EMPLOYMENT TRIBUNALS

Claimant: Mr S Ward

Respondent: Department for Work and Pensions

RESERVED JUDGMENT ON APPLICATIONS FOR RECONSIDERATION

It is the judgment of the Tribunal that:

1.The claimant's applications for reconsideration of the Tribunal's judgment of 29 October 2018 , sent to the parties on 2 November 2018 are rejected as having no reasonable prospects of success, pursuant to rule 72(1) of the 2103 rules of procedure.

2.The claimant's applications for reconsideration of the Tribunal's judgment of 18 March 2020 , sent to the parties on 19 March 2020, whereby the Tribunal proposed to make deposit orders in respect of the claimant's claims that pre-date 31 December 2013 as far as 10 October 2012, i.e nos. 41 to 58 in the Scott Schedule, and struck out the claimant's claims that pre-date 10 October 2012, i.e nos. 1 to 40 in the Scott Schedule, is rejected pursuant to rule 72(1) of the 2013 rules of procedure as having no reasonable prospects of success.

CASE MANAGEMENT ORDER

If the claimant wishes the Tribunal to take his means into account in determining whether to make any deposit orders and, if so, in what amount, he is to provide to the Tribunal, copied to the respondent , full information , with supporting documentation, of his income and outgoings, assets and liabilities, by **2 October 2020**.

REASONS

1. By a claim form presented on 21 March 2015, the claimant brought claims of disability discrimination against the respondent, his former employer. The ambit of the claims as originally presented was very wide, and sought to include claims going back in the claimant's employment history to its commencement in 1997. By orders made at a preliminary hearing held on 26 August 2016 it was ordered that the Tribunal would hear the claimant's claims in respect of the period 13 January 2014 to the end of the claimant's employment on 28 February 2016 , i.e the most recent claims, arising in relation to a period of his employment commencing January 2014,

when he returned to work after a prolonged sickness absence, into a new role, and under new management. The claims are set out in a Scott Schedule [Pldgs:pages 273A to 273K].

2. Those claims , nos 59 to 98 in the Schedule were heard by the full Tribunal in a hearing which commenced on 11 September 2017, and resumed part heard on 5 February 2018. Submissions were received on 9 February 2018, 12 February 2018, and 13 February 2018. The Tribunal convened in Chambers to deliberate on 14 and 15 March 2018, and 12 April 2018. By a judgment promulgated on 2 November 2018 ("the Liability Judgment") the Tribunal found that the claimant's claims of disability discrimination in the form of failing to make reasonable adjustments by :

a) failing by 11 November 2014 to provide him with a suitable workplace chair;

b) failing to provide him with a laptop to enable him to work from home when he was unable to continue at work due to back pain;

c) failing to grant him special leave in October 2014 when delivery of his workplace chair was delayed;

all succeeded, but all the other claims heard were dismissed.

The procedural history of the reconsideration applications.

3. The claimant initially sought a reconsideration of that judgment by an email of 14 January 2019, having been granted an extension of time in which to seek reconsideration. That email was a brief document, but on 28 January 2019 the claimant submitted a far more substantial application, running to 14 pages, together with a three page "Amendments/Reference of Reasons" document.

4. The respondent responded to the application on 21 February 2019. The claimant responded to that response on 25 March 2019. The Tribunal considered that application, and by letter of 24 April 2019 rejected it as having no reasonable prospects of success, pursuant to rule 72(1) of the 2013 rules of procedure.

5. The claimant did not accept the rejection of the application for reconsideration, and wrote further to the Tribunal on 12 May 2019, clarifying the application, raising further points and questioning the Tribunal.

6. The Tribunal then convened a further preliminary hearing , on 21 November 2019 , to consider:

a) Whether the application for reconsideration should proceed to a full hearing before the full panel;

b) Whether the claimant's prior claims that have not been heard should now be struck out;

c) The appropriate orders to make in connection with remedy in respect of those claims upon which the claimant has succeeded.

7. The Tribunal considered issues (b) and (c) first. Orders and Reasons were not given at the hearing .The Tribunal then , in Chambers on 18 March 2020 considered its reserved judgment, and made orders striking out the pre – October 2012 claims, and proposing deposit orders in respect of the claims from October 2012 to December 2013. Following further communications from the parties, particularly as to case management of the remedy hearing, its judgment, with reasons, and the orders it made were promulgated on 19 March 2020.

8. In the meantime, the claimant had submitted further submissions in support of the application for reconsideration on 12 January 2020. This document, headed "Reconsideration of Reserved Judgment", runs to two pages. It makes reference to the EAT judgment in ***Linsley v Revenue and Customs Commissioners [2019] IRLR 604*** , and the appeal then proceeding before the Supreme Court in ***Barclays Bank plc v Various Claimants*** , in which the Court of Appeal's decision upon vicarious liability for the tortious acts of third parties was under consideration.

9. On 19 March 2020 the Tribunal sought the respondent's views upon the claimant's further submissions, particularly with reference to the two cases that had been cited. That response was received on 27 March 2020.

10. On 7 April 2020 the respondent notified the Tribunal that the Supreme Court judgment had been handed down, and provided a link to it. By email of 8 April 2020 the claimant made further submissions by reference to specific paragraphs in the judgment of the Supreme Court.

11. The claimant , by email of 19 April 2020 enclosing a document entitled "Claimant's Response to Deposit Orders" , dated 15 April 2020, sought , or was taken to have sought, reconsideration of the judgment sent to the parties on 18 March 2020. It was ambiguous whether he was seeking reconsideration of only the deposit orders, or was lso seeking reconsideration of the orders striking out the earlier claims,.

12. Thereafter the claimant sent to the Tribunal on 27 May 2020 a further document , headed "Employment Rights Act 1996;Section 44" in which the claimant sought "confirmation" that s.44 of the Employment Rights Act 1996 was "properly considered" by the Tribunal when making its judgment on the case.

13. By letter of 2 June 2020 the Tribunal wrote to the parties, dealing with a number of issues, but in respect of the claimant's applications for reconsideration, the following was requested:

"4.Actions now required.

In order for the Employment Judge now to be able to progress the two outstanding reconsideration applications, the following is required:

a)Reconsideration of the original liability judgment.

The claimant is required to provide the following information, to the Tribunal and the respondent; :

a) *was any claim under s.44 ever made, or sought to be made, in the claims before the Tribunal? If so, where are they to be found?*

b) *If not, why not, and why are such claims only be raised at this stage , 2 years after the conclusion of the hearing ?*

The respondent is then required to comment upon this further, new, ground in support of the application.

b)Reconsideration of the judgment on preliminary hearing.

