



# EMPLOYMENT TRIBUNALS

**Claimant:** Dr M Jackson

**Respondents:** (1) Cardiff University  
(2) Carole Tucker  
(3) Bernard Richardson  
(4) Paul Roche  
(5) Matthew Griffin)

## JUDGMENT

The claimant's application dated 3 August 2021 for reconsideration of the judgment sent to the parties on 20 July 2021 is refused.

## REASONS

1. There is no reasonable prospect of the original decision being varied or revoked for the following reasons.
2. The Tribunal's powers to reconsider judgments are contained within Rules 70 to 73 of the Employment Tribunal Rules of Procedure 2013. Rule 70 provides it may revoke or vary the judgment where it is necessary in the interest of justice. The process is contained with Rule 72. If the Tribunal considers there is no reasonable prospect of the judgment being varied or revoked the application shall be refused and no hearing will take place. Otherwise the Tribunal shall send a notice to parties setting out a time limit for response and seek views on whether it can be decided without a hearing.
3. The Tribunal must follow Rule 72 in the order outlined above (**TW White & Sons Ltd v White UKEAT 0022/21**). In exercising the power the Tribunal must do so in accordance with the overriding objective.
4. In **Ministry of Justice v Burton and another [2016] ICR 1128**, Elias LJ approved the comments of Underhill J in **Newcastle upon Tyne City Council v Marsden [2010] ICR 743**, 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. Further, that 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.

5. In **Liddington v 2Gether NHS Foundation Trust UKEAT/0002/16** Simler P held:

*“..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 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. Tribunals have a wide discretion whether or not to order reconsideration, and the opportunity for appellate intervention in relation to a refusal to order reconsideration is accordingly limited.*

*[35] Where, as here, a matter has been fully ventilated and properly argued, and in the absence of any identifiable administrative error or event occurring after the hearing that requires a reconsideration in the interests of justice, any asserted error of law is to be corrected on appeal and not through the back door by way of a reconsideration application. It seems to me that the Judge was entitled to conclude that reconsideration would not result in a variation or revocation of the decision in this case and that the Judge did not make any error of law in refusing.”*

#### Background and introduction

6. On 3 August 2021 the claimant made an application for reconsideration of judgement sent to the parties on 20 July 2021. The application is set out a 29-page document totalling 146 paragraphs. It was accompanied by a small reconsideration bundle comprising of some material that was without prejudice, an email from the claimant to the second respondent dated 20 May 2015, and a printout of Ms Martyn’s<sup>1</sup> LinkedIn profile.
7. Judge Moore determined it to be appropriate to ask the respondent their comments prior to deciding the first step in paragraph 72 (1) and directed these to be received by 6 September 2021, subsequently extended to 13 September 2021 on application by the respondent.

#### Without prejudice material

8. The claimant submits that the without prejudice material included in the reconsideration bundle she had prepared, should be admitted as the trial bundle already contained without prejudice communication, other details were already included in the bundle and the tribunal had based some of their decisions on without prejudice discussions they assumed were taking place. The claimant accepts that she had attempted to already submit some of the evidence at the main hearing but this was refused.
9. The claimant did not set out where in the bundle she maintains the without prejudice material and “other detail” was located or what the documents were. It is not for the Tribunal to try and guess what documents the claimant was referring to. This submission is therefore rejected.

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<sup>1</sup> Ms Martyn is employed by the First Respondent in their HR Department  
11.6C Judgment – Reconsideration refused – claimant - rule 72

10. One of the documents is a letter dated 18 July 2017 from the first respondent to the claimant. This is the second occasion where the claimant has requested permission to admit this document the first being on 5 March 2021 after all of the evidence in the case had been heard. That application was refused on 30 March 2021 and reasons were given orally. The claimant cannot request reconsideration of the decision not to admit that document on 30 March 2021 as that decision was not a judgment. The decision was a case management order and there has been no application until 3 August 2021 to vary that decision. Further it would not be in the interests of justice, nor would it be equitable to permit the claimant to admit without prejudice communications after the proceedings have finished and all of the evidence has been heard.
11. Addressing the claimants submission that as a litigant in person it was never made clear to the claimant and certainly not in writing, that there was a hard deadline at the end of witness evidence, beyond which no further evidence could be submitted. Claimant asserts that this means the tribunal has not taken her request for reasonable adjustments into consideration.
12. Prior to the main hearing, there were 15 previous preliminary hearings involving extensive case management. Paragraph 8 of REJ Davies order dated 10 December 2019 contained the reasonable adjustments agreed for the hearing. Further, during the course of the hearing in March 2021, both parties sought to admit additional evidence and on all occasions the tribunal explained to the claimant the process for determining applications to admit new evidence. The previous case management orders clearly explained the process in regard to disclosure and agreeing the bundle. In the circumstances, there is no prospect of the judgment being varied on the basis the claimant did not understand that beyond the completion of evidence she would not be able to admit new evidence.

