told the second respondent that it considered that the claimant "was chatting as bad as me".

20. It was notable however that no evidence, either anecdotal or supported by, for example, reciprocating text messages, was produced or referred to by the respondents.

21. Such absence was relied upon by the claimant as being supportive of her case that the second respondent's version of events as mutual banter was, and was, or ought reasonably to have been known by him and the first respondent, as having fallen on stony ground from the outset. At the very least, it was her case that the fact of her complaint in September 2016 made it unmistakably clear to both respondents that this was a real issue for her.

22. In the course of a formal investigation later conducted on behalf of the first respondent by Julie Irwin, an HR advisor to the first respondent since 2015, none of the other workforce interviewed by her related any experience of the claimant engaging in such conduct.

23. It is worthy of note that an identical lack of observed behaviour also was expressed when those fellow workers were asked about the conduct of the Second Respondent.

24. That lack included a complete failure by one Interviewee to mention a conversation which the claimant said had occurred between them on 22 January 2018.

25. That colleague, and others, also told Ms Irwin that the claimant had expressed to them, in somewhat ribald terms, a clear romantic interest in one of the first respondent's drivers, which the claimant denied in her evidence. This was despite the fact that she was in a long-term relationship with her current partner Rodney Stirling. There was evidence that there was some turbulence in that relationship during the same timescale as the evidence in this case, including a temporary break-up of the relationship in September 2017.

26. The report by Julie Irwin was sought by the first respondent after another complaint from the claimant In January 2018 about the second respondent's sexual harassment of her.

27. The claimant's evidence was that, notwithstanding his alleged apology in December 2016, his unwanted and unwelcome sexual attentions recommenced within a very short time.

28. In February 2017, another performance review meeting was held, to address the claimant's lack of progress in her work. The respondent evidence was that, upon advice from Ms Irwin, the meeting was conducted in a very structured way, with questions prepared In advance.

29. The claimant considered however that she was being victimised for complaining about the second respondent, and she queried if anyone else was being treated like this. She said in reply to criticism of her performance that others also made mistakes, and was told in response that nobody was being

picked on, and that everyone could check each other's work, in a constructive approach.

30. The claimant's evidence was that she also expressed the view at the meeting that the second respondent's conduct towards her had not changed since her first complaint about him, but that this was dismissed by the two family members who conducted the meeting, at which Mr Jordan again took the minutes, which included no such reference. His note concluded by stating that the claimant "had no comments to add".

31. The first respondent's witnesses' evidence to the tribunal was clear in their recollection that the claimant had made no reference during that meeting to the second respondent or to his conduct.

32. Ms Irwin's later investigation stated that the claimant received a copy of the meeting minutes, but she refuted this in evidence.

33. The claimant's evidence was that the inappropriate language of the second respondent continued. The language included asking her if she "got any cock" at the weekend, in response to which she would tell him to stop, but he would just laugh.

34. The May to August 2017 incidents included crude sexual references by the second respondent.

35. It is of note that, in a written complaint from the claimant to the first respondent, dated 24 January 2018 she refers to previously having complained about the Second Respondent's conduct towards her "when it was verbal sexual comments".

36. She also Identified In her ET1 complaint to the tribunal 1 September 2017 as the start date of her claim (lodged on 13 April 2018) of sex discrimination by the respondents, although she stated in her ET1 that she had reported it to the first respondent in February 2017 (namely, at the second performance review).

37. The claimant gave evidence to the tribunal that she felt unable to report the second respondent's behaviour to the first respondent, since she had already done so twice, but her complaints had been dismissed and disbelieved.

38. She gave evidence that her discomfort being near the second respondent was compounded by repeatedly being required to sit close to him in a confined space to assist with the business computer records.

39. The respondents' response initially was that some 80% of this work was done by the claimant with a female member of staff, who was a member of the owning family. That figure was substantially downgraded at the tribunal hearing.

40. The second respondent emphatically denied any such conduct, although, after initially saying that he could not recall sending it, he accepted when shown it in Ms Irwin's investigation interview that he on 12 December 2017 had sent a text

to the claimant's personal mobile phone which said "get your rat out". He explained that this expression was a crude reference from his schooldays to female genitalia.

41. There was no surrounding context of texting or verbal conversation between the two which could explain such a comment being made by him. The claimant did not acknowledge or comment upon that message at the time, stating as part of her case that this confirmed not only her lack of alleged participation in such conduct, but that her complete lack of engagement should have served as further notice to the second respondent to desist because it was inappropriate and unwelcome.