The claimant is to clarify , to the Tribunal, copied to the respondent:

a) *whether reconsideration is sought only of the decision that deposit orders will be made, or also of the decision to strike out the earlier claims; and.*

b) *To the extent that the application for reconsideration has been made out of time, upon what basis does the claimant seek the exercise of the Tribunal's discretion to extend time for the making of the application?*

14. On 18 June 2020 the claimant sent to the Tribunal and the respondent a document entitled " Claimant's responses", in which he replied to the Tribunal's letter of 2 June 2020. In relation to the first question posed by the Tribunal it was confirmed that the claimant was seeking reconsideration of both the proposal to make deposit orders , and the judgment to strike out the pre – 10 October 2012 claims. In relation to the second aspect , further submissions were made in relation to an application based upon s.44 of the Employment Rights Act 1996.

15. On 3 July 2020 the respondent responded further to the claimant's further submissions , in a document entitled "Respondent's Response to Claimant's 16 June 2020 Document" . Thereafter, Mrs Ward for the claimant has felt compelled to respond to that response, and has written further to the Tribunal, most recently on 9 July 2020, in a document entitled "Claimant's clarification in response to respondent's comms of 3rd July 2020".

16. The claimant then, on 13 July 2020, sent yet a further document to the Tribunal, duly copied to the respondent. This is entitled "Issues unfinished regarding claimants Reconsideration request". It makes some six points, two of which are phrased as questions to the Tribunal, and others relate to other issues which are not necessarily pertinent to either application for reconsideration.

17. All this correspondence has further delayed the finalisation of this judgment, particularly in relation to the liability judgment, which was sent to the parties as long ago as November 2018, and in respect of which an application for reconsideration was first effectively made on 14 January 2019. This prompted the Employment Judge to direct that the claimant be written to in order to discourage any further unsolicited correspondence relating to the reconsideration applications, as each further communication , which then required referral to the Employment Judge, was then delaying finalisation of this judgment. The Tribunal so wrote to the claimant on

31 July 2020. The claimant nonetheless sent a further email to the Tribunal on 21 August 2020.

18. In the meantime , various other issues have arisen , as to delays to the preparation for the remedy hearing listed for 10 and 11 September 2020, the respondent's application to postpone that hearing, and an urgent application by the respondent for disclosure of medical records by the claimant . The Tribunal's file has therefore been in heavy use, and has not always been available to the Employment Judge, who has also had to deal with intervening applications and case management issues relating to the remedy hearing . He apologises for the delay in the promulgation of this judgment (compounded also by the limitations arising from the Covid – 19 crisis in terms of access to the Tribunal premises, the file and the availability of administrative staff support), but trusts that the parties , particularly the claimant, will appreciate from the foregoing that conclusion of this judgment has not been a straightforward task.

The scheme of this judgment.

19. As indicated , there are two quite separate applications before the Tribunal. The first is the application for further reconsideration of the liability judgment, and the second is the application for reconsideration of the Tribunal's judgment sent to the parties on 18 March 2020, striking out some of the claims, and proposing that deposit orders would be made in relation to others. The Tribunal will deal with them in that order.

Reconsideration of the Liability Judgment.

20. The application for reconsideration was first effectively set out in a letter from Mrs Ward to the Tribunal dated 28 January 2019. It is 14 pages long. In it, she goes through the Tribunal's reserved judgment, pointing out errors, and seeking correction, and findings of discrimination where the Tribunal had made none. This application was considered by the Employment Judge pursuant to rule 72 (1) of the 2013 rules of procedure. He considered that there was no reasonable prospect of the Tribunal revoking or varying its judgment, and by letter of 24 April 2019, the Tribunal notified the claimant of the rejection of the application, and the reasons for it. In short, the Employment Judge considered that the application was little more than an attempt to re-litigate matters, including factual issues, that had been determined against the claimant , with no cogent grounds being advanced as to why the Tribunal had fallen into error.

21. At the preliminary hearing on 21 November 2019 the claimant made submissions as to why all the outstanding claims should be allowed to proceed to a full hearing. Following that hearing, there have been , in substance, three new grounds for reconsideration of the Liability Judgment raised by the claimant since the original application in January 2019.

(i) The Linsley v. Revenue and Customs Commissioners point.

22. The claimant raises this authority (actually handed down by the EAT on 7 December 2018, after the promulgation of the Liability Judgment) to argue that the Tribunal ought to have found that the respondent was in breach of its own

procedure, and hence the Tribunal should have found that it failed to make reasonable adjustments (which the Tribunal did in any event), presumably, earlier than the Tribunal has found that it did.

23. The claimant argues that the Tribunal did not make reference to the respondent failing to follow its own policies. That is correct. No specific failures are identified in the claimant's application. Whilst reference is made to the fact that "an adjustment recommended in the employer's policies is likely to be a reasonable one for it to make", which is indeed what ***Linsley*** holds, the Tribunal is unaware , and more importantly was not made aware during the liability hearing, of any policy which specifically provided that the claimant should have been provided with a specific type of chair.

24. Further, as the respondent's response points out, if anything, the Tribunal's judgment is critical of the respondent for too slavishly following policy and procedure, rather than looking at the wider, and more obvious picture.

25. In any event, this ground for reconsideration can only be seeking to add findings of failures to make reasonable adjustment which are earlier than those which have been found, which , if made , are unlikely to add anything significant to the overall value of the claimant's claims. Whilst it is appreciated that the claimant continually seeks to have the Tribunal determine that his claims of failure to make reasonable adjustments prior to those which the Tribunal has found, the Tribunal has already made its determinations of those claims which it has heard, and nothing in the judgment in ***Linsley*** is likely to affect the Tribunal's findings.

26. The interests of justice do not require a reconsideration on these grounds, and there is no reasonable prospects of the Tribunal so finding after a full hearing.

(ii) The vicarious liability issue.

