EMPLOYMENT TRIBUNALS

Claimant: A

Respondent: Secretary of State for Justice

HELD AT: Manchester **ON:** 26 February 2019

BEFORE: Employment Judge Holmes

REPRESENTATION:

Claimant: In person
Respondent: Mr Hurd, Counsel

RESERVED JUDGMENT

It is the judgment of the Tribunal that the claimant's application for reconsideration of the judgment of 1 August 2018 sent to the parties on 23 August 2018 is refused.

REASONS

1. On 1 August 2018 the Tribunal held a Preliminary Hearing to determine whether the claimant's claims of unfair dismissal and disability discrimination had been presented out of time, and if so whether the Tribunal should extend the time for their presentation. The Tribunal held that both claims had been presented out of time, and, in the case of the unfair dismissal claim that it had been reasonably practicable to have presented it within time, so that the Tribunal could not grant any extension of time for its presentation. In relation to the complaint of disability discrimination the Tribunal concluded that that claim having been presented out of time it would not be just and equitable to extend time for its presentation, and consequently both claims were dismissed.

2. By letter dated 19 August 2018 the claimant sought reconsideration of the Tribunal's judgment of 1 August. That letter set out some five headings under which the claimant sought reconsideration, and, the Employment Judge having considered the matter under Rule 71, listed the matter for a reconsideration hearing today.

3. The respondent was invited to respond to the claimant's application, and did so in an email to the Tribunal of 13 December. Mr Hurd of Counsel appeared for the respondent on this application.

4. The claimant appeared in person, and was invited by the Employment Judge to go through her letter of 19 August 2018 on the basis that that contained the grounds of her application, which she was content to do. Before starting this hearing, however, the Employment Judge confirmed with the claimant that the lay out, temperature and lighting in the Tribunal room were acceptable for the claimant, and she confirmed that they were. He further informed the claimant that she may at any time seek a break should she require it.

The claimant's application.

5. In terms of the grounds relied upon, the claimant wished to start at item five, in which her ground was stated to be:-

The Case Management Order dated 16 March 2018 stated any/all evidence I gave at the hearing on 1 August 2018 would be via video link but this did not happen.

The claimant wished to start with this aspect of her application, as she considered this to be the most important one. She explained how she had arrived at the Tribunal expecting there to be a video link in accordance with a previous Order of the Tribunal, but that she found there was not to be one which she found made the presentation of her case and her evidence more difficult. She had not expressly raised the absence of a video link before the Tribunal , and had not sought any adjournment because of that feature , but felt that she was undermined and intimidated by the lack of this facility. The Employment Judge invited her to explain the consequences of this absence, which she said meant that she was less well prepared, felt intimidated and anxious , so that this would have an effect on the ability to present her case on that occasion.

6. The Employment Judge did raise with her whether it was primarily a request that had been made by reason of the claimant's requirement for privacy , and she agreed that this was one of the reasons that she had sought a video link. She had found its absence stressful, and that it had a "knock on" effect upon her performance in that hearing. A representative would have been likely to have raised this as a point , but as she did not have one she felt she was at an unfair advantage.

7. Having made her case in relation to that ground, she then moved on to the next round in her application which was ground number one as follows:-

The respondent failed to provide evidence I requested on 24 July 2018 and did not explain whether any or all of this would be made available and did not advise me I would have to make alternative arrangements, this was unreasonable and unjust.

8. The Employment Judge invited the claimant to expand upon this ground and in particular to identify the request that she had made for the provision of documents by the respondents on 24 July 2018. The respondents had raised this point in their response to the application, and had pointed out that they were unclear as to what

the claimant had allegedly requested from them. It was argued that the respondent had not received any application for the provision of documents.

