EMPLOYMENT TRIBUNALS

Claimant: Miss J Cammish

Respondent: Secretary of State for Justice

Heard at: Manchester (in private) **On:** 30 September 2021
(In Chambers)

Before: Employment Judge Holmes sitting alone

JUDGMENT ON APPLICATION FOR RECONSIDERATION

It is the judgment of the Tribunal that :

1. The Tribunal grants the claimant an extension of time for submission of her application for reconsideration to 10 February 2021, when it was received by the Tribunal.
2. The claimant's application for reconsideration of the judgment sent to the parties on 21 December 20210 has no reasonable prospects of success, and is refused pursuant to rule 72(1).

REASONS

1.A preliminary hearing was held on 14 September 2020 and 18 November 2020, following the previous preliminary hearing held on 16 March 2020 , at which the Tribunal made Orders, sent to the parties on 8 July 2020, whereby the Tribunal struck out all but two of the claimant's post – 2017 claims, on the grounds that they had no reasonable prospects of success. The Tribunal proposed to make deposit orders in respect of these two claims. The September hearing was originally convened to consider:

a) whether or not it was reasonably arguable that the pre-2017 allegations formed part of an act extending over a period including any post-2017 allegations which are permitted to proceed after that preliminary hearing , or payment of any deposit(s) ordered;

b) In respect of any alleged discrimination or victimisation occurring before 21 March 2019, to consider whether or not it would be just and equitable to extend the time limit;

c) If the Tribunal had jurisdiction to consider the whole or part of the claim as set out in the original claim form, to consider the claimant's application to amend her claim to introduce the allegations set out in the further particulars;

d) To clarify any complaints that are permitted to go forward to a final hearing and to identify the issues in relation to those complaints;

e) To consider the time allocation ,case management , and timetable for the final hearing.

3. As, however, by email of 21 July 2020 the claimant sought reconsideration of the Tribunal's previous judgment, that application too was heard in that preliminary hearing in September.

4. The reserved judgment sent to the parties on 21 December 2020, the Tribunal was as follows;

A.Reconsideration of the Tribunal's judgment of 16 March 2020, sent to the parties on 8 July 2020.

The claimant's application for reconsideration of this judgment is refused, and the judgment and orders made stand, save appears below.

B.Determination of whether the pre – 2017 claims were presented out of time, and, if not whether it would be just and equitable to extend time for their presentation.

The pre - 2017 claims were presented out of time, and it would not be just and equitable to extend time for their presentation. They are dismissed.

C. Determination of whether the two remaining post – 2017 claims were presented out of time, and, if not whether it would be just and equitable to extend time for their presentation.

Claims no 1, in so far as they relate to the alleged delay by Joanne Town in progressing the claimant's IAW application between August 2016 and August 2017, and claim no. 2 , in so far as they too relate to any alleged delay occasioned by Joanne Town in the initial decision upon the claimant's IAW application of the post - 2017 allegations were presented out of time, and it would not be just and equitable to extend time for their presentation. They are dismissed.

D.Application to amend the claims to add new claims.

None of the claimant's claims remaining before the Tribunal, there are no claims to amend, and the Tribunal does not consider the claimant's application of 7 November 2019 to add any further claims.

This reconsideration application – procedural history.

5. The claimant's application for reconsideration of the last judgment was first intimated in a letter sent by email to the Tribunal on 4 January 2021. She appreciated that the time limit for seeking reconsideration would expire on 5 January 2021, but because of her illness, she sought an adjustment of the timescale, to allow her 6 weeks to make her application. That communication was not referred to the Employment Judge, and hence no extension of time was granted.

6. The claimant did in fact however, submit to the Tribunal, her full application for reconsideration on 10 February 2021. That too was not referred to the Employment Judge, so when, following an email from the claimant on 7 April 2021 , in which she sought an update, her email of 4 January 2021 was then referred to the Employment Judge, he replied on 19 April 2021 that he had not received any application for

reconsideration, but were he to do so, he would consider whether to accept it out of time.