27. By the same letter of 12 January 2020 the claimant then raised as a further ground for reconsideration a point upon vicarious liability, referring to the appeal at the time proceeding before the Supreme Court in ***Barclays Bank plc v Various Claimants*** .The Tribunal had dismissed some of the specific claims made by the claimant in respect of the acts or omissions of Evelyn Bird , Jamie Piggott and Angela Dunlop , on the grounds that those individuals were not employees of the respondent, which could not be vicariously liable for them, and hence, whatever the merits of any such claims may have been, the Tribunal could not find against the respondent on that basis, and these claims were dismissed. Those claims were nos. 81, 95 and 97. They are dealt with, shortly it is accepted, as no argument was advanced by the claimant on the vicariously liability point , which was dealt with at para. 25 of the Liability Judgment. That is not a criticism of the claimant , who was doubtless unaware of the issue at the time, and Mrs Ward would doubtless have advanced one , had she then been aware of the ***Barclays Bank plc v Various Claimants*** case.

28. At the time that this ground for reconsideration was raised, the Supreme Court had not given its judgment in ***Barclays Bank plc v Various Claimants [2020] UKSC 13*** . It did so on 1 April 2020, however. The issue before the Supreme Court was whether Barclays Bank was vicariously liable for the sexual assaults allegedly

committed between 1968 and about 1984 by the late Dr Gordon Bates on some 126 claimants in this group action. Dr Bates was a medical practitioner practising in Newcastle-upon-Tyne. He had a portfolio practice. Some of it was as an employee in local hospitals. Some of it was doing medical examinations for emigration purposes. Some of it was doing miscellaneous work for insurance companies, a mining company and a government board. Some of it was doing medical assessments and examinations of employees or prospective employees, originally for Martins Bank, and later for Barclays Bank following their merger in 1969. This was, however, a comparatively minor part of his practice. He also wrote a newspaper column.

29. Applicants for jobs at Barclays who were successful at interview would be told that they would be offered a job, subject to passing a medical examination and obtaining satisfactory results in their GCE examinations. The purpose of the examination was to show that they were medically fit for working in the Bank and could be recommended for life insurance at ordinary rates as required by the Bank's pension scheme. The Bank arranged the appointments with Dr Bates, told the applicants when and where to go, and provided him with a pro forma report to be filled in. This was headed "Barclays Confidential Medical Report" and signed by Dr Bates and the applicant. Dr Bates was paid a fee for each report. He was not paid a retainer by the Bank. If the report was satisfactory, the job offer would be confirmed, subject to examination results.

30. At that time, the Bank was recruiting young people, many of them female. Many of the claimants were teenagers at the time, some aged 16, going for their first jobs on leaving school. The examinations took place in Dr Bates' home in Newcastle. A room in the house had been converted into a consulting room. The claimants were always alone in the room when they were examined by the doctor, although some attended on their own and some were accompanied by other family members. It is alleged that Dr Bates sexually assaulted them in the course of those examinations, by inappropriate examination of intimate areas of their bodies. The litigation began in 2015 and a group litigation order was made in 2016 . On 26 July 2017, Nicola Davies J held that Barclays was vicariously liable for any assaults proved: [2017] EWHC 1929 (QB); [2017] IRLR 1103. On 17 July 2018, the Court of Appeal dismissed Barclays' appeal: [2018] EWCA Civ 1670; [2018] IRLR 947. The Bank appealed to the Supreme Court .

31. Following the Supreme Court judgment, the parties made further submissions. Whilst at the time that the claimant submitted the application for reconsideration the judgments of the High Court and the Court of Appeal had been in favour of the claimants, and found that the Bank was vicariously liable for what may have thitherto have been considered an independent contractor for whom there would be no vicarious liability, the Supreme Court held that the claimant medical examiner was an independent contractor, and notwithstanding that the Bank had sent the claimants to him for purposes connected with their employment, and that the doctor was thereby carrying out a function closely connected with their employment, that was insufficient to ground vicarious liability on the part of the Bank. The claimants in ***Barclays Bank plc v Various Claimants*** lost in the Supreme Court, which held that Barclays Bank plc was not vicariously liable for sexual assaults carried out upon its employees by the medical examiner.

32. Thus, the facts and actual judgment of the Supreme Court do not, in the final analysis, assist the claimant's case on vicarious liability. The Supreme Court did however, as had the Court of Appeal before it, take the opportunity to review the law of vicarious liability in general. The only judgment was given by Lady Hale, who summarised the issue in the appeal at a para. 8 of her judgment:

"8.The claimants, on the other hand, argue that the recent Supreme Court cases of Christian Brothers, Cox v Ministry of Justice [2016] UKSC 10; [2016] AC 660, and Armes v Nottinghamshire County Council [2017] UKSC 60; [2018] AC 355, have replaced that trite proposition with a more nuanced multi-factorial approach in which a range of incidents are considered in deciding whether it is "fair, just and reasonable" to impose vicarious liability upon this person for the torts of another person who is not his employee. That was the approach adopted both by the trial judge and the Court of Appeal in this case."

She went on :

"14 .Next came the Christian Brothers case. This raised issues at both stage one and stage two of the enquiry but much more prominently at stage one. The claimants had been inmates at a residential school owned by the Catholic Child Welfare Society (referred to as the "Middlesbrough defendants"), which also employed the teachers. Some of the teachers, and the head teacher, were members of the Institute of Christian Brothers. Serious physical and sexual abuse was alleged against some of the brothers. The issue was whether the Institute could be vicariously liable, jointly with the Middlesbrough defendants.

15. In para 35, Lord Phillips of Worth Matravers listed "a number of policy reasons" usually making it fair, just and reasonable to impose vicarious liability upon an employer for the torts committed by an employee in the course of his employment:

"(i) the employer is more likely to have the means to compensate the victim than the employee and can be expected to have insured against that liability;

(ii) the tort will have been committed as a result of activity being taken by the employee on behalf of the employer;

(iii) the employee's activity is likely to be part of the business activity of the employer;

(iv) the employer, by employing the employee to carry on the activity will have created the risk of the tort committed by the employee;

(v) the employee will, to a greater or lesser degree, have been under the control of the employer."

Later she said this:

"*27. The question therefore is, as it has always been, whether the tortfeasor is carrying on business on his own account or whether he is in a relationship akin to employment with the defendant. In doubtful cases, the five "incidents" identified by Lord Phillips may be helpful in identifying a relationship which is sufficiently analogous to employment to make it fair, just and reasonable to impose vicarious*

liability. Although they were enunciated in the context of non-commercial enterprises, they may be relevant in deciding whether workers who may be technically self-employed or agency workers are effectively part and parcel of the employer's business. But the key, as it was in Christian Brothers, Cox and Armes, will usually lie in understanding the details of the relationship. Where it is clear that the tortfeasor is carrying on his own independent business it is not necessary to consider the five incidents."