9. Upon further consideration , the claimant referred the Tribunal to a document that she had submitted following the submission by the respondents of their amended response. This document is headed "Inaccuracies Misrepresentations and Omissions in Respondent's Statement". It is an undated document, but was sent to the Tribunal by email on 24 July 2018. The claimant explained that this was the document in which she was requesting documentation from the respondents. The claimant and the Employment Judge went through this document , and he invited her to identify where she made any specific request for documents from the respondent, and how any such requests related to the time limit issues that were before the Tribunal in the Preliminary Hearing. She was unable to do so specifically, but argued that many of the documents that she considered the respondents ought to have disclosed by that stage would be relevant to the time limit issues that the Tribunal was to determine. When pressed further on this she made reference specifically to occupational health referrals which she considered would be relevant to issues of "wellness". She argued that had those documents be available to her in advance of the Preliminary Hearing she might have been able to use some of them in support of her arguments in relation to the time limits, and they may have supported her contentions that she was being affected by stress.

10. The next ground was Number two in her letter of 19 August 2018.

<u>The Tribunal did not consider my application from 29 July 2018 (following my query of 28 May and requested 24 July that the respondent's response be struck out, (made due to the volume of factual inaccuracies and misleading statements).</u>

11. The Employment Judge explored this ground with the claimant. He pointed out that whilst the claimant had made an application to strike out the response the Tribunal was initially considering whether it had jurisdiction to entertain her claims at all. He pointed out that had that issue been determined at an earlier stage the respondents would have been entitled not to put in any response at all. The question of strike out would not therefore arise. Consequently, it appeared to him, as he explained to the claimant , that it would be natural for the Tribunal to deal with applications relating to jurisdiction before considering any further applications that the claimant may make in respect of the response. He invited her to confirm when her application for the response to be struck out was first made, as the Tribunal's file revealed to him that that application was not made until 29 July 2018. The claimant was of the view that it had been made earlier, and referred the Tribunal to her email of 28 May 2018. The Employment Judge located that email in which the claimant said as follows:-

"Dear Sir/Madam,

I have two procedural queries, about making an application for preparation time costs and about processes for correction of manifestly false statements by the respondent. Could you advise on these please, or forward to a Judge for a response if needed?."

12. The Tribunal subsequently replied to that email indicating that the Tribunal could not give advice to parties in these circumstances. The claimant received that response, and accepted that she had not , until 29 July 018, made any application to strike out the response.

13. The Employment Judge went on to ask the claimant how this point related to her ability to deal with the out of time issues that were before the Tribunal on the last occasion, and she indicated that it seemed to her that applications she made were not dealt with , whereas other applications and matters raised by the respondent got a more rapid response and attention from the Tribunal. Had she known that there was no requirement upon her to respond to the response (as the Employment Judge explained to her) she would not have expended time and energy on preparing the document that she did, and to that extent would have been able to better prepare for the out of time point.

14. Moving on to number three on her application of the 19 August 2018:-

"The Tribunal refused my request from 24 July 2018 for breaks at specific periods".

The claimant was referring in this ground to her request indeed made to the Tribunal by letter of 24 July 2018 which the Employment Judge read to her and she confirmed was the relevant letter in which she requested;

- No artificial lights;

- Regular breaks to reduce the risk of headaches and migraine and ensure I can maintain concentration. I do not know how long the hearings is expected to last but if it is more than one hour, I wish to request a five-minute break every half hour and ten minutes break every hour.

- Sufficient ventilation to avoid excessive heat".

15. In terms of breaks the claimant agreed that at the outset of the hearing on 1 August 2018 these were discussed and that she was told that she could take breaks if needed. She went on to say that the Tribunal had not explained what that meant, and she felt intimidated if she then had to ask rather than have set breaks which she contended the Tribunal did not wish to take as these would be inconvenient and disruptive of the hearing. She therefore explained that she had not raised the matter again during the hearing, as she felt that she was put under pressure to agree to take breaks as needed , but did not feel able to raise this issue much further saying in effect "oh, ok then".