42. Notwithstanding the text message of December 2017, the second respondent stated in evidence that, following his verbal warning In September 2016, his relationship with the claimant became "more professional".

43. This was at odds with the account given by the claimant, and, to an extent, with the second respondent's insistence throughout, that any crudeness expressed by him was more than matched by that of the claimant during the material time.

44. On her version of events, matters came to a head in January 2018, when she alleged that, amongst other verbal harassment, the second respondent offered to "put my throbbing cock in to your pussy"; and said that she "hadn't seen my nine inches".

45. The second respondent was clear in evidence of his denial of any such language on any occasion.

46. On 18 January 2018, a dispute flared up between the two as to which was responsible for an ordering error which resulted in inconvenience to the second respondent. In his view, it was the claimant's fault, as part of recurring errors in her work. He conceded that he spoke sharply to her in front of other staff and management, accusing her of "making fuck-ups again", in response to which the claimant warned him not to speak to her like that again.

47. On 22 January 2018, the second respondent accepted that he again accused the claimant in front of others of "making fuck-ups", in response to which the claimant walked off. The two spoke a short time later at lunchtime in the staff kitchen, when the claimant stated the second respondent asked her what was wrong with her. She told him he was "a complete asshole".

48. A short time later, the claimant spoke to the second respondent, who was with two colleagues, and asked the colleagues a question about what work they would be doing the next day. The second respondent accepted that he then interjected and told the claimant it "was none of your fucking business", and that she asked too many questions.

49. The claimant's evidence was that she replied "don't ever speak to me like that again, after everything you've done to me". The respondents' evidence from the

office manager, as to the second half of her sentence differed, in that the claimant was instead heard to say "I warned you about that".

50. It was such a heated exchange between the two that the office manager, another member of the first respondent's family and the claimant's line manager, left her seat in the adjoining sales office, to see what was going on. She told the claimant to go out and have a cigarette to cool off.

51. The claimant was off sick the next day, but returned on 24th to speak to the managing director, and handed him her letter of complaint, "to formally make a sexual harassment complaint" against the second respondent. The letter in its introduction mentioned her previous complaint, citing verbal sexual harassment by the second respondent.

52. The claimant then left work, on a combination of sick leave and maternity leave, and had not returned by the time of the tribunal hearing.

53. The first respondent in evidence said that it had not treated her complaint In September 2016 as a formal complaint, but immediately took action upon receipt of her letter of 24 January 2018. The first respondent's managing director contacted Ms Irwin, as their HR advisor, and sought her guidance.

54. A grievance meeting with the claimant was arranged in the first respondent's offices for 25 January. It was due to be conducted by Ms Irwin, with the managing director present; the claimant was unaccompanied, although her father waited outside in his car. The claimant had been assured that the second respondent would not be in the building, but she caught sight of him from the room in which the meeting was being held, and she was very upset by it. She subsequently requested and was granted a further meeting off-site in a local hotel.

55. The managing director told the tribunal that he perceived his role in the investigation "It was my right to be there to defend the company". The overall attitude of the first respondent to the complaint was that it was something of a smokescreen by the claimant, to distract attention away from yet another set of performance issues surrounding her work.

56. The notes of the interview with the claimant showed that the managing director on a number of occasions made interventions which directly and bluntly challenged the claimant's version of events. It was only at the third meeting that Ms Irwin, who had carriage of the investigation, asked him not to interrupt. The claimant was repeatedly required to go in to detail on that as to what she claimed the second respondent had said to her.

57. Again, the second respondent's witnesses described the claimant as aggressively defensive and evasive during the Investigation process. One such example was her refusal to provide the name of a taxi driver, whom she said would confirm her allegation that the second respondent had invited himself in to her taxi, and that his behaviour towards her was such that the driver ordered

him out of the taxi. On the claimant's evidence, she was reluctant to divulge the name of the taxi driver to protect his privacy.

58. Ms Irwin concluded in her report, from her investigation enquiries and interviews, that the claimant had exaggerated and had been untruthful in her allegations, apart from the sexualised language and text message of 12 December 2017, admitted by the second respondent. She made various recommendations, including mediation, and the instigation of a disciplinary process for the Second Respondent regarding his admitted conduct.

59. As a result of her report, the managing director upheld the grievance, relating to the sexualised verbal behaviour and text message, as admitted by the second respondent. The second respondent was then given a final written warning, of twelve months' duration, which again was viewed by the claimant as wholly inadequate, consistent with her case that the first respondent had in effect protected the second respondent, at her expense.