In conclusion she said:

"29. Until these recent developments, it was largely assumed that a person would be an employee for all purposes - employment law, tax, social security and vicarious liability. Recent developments have broken that link, which may be of benefit to people harmed by the torts of those working in the "gig" economy. It would be tempting to align the law of vicarious liability with employment law in a different way. Employment law now recognises two different types of "worker": (a) those who work under a contract of employment and (b) those who work under a contract whereby the individual undertakes to do or perform personally any work or services for another party to the contract whose status is not by virtue of the contract that of a client or customer of any profession or business undertaking carried on by the individual" (Employment Rights Act 1996, section 230(3)). Limb (b) workers enjoy some but by no means all the employment rights enjoyed by limb (a) workers. It would be tempting to say that limb (b) encapsulates the distinction between people whose relationship is akin to employment and true independent contractors: people such as the solicitor in Bates van Winkelhof v Clyde and Co LLP [2014] UKSC 32; [2014] 1 WLR 2047, or the plumber in Pimlico Plumbers Ltd v Smith [2018] UKSC 29; [2018] ICR 1511. Asking that question may be helpful in identifying true independent contractors. But it would be going too far down the road to tidiness for this court to align the common law concept of vicarious liability, developed for one set of reasons, with the statutory concept of "worker", developed for a quite different set of reasons."

33. In further submissions made in an email of 8 April 2020, Mrs Ward made reference to paras. 28 and 29 of the Supreme Court judgment. She stated that her understanding was that the medical examiners in her husband's case were "employed via a contract and were required to undertake examinations at the behest of the DWP and therefore could constitute an employer/employee relationship". The contract between DWP and the medical providers had not been provided. It may therefore be necessary to review the contract to determine whether a retainer was in place, and what its terms were. In relation to para. 29 she suggested that the provision of medical advice to the DWP was not by way of an "individual contractor" (by which she may have meant "independent contractor".

34. Is there anything in the judgment of the Supreme Court in ***Barclays Bank plc v Various Claimants*** which might lead to the Tribunal reconsidering its findings in relation to the absence of vicarious liability? In the view of the Employment Judge there is not. Obviously, on the facts, the claimants in ***Barclays Bank plc v Various Claimants*** failed, but that does not mean, as Mrs Ward submits, that there will not be circumstances in which a respondent will be vicariously liable for the acts or omissions of a third party, notwithstanding that the respondent does not employ that third party.

35. That much, the Tribunal accepts, is clear from passages in the judgment, but there is an important distinction between the facts of ***Barclays Bank plc v Various Claimants*** and these claims. The doctor in that case was a self – employed independent contractor. The issue therefore was whether, the bank having delegated functions to him, relating to the welfare of its employees, was nonetheless liable for his actions because he was , in effect, carrying them out on behalf of the bank. In other words , should his independent contractor status preclude what would otherwise be vicarious liability , had he in fact been a direct employee of the bank? The Supreme Court answered this question in the negative. That would be enough to dispose of any such argument succeeding on the facts as found by the Tribunal in this case. As the respondent's response document points out , there are a number of factual distinctions with the facts of ***Barclays Bank plc*** . Firstly, the employees victims in that case had to undergo the examinations which led to them being assaulted as part of the process of application for employment. Secondly, there was no choice of any other person, or organisation to carry out this function. In this case, the claimant was not required to see Evelyn Bird, or Jamie Piggott, and had, in fact nothing to do at all with Angela Dunlop, whose sole role was to respond to complaints made by the claimant about her organisation.

36. There is, however, a further and important fact which means there is absolutely no prospect of establishing vicarious liability on the facts of this case. Unlike the doctor in the ***Barclays Bank plc*** case , the three individuals in respect of whom the claimant seeks to impose vicarious liability were not in a direct relationship with the respondent at all. They were employees, but of other , separate , legal entities. It was their respective employers , not them , who had a direct relationship with the respondent. Their employers would be vicariously liable for their acts or omissions (which would fall outside the Tribunal's discrimination jurisdiction), but there is no arguable basis upon which the respondent could be held to be vicariously liable for the torts of persons who were not its employees, but were employees of a third party, itself an independent contractor, for which the respondent would have no vicarious liability. It would be contrary the principles of vicarious liability that the respondent should have no vicarious liability for the tortious acts of O H Assist and RAST , as third parties, but should for the acts or omissions of their employees .

37. Mrs Ward's submissions, in relation to the Supreme Court judgment , do not, with respect , alter this position. There is no prospect of the claimant arguing that Evelyn Bird, Jamie Piggott or Angela Dunlop were in an employer/employee relationship with the respondent. If they were not, for the reasons given above, there is no prospect of the Tribunal imposing vicarious liability for their acts or omissions upon the respondent. This ground for reconsideration therefore has no reasonable prospects of success.

(iii) The s.44 ERA argument.

38.The Tribunal now comes to the further ground for reconsideration advanced by the claimant in Mrs Ward's further application of 27 May 2020 , in which she asked whether the Tribunal had considered s.44 of the ERA. The Tribunal took this as a further ground for reconsideration of its Liability Judgment, notwithstanding that Mrs Ward had not identified which particular claims she contends could and should have been considered as such claims.

39.The respondent responded in its “Response” document on 3 July 2020.

40.The provisions of s.44 of the ERA are as follows:

44 Health and safety cases

(1) An employee has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that—

(a) having been designated by the employer to carry out activities in connection with preventing or reducing risks to health and safety at work, the employee carried out (or proposed to carry out) any such activities,

(b) being a representative of workers on matters of health and safety at work or member of a safety committee—

(i) in accordance with arrangements established under or by virtue of any enactment, or

(ii) by reason of being acknowledged as such by the employer,

the employee performed (or proposed to perform) any functions as such a representative or a member of such committee,

[(ba) the employee took part (or proposed to take part) in consultation with the employer pursuant to the Health and Safety (Consultation with Employees) Regulations 1996 or in an election of representatives of employee safety within the meaning of those Regulations (whether as a candidate or otherwise),]

(c) being an employee at a place where—

(i) there was no such representative or safety committee, or

(ii) there was such a representative or safety committee but it was not reasonably practicable for the employee to raise the matter by those means,

he brought to his employer's attention, by reasonable means, circumstances connected with his work which he reasonably believed were harmful or potentially harmful to health or safety,

(d) in circumstances of danger which the employee reasonably believed to be serious and imminent and which he could not reasonably have been expected to avert, he left (or proposed to leave) or (while the danger persisted) refused to return to his place of work or any dangerous part of his place of work, or

(e) in circumstances of danger which the employee reasonably believed to be serious and imminent, he took (or proposed to take) appropriate steps to protect himself or other persons from the danger.