7. As indicated, the claimant had in fact done so on 10 February 2021, but the Employment Judge had not seen it. The claimant replied on 19 April 2021, pointing out that she had sent in the application on 10 February 2021, whereupon that email was then referred to the Employment Judge, who directed that the application be listed before him in chambers , for him to consider it. It was so "listed" , or was intended to be, for 28 July 2021, but this was not communicated to the Employment Judge, who had no cases listed before him that day.

8. The claimant again in September 2021 enquired what had happened to her application, whereupon the error was realised, and the file was put back before the Employment Judge on 30 September 2021, when he considered the application under rule 72. The Employment Judge can only apologise on behalf of the Tribunal for these administrative failings. As the application has been considered without a hearing, the Code P has been applied to show this was a determination on the papers only.

The application.

9. The Tribunal has undertaken preliminary consideration of the claimant's application for reconsideration of the judgment dismissing her claims. That application is contained in a 34 page document attached to an email dated 10 February 2021. References to paragraphs are references to paragraph numbers from the reasons promulgated with the judgment, or the claimant's application .

The Law

10. An application for reconsideration is an exception to the general principle that (subject to appeal on a point of law) a decision of an Employment Tribunal is final. The test is whether it is necessary in the interests of justice to reconsider the judgment (rule 70).

11. Rule 72(1) of the 2013 Rules of Procedure empowers the Tribunal to refuse the application based on preliminary consideration if there is no reasonable prospect of the original decision being varied or revoked.

12. 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."**

13. 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."**

14. 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.

The claims, the history, and the application

15. As will be apparent , these claims have a long history , with three preliminary hearings being held . They relate to the claimant's employment, at the material time, by the respondent at Leeds Combined Court . As identified in previous preliminary hearings, the claims that the claimant sought to bring potentially went back to 2015, but were divided by the Employment Judge at the preliminary hearing held on 12 November 2019 into two broad categories, "the pre-2017 complaints", and "the post-2017 complaints".

16. The claims were presented to the Tribunal in a claim form on 28 July 2019. The most recent event that had occurred prior to the presentation of the claim form was receipt by the claimant of an appeal outcome on 3 May 2019. That appeal related to the refusal of the respondent (or more accurately its pension and benefits providers) to accept the claimant's application for compensation under a scheme referred to as "Injury at Work" , or "IAW". This refusal had been communicated to the claimant on 3 May 2018, and the ensuing 12 months was taken up with her attempts to appeal that decision. The majority of the claims of discrimination the claimant sought to advance therefore went back to 2017, and even earlier, to 2015.

17. From the outset therefore, given that the claimant did not present her claims to the Tribunal until 28 July 2019, there were always going to be serious time-limit issues with these claims.

18. Having divided the claims into the two pre-and post-2017 categories, the Tribunal considered in the preliminary hearing held on 16 March 2020 whether the most recent of those claims, i.e. those classified as post-2017, had any reasonable prospects of success, the respondent having made application that they be struck out on the grounds that they did not.

19. The Tribunal, by its judgement sent to the parties on 8 July 2020 did strike out, save for two claims, all of the post-2017 claims, as having no reasonable prospects of success. The post-2017 claims were considered by the Tribunal (and not gainsaid by the claimant) to be ones of victimisation. That the claimant had done a protected act was not disputed (and would have been assumed in her favour in any event these purposes), and the focus of the respondent's application was that the claimant had no reasonable prospects of persuading a Tribunal that the reason that she suffered any subsequent unfavourable treatment was that she had done this protected act.

20. The respondent in that hearing took the Tribunal through the full chronology of the claimant's application for the benefit she sought, its refusal, and her subsequent appeal. The respondent's basic submission was that the claimant had failed to be awarded the benefit that she sought for the simple reason that she did not satisfy the medical criteria for such an award. The respondent submitted that this was perfectly clear from the documentation, so the claimant therefore would have no reasonable prospects of persuading a Tribunal that the decision to deny this benefit was in any way shape or form influenced by the doing of any protected act.