Knowledge of disability (paragraphs 1-9)

13. The claimant requests reconsideration of paragraph 53 and a finding the claimant did not tell Professor Tucker she was exhausted and burnt out in June 2015. The claimant relies on new evidence namely an email exchanged between the claimant and Professor Tucker on 20 May 2015. This is refused. Firstly, it is not in the interests of justice to admit new evidence after the proceedings have finalised. Secondly the email does not corroborate the claimant's evidence that she informed Professor Tucker she was exhausted and burnt out in any event.
14. In respect of paragraph 53, the judgment at this paragraph relayed the claimant's evidence about this conversation. The tribunal's findings are paragraph 55. The tribunal considered and weighed the evidence before it made findings of fact and is satisfied they assessed the weight of the evidence on both sides before making the said findings.
15. Further, even if the Tribunal had accepted the claimant told Professor Tucker, she was exhausted and burnt out in May 2015 this would not have changed the overall decision on knowledge for the same reasons as set out in paragraph 410.

Paragraphs 10 -37

16. The claimant is seeking to revisit the findings of fact made at the hearing by relaying her own interpretation of the evidence. The tribunal considered and weighed the evidence before it made findings of fact and is satisfied they assessed the weight of the evidence on both sides before making the said findings. There is no prospect of the Tribunal re visiting the findings of fact based on the claimant's interpretation as set out in the above paragraphs.

Paragraph 38

17. The claimant has requested reconsideration of the finding in paragraph 85 that there was no evidence that Professor Tucker disclosed the claimant's stress condition to anyone other than Professor Griffin and Dr Richardson. The claimant refers to paragraph 11 of Dr Roche's witness statement where he stated he was aware that the claimant was struggling with her workload and was stressed. This could indicate that he was already aware from his own knowledge. He goes on to say that the claimant reported the issue to Professor Tucker on 11 November 2015. Dr Roche refers to an email in the bundle at this point and it is not therefore clear whether he is aware having seen that email as part of these proceedings or whether he was told about the email by Professor Tucker at the time. His statement does confirm that he is aware the claimant was unhappy her report of her stress was passed onto him and further in paragraph 13 of the same statement that it [the report of stress] was confirmed by Professor Tucker in November 2015.
18. None of these points make any difference to the tribunal's findings on knowledge of disability. Even if Dr Roche was told by Professor Tucker the claimant was stressed at the time the claimant has not explained why this should make a difference to the findings on knowledge of the claimant's disability.

Paragraphs 39 – 45

19. This requests reconsideration of the findings of fact at paragraph 142. This is refused as the claimant is seeking to revisit the findings of fact made at the hearing by relaying her own interpretation of the evidence. The tribunal considered and weighed the evidence before it made findings of fact and is satisfied they assessed the weight of the evidence on both sides before making the said findings. There is no prospect of the Tribunal re visiting the findings of fact based on the claimant's interpretation as set out in the above paragraphs.

Expert report paragraphs 46-49)

20. The Tribunal acknowledges the expert report was not a joint expert report. There is no request to reconsider the judgment under this section. For the avoidance of doubt, the status of the report would not lead to the judgment being varied or revoked.

Executive function deficits (paragraphs 50-60)

21. The claimant seeks reconsideration of the judgment at paragraph 24 with regard to the disorganisation issue. There is no prospect of reconsidering this for the reasons set out at paragraphs 22 – 24 in the judgment in that it was the claimant's own case that she did not have difficulties with organisation.
22. The claimant seeks reconsideration of the judgment at paragraph 21 that there was no evidence that she had requested information to be given in written form. The claimant references her later requests during the course of these proceedings to have information in writing as a reasonable adjustment. This is not relevant being a request made as part of the proceedings (and subsequent the claimant's ASD diagnosis).

Harassment / victimisation (Paragraphs 61 – 65)

23. It is agreed that paragraph 108 contradicts paragraph 112. Paragraph 108 should have read "it was not raised again by the Claimant formally or informally **with Professor Tucker** until the mouth zipping incident which we refer to below". Even with this addition there is no prospect of the judgment being varied or revoked as

even though the claimant raised the issue at the meeting on 11 May 2016, and Professor Tucker was present at that meeting, this would make no difference to our reasoning and conclusions set out at paragraph 452 of the judgment.

Paragraph 66 – 75

24. The Tribunal did not base the findings of paragraph 127 solely on observations of the claimant at the hearing albeit it was a corroborative factor. There is no prospect of the Tribunal's judgment being varied or revoked as the other evidence referenced in that paragraph supports the finding that the claimant returned to the issue at the meeting after being asked not to and this was what led to Dr Richardson asking the claimant to accept the particular meeting was not the appropriate forum to raise the issue..