(2) For the purposes of subsection (1)(e) whether steps which employee took (or proposed to take) were appropriate is to be judged by reference to all the circumstances including, in particular, his knowledge and the facilities and advice available to him at the time.

(3) An employee is not to be regarded as having been subjected to a detriment on the ground specified in subsection (1)(e) if the employer shows that it was (or would have been) so negligent for the employee to take the steps which he took (or proposed to take) that a reasonable employer might have treated him as the employer did.

(4) … this section does not apply where the detriment in question amounts to dismissal (within the meaning of [Part X]).

41. The claimant seems to be potentially relying upon s.44(1)(d) and/or (e) . As noted, the claimant has not specified which of his claims these provisions would apply to. Presumably the claimant would say they would apply to occasions when he went home early, or went off sick, because he was in pain, or was at risk of being caused pain, by his working conditions. Mrs Ward has also sought to argue that these claims were in fact before the Tribunal. Alternatively, she has argued that this could be considered "new evidence", entitling the Tribunal to further reconsider its judgment.

42. That said, it is not totally clear that the claimant would put his s.44 claims that way. From her further submissions , Mrs Ward appears to be basing these claims upon the claimant having a better knowledge of his disability and its requirements than his employers, and they then ignoring his suggestions as to how to make adjustments. With respect to Mrs Ward, if that is how the claimant would seek to advance any s.44 claims, these are not s.44 claims. For such claims to be advanced the claimant would need to identify each and every occasion upon which he took or proposed to take any action of the type prescribed in s.44, and each and every act of detriment to which he says he was then subjected as a result.

43. The respondent's primary response has been that the claimant cannot now, at this late stage, seek to add claims which were not raised in the course of the proceedings. Reliance is placed upon ***Ministry of Justice v Burton [2016] EWCA Civ 714*** and , in relation to the failure to raise a particular claim , ***Ironside Ray & Vials v Lindsay [1994] IRLR 318***.

44. Examining the claimant's claims, it would seem that the last of them that could conceivably be brought within the ambit of s.44 would be a claim that the claimant suffering the detriment of not being paid after he went off sick in November 2014, which he could argue , was an instance of him "leaving work" in the circumstances prescribed in s.44(1)(d) or (e). There are earlier instances of the claimant going home early, or taking sick leave , or holiday to avoid using his sick leave, in similar circumstances. These too, presumably, would be advanced by the claimant as s.44 claims.

45. The Tribunal reminds itself that the sole basis for reconsideration is that it would be interests of justice to reconsider the judgment.

46. Firstly, any such claims, even if taken from November 2014 would be likely to out of time. The claim from was presented on 12 March 2015, five months after the last alleged detriment was perpetrated. The test for extension of time would be that of reasonable practicability, and not the more generous just and equitable provisions applicable to discrimination claims.

47. Further, if the claimant were now to be permitted to amend his claims (for that is what this application amounts to) the liability hearing would have to be reconvened. Assuming that the claimant could surmount the time limit issues, the claimant's claims based on s.44 would have to be fully pleaded, the respondent permitted to amend its response thereto, and the witnesses recalled in order for these claims to be put to them. This may be something that Mrs Ward has not appreciated. The Tribunal cannot just generally reconsider its judgment, and consider whether the claimant may have any sustainable s.44 claims. If he seeks to advance such claims they would have to be made by way of amendment, and would have to be fully litigated as additional claims, long after the original Liability Judgment.

48. Whilst in certain, exceptional cases, where an unrepresented (i.e not legally represented) claimant has failed to include in his or her claims obvious and significant potential claims, the Tribunal may be minded to consider such an application, in this case the Tribunal can see no good reason for doing so. With all due respect to the industry and diligence of Mrs Ward, the Tribunal fails to see what such claims would add to the claimant's case. In terms of financial compensation, if the claimant suffered any specific financial losses as a result of leaving his place of work on various occasions, then, these may well fall to be compensated as part of the compensation he receives for the discrimination claims in which he has succeeded. That will almost certainly be the case in relation to any financial losses he sustained following his leaving work on sick leave, and never returning, after 11 November 2014. That may also be the case in respect of any financial losses resulting from the other two acts of disability discrimination, the failure to provide him with a laptop to enable him to work from home, and the failure to allow him to take special (i.e, the Tribunal understands, paid) leave.

49. Even if the three successful claims could also be put as s.44 claims (and that would have to be established, they would not simply necessarily follow as a consequence of the findings of disability discrimination) , the Tribunal would not award compensation for the same financial loss twice.

50. Likewise, with any award for injury to feelings, which the Tribunal acknowledges can be made for s.44 detriment claims. If such claims were made, and succeeded, on the same factual basis as any disability discrimination claims, the Tribunal would only make one award for injury to feelings. There cannot be double recovery just because there are two claims arising out of the same tortious acts of the employer.

51. Thus , where there would be overlap with the successful disability discrimination claims, no additional compensation would be awarded. It is appreciated that the claimant may be seeking to add further, as yet unparticularised, s.44 claims, based on facts that the Tribunal has found do not support any disability discrimination claims. Whilst the Tribunal can only speculate as to what these claims

could be, from its findings thus far it seems unlikely that the claimant would be able to add claims for any significant sums , pre – dating the discrimination findings that the Tribunal has made.

52. Additionally, for all those reasons, and bearing in mind the need for finality and proportionality, the Tribunal does not consider that there is any reasonable prospect of the Tribunal reconsidering its judgment so as to allow the claimant to make an application to amend his claims to add any claims under s.44.

(vi) The EHCR Code of Practice.

53. Finally, the claimant has in a number of communications , and as recently as in an email of 21 August 2020, raised the issue of the EHCR Employment Code of Practice, and its provisions as to disability discrimination. The claimant rightly points out that Courts and Tribunals are bound to take its provisions into account when determining discrimination claims. The claimant asks (and this tends to be the form in which his reconsideration applications are framed) whether the Tribunal has taken its provisions into account.