21. As will be apparent from reading of the Tribunal's previous judgements in this matter, given the claimant's constant references back to her original grievance, and linkage by her of it to the subsequent decision not to award her the benefit that she sought, the Tribunal afforded her a further opportunity to provide more written material, and provide further submissions in opposition to the respondent's application.

22. Having considered that material, and the further submissions made by the claimant, the Tribunal , for the reasons set out in paragraph 76 to 177 of its reserved judgement, concluded that , save for two claims, the other post-2017 claims made by the claimant had no reasonable prospects of success , and they were struck out.

23. As will hopefully be clear from the Tribunal's Reasons, its focus when considering the post-2017 claims was upon their prospects of success on the merits, and not in relation to any time-limit issues. The Tribunal in assessing the claimant's prospects of success had regard to the burden of proof provisions under section 136 of the Equality Act 2010, and the relevant caselaw.

24. Applying those tests to the six claims of victimisation that the Tribunal had identified as the claimant's post- 2017 claims, the Tribunal concluded that they had indeed had no reasonable prospects of success.

25. The Tribunal did, as will be further discussed , consider that the claimant may have some prospects of success in relation to the delays in processing of her application on the part of Joanne Town, but did not consider that she had reasonable prospects of successfully contending that the respondent "repeatedly caused her applications to 'go missing' up to August 2017, which was her first claim.

26. Similarly, the Tribunal concluded that she had no reasonable prospects of successfully claiming that the respondent had delayed the initial decision on the application, her second claim.

27. In relation to her third claim, refusing the application on its merits, the Tribunal was very clear in its judgement that the claimant had no reasonable prospects of establishing that this decision was taken on any grounds other than purely medical ones .

28. In relation to the fourth claim, that the claimant was victimised by the respondent allegedly confining the IAW decision to examination of the medical evidence only, the Tribunal was similarly clear that this claim had no reasonable

prospects of success, for similar reasons to those in respect of the third claim. Indeed the Tribunal found that this was a misconceived claim.

29. In relation to the fifth claim, appointing Ms Collins as decision-maker, the Tribunal again was clear in its conclusion that the claimant had no prospects of raising a prima facie case that there was any causal link between her protected act and this alleged act of unfavourable treatment.

30. Finally , the Tribunal similarly found that the claimant had no real prospects of successfully claiming that her sixth complaint, delaying the appeal outcome, had any connection with the doing of the protected act.

Reconsideration of these findings.

31. The Tribunal has set out these findings because they were themselves the subject of an application for reconsideration in the hearing held on 14 September 2020, the judgement upon which is the subject of this, a yet further , application for reconsideration.

32. It is therefore necessary to examine the claimant's grounds for seeking reconsideration on that occasion, and why the Tribunal rejected that application in its reserved judgement sent to the parties on 8 July 2020.

33. As will be apparent from the discussion at paragraphs 15 to 22 of that reserved judgement, the Tribunal found it hard to discern the basis upon which the claimant was seeking reconsideration of these findings. Her application appeared to be based upon some previously un-made claim of a further act of victimisation on the part of Ms Collins, in the period between June and August 2019. The Tribunal in its Reasons, even accepting that the claimant may have such a claim before the Tribunal (which was doubtful in itself) concluded that any such claim would have no better prospects of success than the other claims it had been struck out previously, as the claimant would still not be able to point to any evidence that would raise a prima facie case that any act or omission on the part of Ms Collins was because the claimant had done the protected act. The Tribunal accordingly rejected the claimant's application for reconsideration of the striking out of the claims which had previously been ordered.

The claimant's further application.

34. In this application, the claimant seeks a yet further reconsideration of the refusal of the previous application for reconsideration of the order striking out her post-2017 claims.

35. The claimant's application largely involves analysing and commenting on paragraphs (referred to by the claimant as "Points") in the Tribunal's reserved judgement i.e that sent to the parties on 21 December 2020 . Paragraphs 1 to 41, pages 2 to 15 of the claimant's application, relate to the application for reconsideration of the rejection of her previous application for reconsideration.

36. There is no particular single cogent or coherent point advanced by the claimant in support of this application, rather she makes a number of observations in the course

of the various paragraphs that she has composed, from which the Tribunal has had to glean the points that she may be seeking to make.

