



# EMPLOYMENT TRIBUNALS

**Claimant:** Mrs V T Barran

**Respondent:** Ministry of Justice

**Employment Judge:** Mr J Macmillan (sitting alone)

## JUDGMENT ON AN APPLICATION FOR A RECONSIDERATION

The Claimant's application for a second further reconsideration of a judgment dated 21<sup>st</sup> May 2015 and judgments on reconsideration dated 23<sup>rd</sup> February 2017 and 25<sup>th</sup> May 2017 is refused on the rounds that it has no reasonable prospect of success

### REASONS

1. On the 25<sup>th</sup> May 2017 I dismissed Mrs Barran's second application for a reconsideration of my judgment dated the 21<sup>st</sup> May 2015. On the following day Mrs Barran emailed the Tribunal and asked that I delay my decision on her second application pending the resolution of a point which has arisen in parallel proceedings to which she is not a party, namely the 'which pension' remedy issue. It is important to note that the decision in respect of which Mrs Barran seeks a reconsideration is a liability issue not a remedy issue. I declined to delay issuing the second reconsideration decision and informed the parties that I would deal with her new point as a separate reconsideration application. I delayed dealing with her new point only out of an excess of caution as, despite the fact that she had failed on liability, there seemed to be a remote prospect that if the new point succeeded in connection with the 'which remedy' issue it might provide Mrs Barran with a pension for her judicial service despite having failed on the merits on liability before me.

2. The issue was raised by a Mr Jack, one of the claimants to whom the 'which pension' remedy issue applies. His contention is that the 'which pension' remedy issue has been superseded by and made academic by the Judicial Pension Scheme (Fee Paid Judges) Regulations 2017 (FPJPS) when read together with Art 5 of the Transfer of Tribunal Functions Order 2013 as

those regulations give him and other judicial office holders in the former Residential Tribunal Property Service, including Mrs Barran, a full judicial pension for the whole of their service. He invited me to rule that that was the effect of the FPJPS and to stay the 'which pension' remedy issue which was due to be listed for hearing.

3. I heard his application at a preliminary hearing for the purposes of case management on the 3<sup>rd</sup> October 2017. I declined to interpret the FPJPS on the grounds that I could not do so in way which would bind the respondent as Mr Jack had conceded that, if his contention was correct, the FPJPS would give him a greater remedy than that to which he would be entitled under the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000 (PTWR) under which his and Mrs Barran's claims have been brought. This Tribunal clearly has no jurisdiction to make an order for compensation or a declaration which exceeds its powers under the legislation under which a claim is brought. In any event it was not clear cut that the FPJPS had the effect for which Mr Jack contended but if it did it seems likely that it does so inadvertently and is also likely to be the subject of amending legislation.

4. I held that in consequence it could not be said that the 'which pension' remedy issue had become academic and if Mr Jack wished to pursue his contention that the FPJPS gave him a better remedy he would have to do so in another jurisdiction, presumably the Chancery Division of the High Court. Mr Jack then announced that he had decided to accept the respondent's offer to settle his pension claim and would not be attending the 'which pension' remedy hearing. It is unclear whether he intends to take his contentions concerning FPJPS further.

5. Whatever the correct interpretation of the FPJPS may be and whether the effect it is said to have is intentional or inadvertent, it is clear that it is not capable of affecting the issue which was before me in Mrs Barran's case namely whether her exclusion from the Judicial Pension Scheme during her service as a Vice-President of the Residential Property Tribunal Service was because of her part-time status and in consequence in breach of the PTWR. I held that part-time status was not the reason and her claim therefore failed. All that can be said about the FPJPS is that there appears to be a possibility that in its current iteration it might entitle her to the pension that my decision deprived her of, but it does so by a route which has no bearing on the correctness of my original decision (which was not appealed) and which is not open to Mrs Barran to follow in this Tribunal.

6. Her second 'further' reconsideration application, her third in total, is therefore refused on the grounds that it has no reasonable prospect of success.

Employment Judge Macmillan

Date 19<sup>th</sup> October 2017