54. No specific provisions of the EHCR Code of Practice are identified , nor are any of the claimant's claims identified as being ones in respect of which consideration of its provisions would have led to the Tribunal making a different decision. The claimant acknowledges that the Tribunal asked Mrs Ward in the hearing in November 2019 which specific provisions of the Code she was referring to, and how they would have been likely affect the Tribunal's judgment. She did not provide a response, and has not since done so. In her email of 21 August 2020 she still declines to do so, arguing that it is the Tribunal's obligation to take the Code into account to fulfil its legal obligations.

55. The Tribunal is therefore left with an unspecified ground of application for reconsideration that the it did not take the provisions of the EHCR into account in reaching its judgment. It is correct that no reference is made to the Code in the Tribunal's judgment, and the Tribunal did not find it necessary to consult its provisions in order to reach its conclusions. The claimant seems to consider that this somehow vitiates its judgment (or at least those parts of it in which any of the claimant's claims are rejected) , but has failed to specify how.

56. Despite extensive research, the Employment Judge can find no authority for the implicit proposition made by the claimant that failure to consider the EHCR Code when determining disability discrimination claims in itself amounts to an error of law, or entitles a party to have any part of a judgment reconsidered. In short, failure to consider the EHCR Code , of itself, will not vitiate any decision or judgment , any more than making reference to it will validate one.

57. The Code itself provides :

Status of the Code

1.12

The Commission has prepared and issued this Code on the basis of its powers under the Equality Act 2006. It is a statutory Code. This means it has been approved by the Secretary of State and laid before Parliament.

1.13

The Code does not impose legal obligations. Nor is it an authoritative statement of the law; only the tribunals and the courts can provide such authority. However, the Code can be used in evidence in legal proceedings brought under the Act. Tribunals and courts must take into account any part of the Code that appears to them relevant to any questions arising in proceedings.

1.14

If employers and others who have duties under the Act follow the guidance in the Code, it may help them avoid an adverse decision by a tribunal or court.

58. Reconsideration is not an opportunity for a litigant to "mark the Tribunal's homework". Generalised criticisms and observations are only grounds for reconsideration if it can be shown that there is some prospect of the judgment being changed because of something that was not considered, which ought to have been, and, had it been, a different result may have ensued. If the claimant could point to any conclusions or findings which are inconsistent with any specific provisions of the Code , the position may be different, but he has not done so. This ground for reconsideration has no reasonable prospects of success.

Conclusion on reconsideration of the Liability judgment.

59. The claimant has raised evolving grounds for seeking reconsideration of the Liability Judgment. As previously explained in response to the original application, in the Tribunal's letter of 24 April 2019 rejecting it , as it was then put, reconsideration is not an opportunity to re-litigate aspects of a judgment which a loosing party disagrees with. The importance of finality was confirmed by the Court of Appeal in ***Ministry of Justice v Burton and anor [2016] EWCA Civ 714*** in July 2016 where Elias LJ said that:

"the discretion to act in the interests of justice is not open-ended; it should be exercised in a principled way, and the earlier case law cannot be ignored. In particular, the courts have emphasised the importance of finality (Flint v Eastern Electricity Board [1975] ICR 395) which militates against the discretion being exercised too readily; and in Lindsay v Ironsides Ray and Vials [1994] ICR 384 Mummery J held that the failure of a party's representative to draw attention to a particular argument will not generally justify granting a review."

60. Similarly in ***Liddington v 2Gether NHS Foundation Trust EAT/0002/16*** the EAT chaired by Simler P said in paragraph 34 that:

"a request for reconsideration is not an opportunity for a party to seek to re-litigate matters that have already been litigated, or to reargue matters in a different way or by adopting points previously omitted. There is an underlying public policy principle in all judicial proceedings that there should be finality in litigation, and

reconsideration applications are a limited exception to that rule. They are not a means by which to have a second bite at the cherry, nor are they intended to provide parties with the opportunity of a rehearing at which the same evidence and the same arguments can be rehearsed but with different emphasis or additional evidence that was previously available being tendered."

61. In common with all powers under the 2013 Rules, preliminary consideration under rule 72(1) must be conducted in accordance with the overriding objective which appears in rule 2, namely to deal with cases fairly and justly. This includes dealing with cases in ways which are proportionate to the complexity and importance of the issues, and avoiding delay. Achieving finality in litigation is part of a fair and just adjudication.

62. The majority of the points raised by the claimant are attempts to re-open issues of fact on which the Tribunal heard evidence from both sides and made a determination. In that sense they represent a "second bite at the cherry" which undermines the principle of finality. Such attempts have a reasonable prospect of resulting in the decision being varied or revoked only if the Tribunal has missed something important, or if there is new evidence available which could not reasonably have been put forward at the hearing. A Tribunal will not reconsider a finding of fact just because the claimant wishes it had gone in his favour. That broad principle disposes of almost all the points made by the claimant, and the four specific grounds advanced above have been considered and rejected.

Reconsideration of the Reserved Judgment sent to the parties on 18 March 2020.

63. The Tribunal now turns to the claimant's second application, that which relates to the judgment in which the claimant's claims which pre – date 10 October 2012 , nos. 1 to 40 in the Scott Schedule were struck out, and the Tribunal proposed to make, but did not actually make, deposit orders in respect of the claims between 10 October 2012 and 31 December 2013, nos. 41 to 58 of the Scott Schedule.

64. That application was first made (although not so expressed) in the claimant's letter to the Tribunal of 19 April 2020, to which was attached document dated 15 April 2020, entitled ""Claimant's Response to Deposit Orders". That document appears to relate solely to the proposed Deposit Orders, but it does have some overlapping relevant to the strike out judgment.

65.The initial point taken by the respondent is that this application for reconsideration is out of time. The judgment was sent to the parties on 19 March 2020. Under rule 71 an application for reconsideration must be made within 14 days of the judgment being sent to the parties. As that was on 19 March 2020, that period would have expired on 3 April 2020, but the application was no made until 19 April 2020.

66. The claimant seeks an extension of time, Mrs Ward has argued that the claimant should be granted an extension of time as there have been a number of factors such as the health of Mrs Ward's own mother, and the effects of the Covid – 19 emergency, which delayed the making of the application.

The proposed deposit orders.

67. The first, and procedural, point is that the claimant cannot seek reconsideration of this proposal. That is for two reasons. The first is that no deposit order has yet been made. The Tribunal is proposing to make one, or more, but no such order has yet been made.

68. Secondly, if such an order is made, it will not be a judgment, but a case management order. As such it is not susceptible to an application for reconsideration under rule 70. An application can be made under rule 29 to vary or revoke such orders, but only when an order has been made.