37. It has to be said that the majority of the points raised by the claimant are really attempts to re-open issues on which the Tribunal heard evidence from the claimant , and submissions 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 , or a determination, just because the claimant wishes it had gone in her favour.

38. In overall terms the claimant appears, for example in paragraph 2, to be contending that there is some new evidence. It is unclear what she means by this, she appears to be referring to the respondent's amended response, which is not new evidence. The complaint is that Joanne Town carried out a "further act of victimisation" by failing to adhere to a policy in connection with the grievance. Paragraph 3 refers to "unreasonable behaviour" on the part of the respondent.

39. Paragraph 5 appears to refer to matters identified in the original preliminary hearing , when the claims were struck out, which relate to the period between June and August 2019 and the involvement of Ms Collins. This is referred to again by the claimant as an act of victimisation by the respondent. As has previously been identified the Tribunal's original judgement , this was not a claim the claimant made to the Tribunal. It was also one which, if made, the Tribunal considered to have no reasonable prospects of success. This argument is also advanced in paragraphs 6 and 7 of this application. These points relating to Ms Collins are also raised again in paragraphs 8 and 9.

40. Paragraphs 11 and 12 again go over old ground , in the view of the Tribunal. The Tribunal has always understood the claimant's disappointment that her grievance did not result in the removal of certain sickness absences from her record, and the reinstatement of her full pay for periods when she was on reduced or no pay. In her application , as previously, the Tribunal has to note with regret that the claimant appears to continue to confuse the unsatisfactory outcome, and indeed handling of, her grievance with acts of victimisation for having raised it.

41. The claimant at paragraphs 13, 15 and 16 seeks to go further and introduce concepts of unreasonable behaviour , and failure to engage in early conciliation on the part of the respondent. Such matters are irrelevant to whether her claims of victimisation of any reasonable prospects of success.

42. Paragraph 18 refers to Deborah Smith, in respect of whom no complaints of victimisation had been presented to the Tribunal. In paragraph 21 the claimant complains that Deborah Smith "failed to assist" her. It is unclear if this is meant to be a further allegation of victimisation, but it is not one of the claimant's claims. In paragraph 23 the claimant refers to Deborah Smith acting unreasonably. That may be so, but unreasonable conduct is not the same as victimisation. The claimant says of this, and other matters, including each occasion upon which her pay was reduced due

to her sickness absence , referred to in paragraph 25 , that they are "all acts of victimisation and directly linked to the making of the protected act". As previously observed, there is doubtless a link to the protected act, in the sense that these matters all arose out of the claimant's grievance , and her sickness absence, but that that is not the same as them having been perpetrated because of it.

43. In paragraph 26 the claimant then sets out matters that have occurred within the last 18 months. She refers to a request for flexible working made in March 2020. She then complains in paragraph 27 that the respondent failed to make a decision upon this request, and how the claimant then was signed unfit for work on 18 June 2020. The claimant then refers to this as a failure to consider a reasonable adjustment, and an act of victimisation as a result of the claimant having made protected act, and unreasonable behaviour by the respondent.

44. She goes on in paragraphs 28 to 32 to refer to further requests that were made during this period, and an apparently recent request by the respondent for the claimant to return to work each day of four continuous hours of the end of an eight week phased return. She suggests that this treatment of her amounts to the respondent victimising her for having made protected act, and failure to consider reasonable adjustments.

45. The obvious observation that the Tribunal must make is that these are not grounds reconsideration of its previous judgement. If anything, they may be potentially further claims the claimant may wish to bring, although she will doubtless already appreciate that in respect of matters going back to March 2020 there will be likely to be time-limit issues yet again. Whatever her intentions, whatever the merits of any such claims, they can have no bearing on whether the Tribunal should reconsider its previous reconsideration of the strike out of the post-2017 claims, or indeed any other aspects of the last judgment.