16. She was asked when did she feel she actually needed breaks but did not take them, and said it was several times during the hearing and during her evidence. She agreed that she had in fact taken breaks at the points that the Employment Judge had suggested to her from his notes of the evidence, including a break of five minutes or so that she did not ask for, and a break from 11:45 to 12:55 before the respondent's submissions, which she considered were normal breaks and were not anything further than would have been afforded to anybody else in the circumstances. The Employment Judge did ask her what specific points would she have been likely to make in her evidence or her submissions if she had been allowed

more breaks than she took. She was unable to answer that point at this stage, but would consider it further after a break. Following the lunch time adjournment at 1pm, and resuming at 2:20 pm, the claimant resumed this point, and in terms of the effect of not taking the breaks that she said she needed, said that she would have been in a more positive frame of mind , and been able to be more focussed on the relevant evidence. She had not looked at the "Inaccuracies" document and was not in a position to make points from it that she properly could and should have done. Breaks would have enabled her to re-orientate herself, and in particular when being cross examined about her meeting on 7 December she would have been able to give better answers in relation to the impact that that meeting had upon her in terms of preventing her from presenting the claims within the requisite time limit.

17. Turning to ground four:

"I was prevented from having evidence considered due to the lack of explanation about the structure of the hearing, and the points at which evidence could and could not be presented. This lack of explanation was then followed by a decision by the Tribunal to disregard some of my evidence due to the point at which I presented it. The Tribunal had not adequately explained when and how I could go through my evidence and did not explain that there was specific points when this had to be presented. This was unjust".

18. This, the claimant explained was a reference to matters that she tried to raise in her summing up in the original hearing when the respondent objected saying that she was trying to introduce evidence which had not been in her witness statement and had not been the subject of cross examination. Had she been represented, she said that she would have been told that her evidence was the one and only chance that she would have had to give this evidence, and she would have said more at the time. She would have liked more time had she been aware of the procedure in which to add this evidence at the appropriate point whereas she was in fact prevented from relying upon it. This was another result of the effects of her stress upon her, she was not able or confident enough to say what she needed to say. In terms of what that would have been, she explained that that would again relate to the reasons why she could not bring the claims after the 7 December meeting and its effects upon her. She would have pointed to the occupational health report, and the impact of the delays in the respondent's responses to her grievances in support of her claims that she could not bring the claims within the relevant time limit.

19. Moving on to point six which is as follows:-

"During the hearing the respondent acted unreasonably by repeatedly seeking to undermine the merits of my claim during a hearing which I was told was only considering time limits".

20. The claimant explained that there were several occasions when the respondent was suggesting there was no merits to her claims. She felt this was unreasonable and had been told that everything that would be considered was about the time limit issues. The respondents had only been reminded once of this fact, but were allowed to continue to ask questions on this basis which had an impact upon the claimant's ability to respond. She felt this was undermining and humiliating. The Employment Judge did ask her where in the judgment was there any reference

to merits of the claims. She considered the judgment for some time, and responded in due course that in paragraph 50, where the Tribunal says "to some extent the claimant's claims in relation to disability discrimination appear to have somewhat secondary status to her unfair dismissal claim". By this she took the Tribunal to mean that the merits of her discrimination claim were not good and that the Tribunal was in effect saying that they had no merits. This was the way that she could take it, but she could not find anything else in the judgment which related to merits.

21. Turning to ground seven:

"The respondent acted unfairly and unreasonably"

22. In relation to this ground the claimant referred to the inaccuracies and mis-statements in the amended response. She considered that these were to a highly unreasonable degree, and were designed to undermine and humiliate her. The Employment Judge enquired how this affected the time limits issue before the Tribunal in the previous Preliminary Hearing, and the claimant replied that the respondents were trying to use the out of time points to prevent her case being heard, and by raising all sorts of points to make difficulties for her. She was not suggesting this was deliberate, but all this had weakened her ability to deal with the out of time issues. Asked to expand upon what she meant by the grounds she had set out under this particular heading, the claimant referred to a number of the case management issues that had arisen. It appeared to her that the respondent was able to say things and make assertions which the Tribunal acted on, but when she did the same nothing happened. The respondent appeared to be getting the benefit of decisions and actions on the part of the Tribunal that she was not and these were examples of that. The reference to the "arbitrarily early date" in this section of the grounds of reconsideration, was to the date that the Tribunal had taken in paragraph 48 of its judgment as to be the latest date upon which the claimant could have suffered any act of disability discrimination as that was the last date that she was in work. She would argue that that was not the last date because she continued after that date to seek a resolution by way of grievances, and that the matter therefore went on some time after that date. The Employment Judge explained the Tribunal's reasoning of paragraph 48 which related to the claimant's attendance at work, and how thereafter on the 31 July 2017, her employment ended in any event which would be the very last date upon which any alleged act of discrimination could be argued to start from. The claimant went on to explain how the reference to the respondents seeking their "preferred judge" in relation to an application for preparation time that she wished to make was a further example of the respondents acting unreasonably and saying something to the effect that "he had been kept waiting as well", a reference to an occasion when the claimant had not attended a Preliminary Hearing, which resulted in the respondents making an application for costs against her.