68. The Tribunal does not therefore propose to consider the claimant's application any further, and the claimant should await the making of any order.

69. To assist the claimant, however, the Tribunal would like to make clear that there is no proposal to make a deposit order of £1000 in respect of each claim, as the claimant seems to believe. There are 17 claims, and the Tribunal has power to make a deposit order of up to (and it is noted that those words are omitted from para. 30 of the Judgment) £1000 in respect of each claim. In fact there are arguably more than 17 claims, as some are expressed in the alternative as up to five different types of discrimination claim.

70. That does not, however, mean that the Tribunal will make £1000 deposit orders on each claim. It is likely to take an overall view, and make deposit orders which are, when viewed cumulatively, proportionate and reasonable.

71. Further, the claimant has been invited to put forward details of is means if he wishes them to be taken into account in setting the appropriate level of deposit order. Whilst reference has been made to the claimant living on a "meagre" pension, no supporting information has been provided. The claimant has offered to provide such information, but it is his responsibility, if he wishes his means to be taken into account to provide full details to the Tribunal. The Tribunal has accordingly made a further order for the claimant to provide more detailed information to the Tribunal, if he wishes his means to be taken into account.

72. Finally, and by way of guidance, in terms of the reasons for the Tribunal's proposals, which derive from its views that the October 2012 to December 2013 claims have little reasonable prospects of success, these are very much linked to its reasons for striking out the earlier claims, which it considers have no reasonable prospects of success. As the claimant has sought reconsideration of this finding, the Tribunal's findings upon that application may well inform the prospects of success of the later claims.

Reconsideration of the strike out judgment.

73. As the striking out of these claims is a judgment, disposing of some of the claims, it can be reconsidered. The grounds advanced by Mrs Ward, as far as the Tribunal can discern them from the various submissions made, for reconsideration of the strike out judgment are as follows:

The application dated 15 April 2020:

The claimant's claims go back to 1997, when the duty to make reasonable adjustments was engaged, and remained engaged , during the whole period of his employment. There was thus no 5 year "break" during this 18 year career.

It was irrelevant that the claimant returned to work in January 2014, under what was said to be "new" management.

The Tribunal should not have found that there was no conduct extending over a period of time between 2013 and 2014.

The claimant was "under threat of dismissal" from 2000, and had a diagnosis of depression.

The spirit of the Equality Act 2010 was to protect vulnerable persons and their needs.

The claimant had grieved in 2013, effectively by Mrs Ward conducting his grievance, but the respondent had still failed to provide the reasonable adjustments needed.

Application dated 18 June 2020 (second part – Reconsideration of the judgment on a preliminary hearing).

Whilst this addressed mainly the application for reconsideration of the Liability Judgment on the grounds of s.44 of the ERA, a copy of which was attached to it, it also, in para. 3 on the second page, explained the delay in submitting the application, and sought an extension of time on the basis that it would be just and equitable to grant on.

Claimant's clarification in response to respondent's comms of 3rd July 2020.

Again whilst this document largely addresses the respondent's submissions in relation to the s44 ERA ground for reconsideration of the Liability Judgment, it arguably touches upon the judgment on the preliminary hearing, in that it again references the 18 year failure on the part of the respondent to make reasonable adjustments.

In the final paragraph , Mrs Ward says this:

"As documented previously, the claimant's ET1 accounted for his entire employment; It was Judge Holmes and the respondent's legal team that pressed the claimant to proceed from 2014 onward, under the assurance his case would not be watered down by such action, which it clearly has been. The claimant considers he was pressuraied into such action and did not know, because of his lack of legal training , it would be so detrimental to his overall claim. The claimant considers the lack of knowledge and training of he and his rep, has been abused by the ET process."

74.Those, as far as the Tribunal can see, are the grounds advanced for consideration of the strike out judgment. Whilst not being critical of Mrs Ward, her communications have sometimes been ambiguous, and she has not always

specified what grounds she is advancing in support of which application for reconsideration.

75.The Tribunal appreciates that there is inevitably some overlap between the two applications. The claimant's starting point is that the Tribunal was wrong not to find any of his claims that pre – date October 2014 well founded, so as to create a break between the earliest of his successful, in time claims, and the last of his prior, as yet untried claims. This break creates a problem for the claimant arguing that the last of his claims could be argued to be saved as being presented in time by virtue of the "conduct extending over a period of time" provisions in s.123(6) of the ERA. That issue is addressed in the consideration of making deposit orders in respect of those claims which fall between 10 October 2012 and 31 December 2013.

Application for reconsideration made out of time.

76. Before proceeding further, the contention that the application is out of time must be addressed. On the timeline, and the application of rule 71, the application was made outside the 14 day time limit. Under rule 5 the Tribunal has power to extend time limits for most of the provisions in its rules, a power that is to exercised judicially, balancing the prejudice to both parties. The respondent has identified no prejudice arising from an extension of time for 14 days, and the Tribunal has no hesitation in granting one, so that the application can be considered.

Discussion and ruling.

77. The Tribunal notes Mrs Ward's submissions about the need for reconsideration of the striking out of the earlier claims, and how she contends (see the final paragraph of her submission of 8 July 2020) that the Tribunal somehow, in obtaining the claimant's agreement , under pressure, to only trying the post – January 2014 claims , has thereby disadvantaged the claimant into limiting the hearing in this way. She has continually suggested that this was done on the express basis that the claimant's earlier claims would not be prejudiced, and that this was detrimental to his overall claims.

78. It has been made clear that this was not the basis that upon which the split of the hearing of the claims was ordered. What it meant was that the Tribunal would not, at the outset of the hearing of the claims, or at case management stage, make any determination of whether any of the earlier claims were out of time, and whether they should be struck out. That thereby in fact preserved those claims. Had, for example, all the claims that were tried in the 2018/2019 hearing been successful, that may have led to the claimant having a sustainable argument for conduct extending over a period of time , at least in respect of the claims which related to the preceding 12 months or more.