Law and Conclusions

60. The source of the basis for the claimant's case is contained in Article 6A of the Sex Discrimination (Northern Ireland) Order 1976 ("the 1976 Order"):-

> 6A.-(1) For the purposes of this Order, a person subjects a woman to harassment if:-
>
> (a) he engages in unwanted conduct that is related to her sex or that of another person and] has the purpose or effect-
>
> (i) of violating her dignity, or
>
> (ii) of creating an intimidating, hostile, degrading, humiliating or offensive environment for her,
>
> (b) he engages in any form of unwanted verbal, non-verbal or physical conduct of a sexual nature that has the purpose or effect:-
>
> (i) of violating her dignity, or
>
> (ii) of creating an intimidating, hostile, degrading, humiliating or offensive environment for her, or
>
> (c) on the ground of her rejection of or submission to unwanted conduct of a kind mentioned in sub-paragraph (a) or (b), he treats her less favourably than he would treat her had she not rejected, or submitted to, the conduct.
>
> (2) Conduct shall be regarded as having the effect mentioned in paragraph (1) (a) or (b) only if, having regard to all the circumstances, including in

particular the perception of the woman, it should reasonably be considered as having that effect."

61. The relevant burden of proof requirements are set out in Article 63A of the 1976 Order:-

63A.-(1) This Article applies to any complaint presented under Article 63 to an industrial tribunal

(2) Where, on the hearing of the complaint, the complainant proves facts from which the tribunal could, apart from this Article, conclude in the absence of an adequate explanation that the respondent:-

(a) has committed an act of discrimination or harassment against the complainant which is unlawful by virtue of Part III, or

(b) is by virtue of Article 42 or 43 to be treated as having committed such an act of discrimination or harassment against the complainant, or

(c) has contravened Article 40 or 41 in relation to an act which is unlawful by virtue of Part III, the tribunal shall uphold the complaint unless the respondent proves that he did not commit or, as the case may be, Is not to be treated as having committed, that act."

62. The tribunal unanimously concluded that the evidence established a course of conduct by the second respondent which included sexualised verbal comments to the claimant. That was established as occurring as far back as September 2016, at which point the claimant complained about it. Whilst the second respondent accepted such conduct, he alleged that the claimant was a willing participant in such conversations.

63. The tribunal noted that there was no independent evidence to support such an assertion, then or later. The assertion by the second respondent in his evidence that the first respondent had made it clear that it accepted his assertion was unchallenged by the first respondent; and it was made clear to the second respondent by the first respondent that, notwithstanding his stance and its acceptance of it, the conduct had to stop. Whether or not the respondents accepted the claimant's objections, both were on notice from September 2016 that this conduct was deemed unacceptable by the claimant.

64. In the view of the tribunal, the extreme leniency of the penalty imposed appeared to be symptomatic of grudging minimal compliance with the requirement to address it. This was in the view of the tribunal confirmation of the accuracy of the claimant's perception of the first respondent's lack of belief of her story.

65. There was no form of investigation; the claimant was never informed by the first respondent of what, if any steps, had been taken to address the issue; and there was no follow-up of even basic enquiry as to her welfare.

66. The tribunal concluded that it was little wonder that the claimant felt that her complaint had not been taken seriously by the first respondent.

67. It therefore seems reasonable to conclude that the second respondent interpreted the first respondent's conduct in a similar light. Even on his own evidence (disputed by the claimant), he offered no apology to her until December 2016, despite the fact that his verbal warning had been notified to him on 22nd September 2016.

68. The tribunal concluded that the second respondent renewed his use of inappropriate sexualised language a short time after the verbal warning was given in September 2016. This was in high degree confirmed by his defence, when taken to task about it again in early 2018. His attitude was that the claimant was just as willing as he was to engage in such behaviour, despite the fact that such behaviour had caused problems before.

69. The text message of 12 December 2017 was, by any stretch of the imagination, obscene.

70. There was no evidence that the claimant participated in anything before or after its sending which could explain it in the context of the second respondent's proffered view that her conduct was the same as his.

71. The tribunal unanimously concluded that the second respondent's verbal conduct fell within the statutory definition of harassment on the grounds of her sex. It was, and from the time of her first complaint, was demonstrably unwanted, and further it fulfilled the remaining criteria flowing from such unwanted conduct.