23. After a further break between 3 o'clock and 3.15 pm in which the claimant was invited to prepare to summarise her grounds and add anything further to what she had already said, the claimant upon return said the essence of what she was arguing was that she had not been able on the day of the Preliminary Hearing to explain fully her case, and how she did not have the ability to complete the claim for presentation

in time. Lack of documents from the respondents and things of that nature had only made things worse, and she had sought advice from the Tribunal.

The respondent's response.

24. Mr Hurd replied on behalf of the respondents, and largely followed the grounds that are set out in the email from the respondent's solicitors of 13 December 2018. He recited the relevant Tribunal rules, and how the claimant needed to show that it was in the interests of justice that her application be granted. There must be finality in litigation, as the Employment Appeal Tribunal and Higher Courts had held, and if there had been an error of law the claimant's remedy was to appeal. The Preliminary Hearing had been on relatively narrow issues in relation to whether the two claims were out of time and if so, whether extensions of time should be granted. The respondent's position was that there was nothing in the claimant's submissions which would have made any material difference to how the issues before the Tribunal on the previous occasion would have been determined.

25. In relation to the video link issue, ground number five, whilst Mr Hurd was not be present at the start of the hearing from information provided to him this had been an issue raised because of the claimant's concerns about privacy. This had been ventilated at the beginning of the hearing, and as there were no observers, she agreed to proceed. The claimant could have objected at any time to the lack of a video lack but had not done so. When pressed as to what difference this made to the presentation of her evidence and arguments in the Preliminary Hearing, the claimant had been vague in her responses.

26. In relation to ground number one, the document referred to had not expressly requested copies of any documents and it was difficult to see how any of these in any event went to the time limit issues. If the claimant was of the view that the respondents had not provided documents relevant to the time limit issues she could have asked and raised this issue in the Preliminary Hearing but did not do so.

27. In relation to number two, the reason why the claimant's application for an order striking out the response had not been dealt with was the Tribunal's natural and obvious need to approach matters in a sequential manner and the time limit issue had to be determined first.

28. In terms of ground number three, it was clear that rest breaks were given. It was always open to the claimant to request more. It still remained unclear what additional evidence the claimant would have given herself, had she been allowed further rest breaks. It was also to be noted that the claimant had been ordered to make a witness statement in relation to the time limit issues and had done so in plenty of time for the Preliminary Hearing. The claimant had done so on 11 April 2018. It was hard to see how any alleged failure to grant appropriate breaks would have any difference on the evidence when she had set this out in her witness statement prior to the hearing.

29. This ground relating to the claimant's inability to raise medical issues because of her lack of understanding of the structure of the hearing was , Mr Hurd conceded, one that may amount to a ground worthy of consideration in support of the claimant's application. The claimant had indeed during her submissions tried to raise medical

issues but the objection had been made that these were not contained in her witness statement. The Tribunal, however, clearly took all matters that it could into account in its judgment. He referred to paragraph 38 of the judgment, in which the claimant's mental condition was considered, and how the claimant had not produced any evidence in today in support of her contention that there were medical issues preventing her bringing the claims in time. Any such evidence would be new evidence, he submitted, and would have to satisfy the **Ladd -v- Marshall** ……. For the admission of new evidence. The medical issue is considered in paragraphs 35 to 39 of the judgment in any event, and he submitted would not have made any difference. The claimant's witness statement did not make any reference to her medical conditions at that time.