79. Whilst the claimant did agree to this course, the Employment Judge would made it clear that if he had not, that would , in any event have been the order that the Tribunal would have made. Employment Tribunals regulate their own procedure , and decide how they will hear and determine claims, which is a matter of case management. As it was , limiting the first hearing to the claims going back to 13 January 2014, a period of some 15 months before the claims were presented , required a hearing in three tranches over 16 days, and led to a 95 page reserved

judgment. As explained to the claimant at the outset, in cases such as this the Tribunal has to focus on the final claims, as , if none of those had succeeded, all the previous claims potentially would fail, as, if there is no successful in time claim to which any prior claims can be linked under the "conduct over a period of time" provisions, the claimant is then left only with out of time claims, for which he must then seek the just and equitable extension. The January 2014 cut off was a logical, and manageable (largely) approach, which has resulted in findings in his favour in respect of some claims which were in time.

80. Had the preceding claims, either going back a further 12 months, or further still , actually been heard in one final hearing (requiring, one would have thought probably at least 6 weeks) , the same issues as to whether the pre – January 2014 claims were out of time, and whether the claimant could invoke the just and equitable extension, would still have arisen. The difference is that the Tribunal would have had to consider all the evidence relating to those stale claims, which would, as it findings on the in time claims demonstrate, have been a complete waste of time and resources, at least as far as the pre – October 2012 claims are concerned.

81. Turning to the specific grounds for reconsideration of the striking out of the pre – October 2012 claims, these are , with respect, a little hard to discern. As observed, they are intertwined with the application for reconsideration of the Liability Judgment. They are summarised in para. 73 above.

82. It must be observed that much of Mrs Ward's submission is a critique of the iniquity of having a limitation period at all, rather than addressing the prospects of the claimant in this case successfully invoking any exceptions to it. Of the factors set out in ***British Coal Corporation v Keeble [1997] IRLR 336*** referred to in para. 48 of the Liability Judgment. The only factor that Mrs Ward's submissions really address are the reason for the delay on the part of the claimant . She does not address the effects of that delay upon the cogency of the evidence at all. The Tribunal found that it would not be just and equitable to extent time for the presentation of the claims which pre – dated October 2014 in its Liability Judgment for the reasons advanced in paras. 48 to 54 .

83.There is, the Tribunal notes a contention (made in the "Claimant's Response to Deposit Orders document dated 15 April 2020) that the claimant was under threat of dismissal from the year 2000. This is an unsubstantiated allegation, which at most only goes to the reason for the delay in bringing the claims, which the claimant did not do until 15 years later. Even if accepted as a reason for the claimant not taking at action at that time, the Tribunal would have to consider that this remained an operative deterrent to the claimant bringing these claims for the ensuing 15 years. Given that he was a union member, and had, by 2013 at least, found himself able to raise a grievance, even if there were to have been at some stage some validity in this reason, it is likely not to be considered as a good enough reason for the claims not being issued until 2015.

84.The reason for the delay, however, is but one factor in the factors to be considered as set out in ***British Coal Corporation v Keeble [1997] IRLR 336*** . It is to be considered , firstly, along with the length of the delay, which, on any view is enormous, considering the normal three month time limit. The mere fact that the claimant may have an explanation for the delay will not lead to that period being

disregarded. Absence of any explanation is likely to be fatal to an application to extend time, but the converse, that there is , or may be , an explanation, does not mean the application will succeed.

85.As observed, Mrs Ward's submissions do not address any of the other factors to be considered. There is no explanation of the steps that the claimant took to obtain advice once he knew of the facts giving rise to the claims, and there is no contention of any lack of co-operation in the provision of information by the respondent.

86.Most crucially, however, no attempt at all is made to address the effect of the delay upon the cogency of the evidence. This factor has not been addressed in the claimant's submissions. The Tribunal has already, at paragraphs 49 to 53 of the Liability Judgment , set out its reasons , applying the ***British Coal Corporation v Keeble [1997] IRLR 336*** principles, why it would not grant the just and equitable extension to the claims which it was determining , which were far more recent than those which have been struck out. The prospects of it coming to a different view in relation to the claims which were struck out, which go back even further to October 2012 can be no better, and must be considerably worse, in fact, they are nil.

87.Further, the Tribunal also noted that the struck out claims were poorly particularised, and a fair trial , even at March 2015, which is the time when the Tribunal must consider the issue, of such stale claims, with no prior grievance relating to them, would not be possible. This is another factor arising from the substantial delay in bringing these claims, which remains unaddressed by any of the claimant's submissions.

88. For these reasons, the Tribunal considers that there is no reasonable prospect of the claimant successfully contending that the judgment striking out those claims as having no reasonable prospects of success, on the basis that they are so out of time, should be reconsidered, and the application is dismissed pursuant to rule 71(1).

89. The Employment Judge is sorry that the claimant and Mrs Ward continue to feel the way they do. It is a recurrent theme of their submissions that they expect , or expected , the Tribunal to consider and adjudicate upon claims which go back 18 years before the presentation of the claim from, and encompass the whole of the period of the claimant's employment. The Tribunal understands the claimant's, and Mrs Ward's, perception of how he was treated by the respondent throughout the whole of his employment, about which they understandably feel strongly, and they may well be right. There is frequent reference to the respondent's "duty of care". As has been explained , however, whilst that concept has application in the law of negligence , it has none in disability discrimination. As the claimant doubtless appreciates, the law on discrimination claims is highly technical , and the Tribunal's rules on time limits are strictly applied.

90.Their dissatisfaction , with respect, derives perhaps from a lack of understanding of the Tribunal system, which is a creature of statute, only empowered by Parliament to determine discrimination claims brought within a three month time limit. That Tribunals can, and do, from time to time, consider claims going back further than three months shows that a degree of flexibility and latitude is permissible, and in this very case the Tribunal has thus far determined (i.e has heard) claims which went

back 15 months before the presentation of the claim form. It is also prepared, upon condition of payment of a deposit, to entertain claims going back a further twelve months. Even the under the more generous provisions in the civil courts for personal injury claims, however, there is a three year limitation period. The same principles that apply to extensions of time for the presentation of personal injury claims are applied to the just and equitable extension provisions in the Employment Tribunal. They can be seen in operation in paras. 47 to 53 of the Liability Judgment. Much of the claimant's argument appears to be more with the iniquity of having a limitation system at all, and its prejudicial affect upon the claimant , rather than addressing the specific bases upon which he could legitimately seek to have any such periods disapplied to his outstanding claims.

91.The applications for reconsideration are therefore dismissed, and the Tribunal will hopefully now soon be able to proceed to determine remedy in respect of the claims upon which the claimant has been successful.

Employment Judge Holmes

Dated: 4 September 2020

RESERVED JUDGMENT SENT TO THE PARTIES ON

8 September 2020

FOR THE TRIBUNAL OFFICE