72. The tribunal further unanimously concluded that such verbal conduct was probably and predictably facilitated by the first respondent. The evidence supported the conclusion that the first respondent in September 2016, without having a proper investigation, took the word of the second respondent, a family member, at face value, and disbelieved the claimant. The first respondent went as far as communicating that disbelief to the second respondent, did not take appropriate steps to fulfil its obligation to deal appropriately with his admitted conduct, to ensure that it stopped, and that it would not be repeated.

73. The tribunal also found that the first respondent's disbelief of the claimant was repeated in the investigation by Julie Irwin. The attitude from the outset was found by the tribunal to be defensive of the second respondent. The managing director's declaration that he was entitled to attend the investigation "to defend the company" completely undermined any notion of independence, and, by implication, excluded the claimant from membership of the first respondent as an employee.

74. The tribunal found the tolerance by Ms Irwin of his aggressive and overtly dismissive conduct towards the claimant to be intrinsically flawed. It was in the

view of the tribunal of little surprise that the claimant did not react well to what clearly was a hostile environment.

75. The tribunal is well aware of the danger of imposing too high a standard of investigation upon employers. In its view however, the atmosphere in which the claimant was also expected to provide repeated descriptions of her allegations was wholly inappropriate.

Anonymisation

76. The parties' names were anonymised until the promulgation of this decision.

Remedy

77. The tribunal is satisfied that a number of factors apply.

78. Firstly, the conduct of the second respondent was, by any standard, sleazy and sustained. Whilst he accepted his conduct, he persisted in his assertions that the claimant had been as bad as he was. This was despite the fact that there was no evidence to support such allegation, and the claimant's failure to respond in any way to his text is viewed by the tribunal as compelling confirmation of her obvious distaste, which the second respondent ignored.

79. The tribunal is satisfied that the second respondent's continued, revived and repeated conduct, whilst his own choice, was significantly boosted by the first respondent's complete failure to meaningfully address it. The first respondent by its actions and inaction, at crucial points throughout this case, knowingly placed the claimant in harm's way. Her feelings of isolation and of being treated as an outsider were compounded by the clear message from the first respondent that it was she in fact who was the problem, not the second respondent.

80. The tribunal has concluded that the conduct of both respondents combines to place the award for injury to feelings in this case in the upper range of the middle band of Vento (as updated). The tribunal therefore considers that the First Respondent should be ordered to pay to the claimant the sum of £20,000.

81. This is a relevant decision for the purposes of the Industrial Tribunals (Interest) Order (Northern Ireland) 1990 and the Industrial Tribunals Interest in Awards in Sex and Disability Discrimination cases (Regulations) (Northern Ireland) 1996.

Employment Judge: *TGBrowne*

Date and place of Hearing: 17 – 20 June & 27 June 2019, Belfast

This judgment was entered in the register and issued to the parties on: 11 November 2019

THE INDUSTRIAL TRIBUNALS

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and the Fair Employment Tribunal
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JUDGMENT OF THE INDUSTRIAL TRIBUNALS

EXPLANATORY NOTES

The judgment of an industrial tribunal in proceedings to which you were a party is attached. These notes are intended to assist parties in understanding the implications of the judgment but they are not in any sense, a complete or authoritative statement of the law. You should read them carefully, in particular the time limits set out in paragraphs 6, 12, 13, 16 and 17 below for seeking a reconsideration of the judgment and/or appealing against it on a point of law.

Industrial Tribunal Awards and Orders

1. Where an industrial tribunal –

   (a) finds that an employee was unfairly dismissed by his employer and orders that employee to be reinstated or re-engaged by that employer, the employee should notify the Secretary of the Industrial Tribunals and the Fair Employment Tribunal immediately if the employer fails to comply with the reinstatement/re-engagement order within the time allowed to him to do so; and

   (b) finds that a complaint of unlawful discrimination is well founded and makes a recommendation that the person/body discriminating take action within a specified period in relation thereto, the person in whose favour the tribunal found should notify the Secretary of the Tribunals immediately if the recommendation made by the tribunal is not complied with within the specified time.

2. A sum of money awarded by an industrial tribunal is payable, without further notice by the party against whom the award is made, direct to the party entitled to receive it except when Jobseeker's Allowance, Income related Employment and Support Allowance and/or Income Support has been paid during a period of unemployment. In such cases the whole or part of these benefits may be recovered by the Department for Communities from the award before it is paid. In that event, the appropriate notice is attached to the judgment. The respondent may be obliged by law to make some deductions from gross wages or salary in respect of income tax and/or national insurance. If in doubt you should consult the appropriate authorities.