30. Turning to ground seven, this he submitted was a "catch all", a general complaint. It was not unusual for any litigant in person to feel this way, but the Tribunal had sought to level the playing field and remedy any imbalance between the parties. There was agreement that the claims were presented out of time so the sole issue was whether there should be any extension of time. Whatever the claimant's perception, there was nothing that he had said today which had any substance, going to the heart of these issues. The claimant had not shown what difference the various disadvantages she complains of have made and has been rather vague. He invited the Tribunal to reject the application.

The claimant's reply.

31. The Employment Judge invited the claimant to respond to Mr Hurd's submissions if there was anything further that she needed to say, and at that point the claimant suggested that she had indeed medical evidence. This was at 3:40 in the hearing. This had not been mentioned previously. The Employment Judge asked why this was so, and the claimant explained that she did not realise that she could or should have mentioned this earlier and thought that the Tribunal would determine whether to have a reconsideration and then this evidence could then be put forward. Mr Hurd was accordingly not on notice of the potential production of his evidence. This evidence, however, was in the claimant's phone and she needed to retrieve it from the phone. The Employment Judge rose so that she could do so and she took some time in doing so. She eventually found it, and rather than print it out or show her phone to the Tribunal (in any event she wanted to redact parts) she confirmed that this was a letter from one Alison Quinn, who was a Mental Health Advisor in a document dated 25 October 2018. This was prepared for the Community and Wellbeing Department , apparently of a University. It was to that extent a form of occupational health report. The claimant read from this report, in which Ms Quinn had apparently referred to her "long history of mental health issues", her severe depression and anxiety and panic attacks, which would "impact on her studies" and she made some recommendations. Accordingly, this evidence the claimant accepted did not relate to December 2017, and the effects of the meeting on 7 December 2017 upon her and her ability to present the Tribunal claims at that time. It was a general report for the purposes of the University which the claimant is attending making potential adjustments in relation to her ability to study.

Discussion and Findings.

32. That then , in summary, was the hearing , the submissions made , and evidence before the Tribunal. Given the lateness of the hour (it was 4:10 pm) and the need for the claimant to return and travel some distance, the Employment Judge with the agreement of the parties reserved this judgment which is now given.

33. As correctly identified by Mr Hurd in his submissions, the sole question for the Tribunal on an application for reconsideration of this nature is whether it would be in the interests of justice to grant reconsideration. There are no restrictions upon that, albeit that the previous provisions of the 2004 Rules which did provide express grounds have been said still to be relevant. It is nonetheless, a broad discretion given to a Tribunal in these circumstances.

34. In terms of the various points raised by the claimant the Tribunal will go through them in the same order that she did. The first, and obviously to her, most important one relates to ground five, the absence of a video link at the hearing. The Tribunal appreciates that the claimant was expecting a video link which was not available on the day of the hearing. There was, it would seem, some miscommunication about that and the Tribunal apologises for it. That matter was nonetheless , the Employment Judge is satisfied , dealt with at the hearing. There was a discussion which the claimant agrees occurred at the beginning of the hearing as to the effects of the absence of a video link. The Employment Judge considers, as the claimant herself partially conceded, that the main issue in relation to the need for a video link related to the claimant's privacy. Once it was clear that there were no observers present , and there were unlikely to be any during the course of the day, then the claimant agreed to proceed effectively in a private hearing. The issue of video link was never raised again during the hearing, and the Employment Judge considers that this is not a ground for reconsidering his judgment. Further, in any event, the Employment Judge does not consider that the absence of a video link in any way impinged upon the claimant's ability to give evidence. She appeared to the Employment Judge to be perfectly cogent and able to give evidence during the course of the Preliminary Hearing , and at no stage became obviously distressed or unable to answer questions , or give effective evidence. This is not a ground for reconsideration.