Failure to make reasonable adjustments / indirect discrimination

Paragraphs 76 – 110

25. This is refused as the claimant is seeking to revisit the findings of fact made at the hearing by relaying her own interpretation of the evidence. The tribunal considered and weighed the evidence before it made findings of fact and is satisfied they assessed the weight of the evidence on both sides before making the said findings. There is no prospect of the Tribunal re visiting the findings of fact based on the claimant's interpretation as set out in the above paragraphs.

Results of grievances and investigations

Paragraphs 111 -115

26. The claimant requests reconsideration of the last sentence in paragraph 243 however this is relaying a finding made by Professor Morley and is not a fact or conclusion of the Tribunal. As such it cannot be reconsidered.

Grievance investigation and outcome

Paragraphs 116 – 117.10

27. This is refused as the claimant is seeking to revisit the findings of fact made at the hearing by relaying her own interpretation of the evidence. The tribunal considered and weighed the evidence before it made findings of fact and is satisfied they assessed the weight of the evidence on both sides before making the said findings. There is no prospect of the Tribunal re visiting the findings of fact based on the claimant's interpretation as set out in the above paragraphs.
28. In respect of the submissions regarding the without prejudice issue this does not bear any relevance to the claims advanced by the claimant. There was no claim brought regarding the discussions between the parties regardless as to when those discussions took place. The claimant did not advance a claim regarding any delay in the outcome of the grievance appeal.

Additional issues

Paragraphs 118 – 132

29. This is refused as the claimant is seeking to revisit the findings of fact made at the hearing by relaying her own interpretation of the evidence. The tribunal considered and weighed the evidence before it made findings of fact and is satisfied they assessed the weight of the evidence on both sides before making the said findings.

There is no prospect of the Tribunal re visiting the findings of fact based on the claimant's interpretation as set out in the above paragraphs.

Paragraphs 133 - 141

30. The claimant seeks reconsideration of paragraph 256 which makes a finding of fact about the outreach project. The claimant asserts the numbers were higher and references her cross examination of Professor Griffin on this issue. The Tribunal has checked the notes of the cross examination the claimant references. This took place at 15.55pm on 22 February 2021. It is agreed that the claimant took Professor Griffin to a progress report authored by the claimant for the Welsh Government. The report was not dated but was written for claim period 1 April 2016 – 31 December 2016. It is not clear from the claimant's application what figures the claimant maintains are incorrect. The report quoted by the claimant does not show any school visits at all and it is not clear what figures the claimant says the report show were higher. The claimant did not take Professor Griffin to any specific figures. The Tribunal's finding of fact was based on an email from Professor Griffin dated 12 June 2017.
31. The claimant's recount of Professor Griffin's evidence does not accord with the Tribunal notes. Whilst Professor Griffin accepted he may have got the figures from Dr Roche, he explained he had not seen the report from the claimant previously. He did not acknowledge a mistake and admit he had quoted erroneous figures according to the Tribunal's note of the evidence. He did state that if he receives information from others, he assumed it to be accurate and trustworthy and would not personally check the accuracy of every piece of information.
32. Further, the claimant has not sought to advance any claim regarding the outreach project. The claimant's performance on the outreach project is not relevant to the claims and no conclusions have been reached in respect of these findings.
33. For these reasons the request to reconsider this paragraph is refused.

Regarding treatment after disability disclosure

Paragraphs 142 – 146

34. The claimant's application to admit new, without prejudice documentation has already been dealt with above and refused.
35. In relation to the application to reconsider paragraphs 293, there are no grounds set out as to explain why the claimant's witness statement did not address allegations advanced that she had been threatened for having made a subject access request. It cannot be in the interests of justice to permit reconsideration of these findings based on a without prejudice letter disclosed after the hearing has concluded.

Overall Conclusions

36. The volume and number of objections are such that to entertain a reconsideration would amount to a substantial re hearing and revisiting evidence where appropriate findings of facts have already been made. This would not be in the interest of justice and I do not consider there are reasonable prospects of the decision being varied or revoked on this basis.
37. The claimant is seeking to re-litigate the claim. Applying **Liddington v 2Gether NHS Foundation Trust UKEAT/0002/16**, there should be finality in the litigation.

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The claimant has sought to rehearse and reinterpret evidence and in some parts of the application, requested reconsideration of matters which even if were granted would have no bearing on the overall conclusions reached.

38. For these reasons, the application is refused under Rule 72 (1) of the Employment Tribunal Rules of Procedure 2013 and for the avoidance of doubt, I consider a hearing is not necessary given there is no prospect of the original decision being varied or revoked.

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Employment Judge S Moore

Date: 1 October 2021

JUDGMENT SENT TO THE PARTIES ON 5 October 2021

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FOR THE TRIBUNAL OFFICE Mr N Roche