3. The Industrial Tribunals (Interest) Order (Northern Ireland) 1990 provides that interest is payable on all or part of an industrial tribunal award which remains unpaid 42 days after the judgment of the tribunal is sent to the parties. (For further details see "Interest on Tribunal Awards: Guidance Note" at page 6).

4. If a party against whom an award is made by an industrial tribunal does not comply with that award, then the award can be enforced by lodging an application with the **Enforcement of Judgements Office (EJO)**.

   You should complete a Form 1 (Application to enforce a judgement for the recovery of money only) **in duplicate** and forward both to the EJO together with **two copies** of the tribunal's judgment and appropriate fee. Members of the EJO are trained to provide support and advice about the enforcement process and their forms.

   Form 1 can be found @ www.courtsni.gov.uk or contact:-

   Enforcement of Judgments Office
   Laganside House
   23-27 Oxford Street
   Belfast
   BT1 3LA
   Phone: 030 0200 7812

   Any request for enforcement by the EJO will require the written judgment of the industrial tribunal and any recoupment notice that may have been served by the Department for Communities on the party seeking to enforce in respect of Jobseeker's Allowance, Income related Employment and Support Allowance or Income Support received. The production of a document certified by the Secretary of the Industrial Tribunals and the Fair Employment Tribunal to be a true copy of the judgment of the industrial tribunal shall, unless the contrary is proved, be sufficient evidence of the document and of the facts stated in it for any proceedings in any court. Application for such a copy – obtainable free of charge – should be made to The Secretary of the Industrial Tribunals and the Fair Employment Tribunal at the address shown above.

5. In certain circumstances the Department for the Economy is entitled to make payments out of the Northern Ireland National Insurance Fund if an award of an industrial tribunal has not been paid. If you have difficulty obtaining a redundancy payment or certain other payments due to you, or if your employer is insolvent, you should contact the Redundancy Payments Branch of the Department for the Economy, Room 203, Adelaide House, Adelaide Street, Belfast BT2 6FD (Freephone 0800 585811) for advice.

Reconsideration of a Judgment of the Industrial Tribunals

6. A tribunal may, either on its own initiative or on the application of a party reconsider any judgment where it is necessary in the interests of justice to do so.

7. Except where it is made at a hearing, an application for reconsideration shall be presented in writing, and copied to all other parties, within 14 days of the date on which the original judgment was sent to the parties or within 14 days of the date that the written reasons were sent (if later). The application must set out why reconsideration of the original judgment is necessary in the interests of justice. There is no right to have the judgment reconsidered because someone thinks it is the wrong judgment.

8. An employment judge shall consider any application for reconsideration. If the employment judge considers that there is no reasonable prospect of the original judgment being varied or revoked (including, unless there are special reasons, where substantially the same application has already been made and refused), the application will be refused and the parties informed accordingly.

9. If the application is not refused, a notice shall be sent to the parties setting a time limit for any response to the application by the other parties; seeking the views of the parties on whether the application can be determined without a hearing; and, where the employment judge considers it appropriate, setting out the employment judge's provisional views on the application.

10. If the sum payable is varied after a reconsideration of the industrial tribunal's judgment, then interest will accrue after 42 days from the date of issue of the original judgment which was the subject of reconsideration, but on the varied amount and not on the amount that the industrial tribunal first awarded. (See paragraph 3 above and "Interest on Tribunal Awards: Guidance Note").

11. The Industrial Tribunals and Fair Employment Tribunal (Constitution and Rules of Procedure) Regulations (Northern Ireland) 2020 allow an Employment Judge to extend the time in which an application can be made. An application to extend the time should be made to the Secretary of the Industrial Tribunals and the Fair Employment Tribunal at the above address setting out the reason(s) for that application to extend time.

Direct Appeal against Judgment of the Industrial Tribunal to the Court of Appeal

12. A party, known as the appellant, who is dissatisfied on a point of law with a judgment of an industrial tribunal must serve a notice of appeal on all parties to the case and the industrial tribunal within **6** weeks of receiving a copy of the industrial tribunal's judgment. The notice of appeal must state the questions of law upon which the appeal is brought.

13. The appellant must also, within **7** days after serving the notice of appeal (referred to at paragraph 12 above) on all the parties to the case and the

industrial tribunal, enter the appeal for hearing by lodging in the Central Office, Royal Courts of Justice, Chichester Street, Belfast, BT1 3JF:

(a) 2 copies of the notice of appeal;
(b) a certified copy of the industrial tribunal's judgment (obtainable free of charge from the Secretary to the Industrial Tribunals and the Fair Employment Tribunal);
(c) any other documents which may be relevant to the appeal.