35. Moving on to the other grounds in the same order, ground one, the failure to provide evidence requested from the respondents, is one that the Employment Judge does not consider to be made out. Firstly, it is far from clear that the claimant made any such requests. The implication of the application she has made is that there was a specific request on 24 July 2018 for some documents from the respondent. That, as it turns out, is not the case. The claimant in her lengthy "Inaccuracies" document may have been requesting documents, but, as Mr Hurd pointed out, the time for disclosure had not yet taken place and there was no order from the Tribunal. Whilst the claimant seems to be of the view that the respondents were at that time already under some duty to give her disclosure when they were not, the Tribunal does not agree. Further, in any event, the claimant failed to identify which if any of the documents she was referring to would have had any bearing upon the extension of time applications that the claimant was making. The claimant appears to have made vague and generalised assertions that sight of these documents may have enabled her better to deal with the time limit points, but the Employment Judge is unable to see how that is so. Further, the claimant at no point during the original Preliminary Hearing raised the absence of these documents as

being in any way relevant to the issues before the Tribunal. This is not a ground for reconsideration of the judgment.

36. Ground two relates to the Tribunal's failure to consider the claimant's application to strike out the response. That is correct, but the claimant only made that application on 29 July 2018 some three days before the Preliminary Hearing. In any event, as explained to the claimant, the Tribunal would not consider such an application unless and until it had determined that it had jurisdiction to entertain the claimant's claims. That was always going to be done first. The Tribunal appreciates the point that the claimant made in connection with other grounds ,that her time and energy was expended upon responding to the respondent's response and making that application. That may be so, and was unfortunate. There was , as was explained to the claimant , no requirement for her to do that but she chose to do it in any event. It is appreciated that that is doubtless as a result of unfamiliarity with the Tribunal's procedure, and the inability of the Tribunal to advise her one way or the other in relation to that document. Whilst appreciating that this was therefore something of a diversion and a waste of her energy and resources, the Tribunal is not satisfied that that in fact adversely affected her ability to deal with the time limit points , and to advance the points in the Preliminary Hearing that she needed to do. This is not a ground for reconsideration.

37. In relation to ground three, the alleged refusal of the Tribunal for breaks at specific periods, the Employment Judge notes that the claimant agrees that she was provided with breaks when requested. She also agreed when the Employment Judge raised it with her that other breaks were taken as were explained in the course of the hearing. She agreed that she did not raise this absence of breaks as being a problem during the hearing , but claimed that this was as a result of feeling undermined, and intimidated. The Employment Judge did not recall the claimant appearing to be so cowed that she could not raise a request for a break. Indeed, at one point the claimant was given a break when she did not ask for it. The claimant did mention in her written application (though not in her submissions) to the Tribunal, that she had fallen over at the start of the hearing. This was indeed the case , and the Employment Judge has a clear note that at that point he offered her a break. The claimant has said in her application that this had left her considerably jarred, shaken and increasingly unwell. If that was so, the claimant made no mention of it whatsoever during the rest of the hearing. Again, in response to questioning from the Employment Judge as to what difference the absence of breaks has made to the presentation of her evidence or arguments in the previous hearing, the claimant was again vague and unable to identify anything more that she would have said if she had been afforded further breaks. This is not a ground for consideration.

38. In relation to ground four, this relates to the claimant's alleged inability to raise in her evidence or submissions issues going to medical conditions which may have impacted upon her ability to present the claims in time. Mr Hurd conceded that this may amount to an arguable issue, but on reflection and examination particularly in the light of the evidence that the claimant put before the Tribunal at the end of this hearing the Employment Judge does not agree that this gives the claimant any grounds for reconsideration of the judgment. The position is , as pointed out by Mr Hurd, that the claimant was directed and indeed did prepare a witness statement in relation to the time limit points well in advance of the Preliminary Hearing. That witness statement did not mention anything at all about the claimant's medical