14. After the appellant has lodged the documents (referred to at paragraph 13 above) the Court of Appeal will list the appeal for hearing not earlier than the expiration of **21** days from the date of lodgement unless an earlier date is fixed by the Court of Appeal at the request of and with the written consent of both the appellant and the other parties to the appeal.

Appeal by way of Case Stated to the Court of Appeal against Judgment of the Industrial Tribunal

15. A party, known as the appellant, who is dissatisfied on a point of law with a judgment of an industrial tribunal wishes the industrial tribunal to state a case for the opinion of the Court of Appeal on a point of law rather than following the direct appeal procedure (set out at paragraphs 12-14 above) the appellant must apply directly to the Court of Appeal for **LEAVE** for the tribunal to do so.

16. The application for **LEAVE** (referred to at paragraph 15 above) must:

(a) state the grounds for the appeal to be brought by way of case stated rather than the direct appeal procedure (set out at paragraphs 12-14 above); and
(b) be lodged together with a certified copy of the industrial tribunal's judgment (obtainable free of charge, from the Secretary to the Industrial Tribunals and the Fair Employment Tribunal) in the Central Office, Royal Courts of Justice, Chichester Street, Belfast, BT1 3JF within **14** days of the date of the industrial tribunal's judgment.

17. An industrial tribunal does not have power to extend the limits set out at paragraphs 12, 13 and 16 above. Those time limits can only be extended by the Court of Appeal. Any application to extend those time limits has to be made directly to the Court of Appeal. The time limits for appeals (as set out at paragraphs 12, 13 and 16 above) are **not** extended because an application has also been made to the industrial tribunal to reconsider its judgment.

18. If the sum payable is varied as a result of an appeal to the Court of Appeal (or on subsequent appeal) then interest will accrue in the same way from the calculation day, known as relevant judgment day, in respect of the original judgment which was the subject of the appeal, but on the varied amount and not the amount the tribunal first awarded. (See "Interest on Tribunal Awards: Guidance Note" at page 6).

19. If you are considering appealing a judgment of an industrial tribunal either directly to the Court of Appeal or by way of case stated with the **LEAVE** of the Court of Appeal, you should take advice on what constitutes a 'point of law'.

20. Where oral reasons have been provided by a tribunal or the Employment Judge at the hearing written reasons shall only be provided in writing if requested by any party:-

    (a) at the hearing; or
    (b) within 14 days of the date on which judgement was sent.

    If no request is received as above, the tribunal shall provide written reasons only if requested to do so by a court.

INTEREST ON TRIBUNAL AWARDS: GUIDANCE NOTE

1. This guidance note should be read in conjunction with the enclosed Notes on Tribunal Judgments.

2. The Industrial Tribunals (Interest) Order (NI) 1990 provides for interest to be paid on industrial tribunal awards of compensation if they remain wholly or partly unpaid after 42 days.

3. The 42 days run from the date, known as the relevant judgment day, which the tribunal judgment is recorded as having been issued to the parties. The date from which interest starts to accrue is called the calculation day. The dates of both the relevant judgment day and the calculation day which apply in your case are recorded on the Notice attached to the judgment.

4. Simple interest will accrue on a daily basis on any sum outstanding on the calculation day. Interest does not however accrue on deductions such as tax and/or national insurance contributions which have to be paid over to the appropriate authorities. Neither does interest accrue on any sums which the Department for Communities has claimed in a recoupment notice. (See paragraph 2 of the Explanatory Notes on Tribunal Judgments). If part of the sum is paid within 42 days then interest will accrue only on the amount which remains unpaid.

5. The rate of interest will be the rate in force on amounts awarded by decree in the County Court on the judgment day. This is known as the "stipulated rate of interest" and the rate which applies to your case can be found on the Notice attached to the judgment document.

6. If the sum payable is varied either on appeal to the Court of Appeal (or on subsequent appeal) (see paragraphs 10-12 of the Notes on Tribunal Judgments), or after a review of the tribunal's judgment (see paragraphs 7-9 of the Notes on Tribunal Judgments) then interest will accrue in the same way from the calculation day in respect of the original judgment which was the subject of the appeal or reconsideration, but on the varied amount and not on the amount that the tribunal first awarded.

7. Industrial tribunal awards are enforced through Enforcement of Judgements Office (see paragraph 4 of the Notes on Tribunal Judgments). The interest element of any such award is enforced in the same way.