conditions in anyway impacting upon her ability to issue the claims within the relevant time limits. This was therefore a wholly new suggestion that the claimant sought to make in the course of her submissions. It is for that reason that she was prevented from doing so, given that the respondents had not had the opportunity to cross examine her upon that. That may have been an error on her part, and it may well be that had she put that evidence in in the first place she would have been allowed to give it and the Tribunal could have considered it. The Tribunal did, however, take into account the possibility that there may be some medical reason for her inability to submit the claims in time, but discounted it. Given the opportunity today to present further evidence, even though the claimant was confused as to when she could present it, the only evidence that she sought to present , albeit by secondary means was a medical report of 25 October 2018 prepared in connection with her university studies. That , from what the claimant read out of it , did indeed provide support that she had a history of mental health issues and serious depression , but says no more that these would impact upon her studies. That is way short of the evidence that would be required by the Tribunal to support a contention that there was any medical reason preventing the claimant from presenting her claims in time in December 2017. This is particularly so in relation to the reasonable practicability test applicable to the unfair dismissal claims. Thus, even at this stage the claimant is unable to put before the Tribunal any evidence (leaving aside the issue of whether it would have been fresh evidence or not) which would begin to cause the Tribunal to revisit its judgment on the time limit issues in respect of both the unfair dismissal and disability discrimination claims. This then is also no ground for reconsideration.

39. In relation to ground six, this relates to the respondent's alleged undermining of the merits of the claimant's claims and the reference by the respondents to the merits when they had been told that these were not relevant in the time limit considerations. Whilst the claimant was of the view that the Tribunal had referred to the merits of her claims in the oral reasons, other than a reference in paragraph 50 of the written judgment, which the Tribunal cannot see relates to merits, there is no reference to merits at all. Merits were discounted in terms of the time limit issues, and therefore whatever the respondent said about them in the course of the hearing was not taken into account , and this too is not a ground for reconsideration.

40. In relation to ground seven, the alleged unfair and unreasonable conduct of the respondent, these complaints about the conduct of the respondent do not in the view of the Employment Judge have any bearing upon the decision taken in the Preliminary Hearing. Whilst appreciating the claimant's perception that the respondents were "making life difficult for her" and that she was having to expend time and energy in pursuit of her claim that was possibly diverting her from attention to the time limit points the fact remains that when pressed during the course of this hearing for what else, apart from the medical issues, she would have raised and how she would have dealt with matters differently in all the circumstances the claimant has been unable to point to anything specific that she would have been able to advance had all the matters of which she complains in this application not occurred. This is no ground for reconsideration either.

41. In summary, the issues before the Tribunal in the previous Preliminary Hearing were narrow and straightforward. The claims were presented out of time. The Tribunal had to determine in relation to the unfair dismissal claim whether it was

not reasonably practicable to have presented it within time. As set out in the previous judgment want of reasonable practicability is a hurdle that requires the claimant to provide cogent evidence in order to surmount. The claimant did not do so, and, from everything else she has said since, would still be unable to do so. She had, as previously observed, left it late to bring the claims, with an awareness of the relevant time limits. As previously observed the root cause of this was the claimant's misplaced hope that matters would be resolved by way of internal grievances and appeals, when the time for her presentation of her claims was rapidly expiring. That in essence the Tribunal previously found was why her claims were then presented out of time and nothing that the claimant has sought to put forward since has suggested there was any prospect of the claimant persuading the Tribunal of anything else.

42. Similarly, in relation to the disability discrimination claims and the extension of time for their presentation under the just and equitable principle, once medical evidence is discounted, and it still has not been provided in any acceptable shape or form, there really is nothing more that the Tribunal could and would have taken into account in that exercise. Thus, however better the claimant feels she could have presented her case in the previous hearing , or whatever evidence the claimant considers she would have been able to give, the Tribunal cannot see in anything in what she has raised which would entitle it to conclude that its previous judgment was in any way incorrect , or that the interests of justice require it to be reconsidered. This application is accordingly dismissed.

Employment Judge Holmes

Dated : 11 March 2019

RESERVED JUDGMENT AND REASONS
SENT TO THE PARTIES ON

13 March 2019

.....
FOR THE TRIBUNAL OFFICE

[JE]