46. In paragraphs 35 to 40 of the application the claimant reverts back to comment upon matters going back 2015. She seeks to extract from various documents in the bundle evidence in support of allegations that she makes of victimisation on the part of Joanne Town and Deborah Smith. The claimant again makes reference to unreasonable behaviour on the part of Deborah Smith, and her alleged failure to assist the claimant. At one point (para. 37) the claimant actually suggests that the respondent is "found lacking in their duty of care" to her. This perhaps rather highlights that the claims the claimant seeks to make before the Employment Tribunal are not the ones that she should perhaps be pursuing. As has probably been observed to her previously in the course of these proceedings, the Tribunal has no jurisdiction in respect of the duty of care than employers owe to an employee. That is the province of the law of negligence, over which the Tribunal has no jurisdiction.

47. In short, the Tribunal finds nothing in paragraphs 1 to 40 the claimant's application which warrants any reconsideration of the reconsideration that the Tribunal has already given to the striking out of her post-2017 claims, and the application in this regard is refused as having no reasonable prospects of success pursuant to rule 72(1) of the rules of procedure.

Reconsideration of the determination that the pre – 2017 claims were presented out of time , and the refusal of an extension of time.

48. The next part of the claimant's application , paragraphs 42 to 148 , relates to the Tribunal's determination in relation to the pre-2017 claims. This was the first determination of this issue , and hence the claimant is not seeking , in this part of her application , reconsideration of a previous reconsideration by the Tribunal.

49. The relevant part of the Tribunal's reserved judgement is paragraphs 28 to 109. The claimant has similarly made this part of her application by analysing and commenting on most of these paragraphs in the Reasons in support of her application.

50. The first matter the Tribunal had to decide upon was the date of the last of the pre-2017 claims that the claimant was seeking to make. At paragraph 71 of the reserved judgement Tribunal determined that the last of the claimant's pre-2017 claims arose on 29 September 2016 , when the claimant attended an informal attendance review meeting. The Tribunal also determined that, given the striking out of all but two of the post-2017 claims , and the fact that the two remaining claims were themselves out of time, in that they arose at the latest, in August 2017, there were not , and could not be, any remaining in time claims to which the claimant could seek to attach her pre-2017 claims so as to argue that there was conduct extending over a period of time within the meaning of s.123(6) of the Equality Act 2010.

51. Having made those determinations as to whether there were any claims which were , or could reasonably be argued to be, in time, the Tribunal went on to consider whether it should exercise its discretion on the just and equitable basis to extend time for the presentation of the pre-2017 claims, which were now all out of time.

52. Unfortunately, but with no criticism of her, and allowing for her unrepresented status, and her health conditions , the claimant's 106 paragraph 22 page, point by point submission does not clearly identify which actual findings in the Tribunal's judgement are being challenged, and upon what basis it is said that the Tribunal should reconsider , and presumably revoke , the judgment that it has made. The summary in paragraphs 148 to 151 perhaps comes closest to doing so.

53. From paragraphs 55 and 56 of the application, it appears that the claimant is challenging the conclusion the Tribunal reached that there could not be any arguable case for conduct extending over a period of time, and that this finding is therefore incorrect. The claimant seeks to advance this proposition on the basis that the last acts complained of extended over the period of pre-and post-2017, and did not end on 29 September 2016. She also makes reference to the period of June to August 2019.

54. The Tribunal does not consider that this amounts to any basis for reconsidering its decision on this point. Whether there was any conduct extending over a period of time for the purposes of s.123(6) of the Equality Act 2010 is only a relevant consideration if there are any claims before the Tribunal that were in time. After the strike out of all the post-2017 claims, bar two, which were themselves out of time, there were no in time claims to which this argument would relate. There is no basis for the Tribunal reconsidering its judgement on this aspect.

55. To be clear, and to assist in resolving any confusion on the part of the claimant, it bears repeating that the post-2017 claims were struck out solely on the basis of want of reasonable prospects of success, not on any issues relating to time limits. Once, however, they had been struck out that left the claimant in the difficult position of having no in time claims to which she could seek to attach the pre-2017 claims. The claimant , unfortunately, still seems unable to grasp this point, as , for example in para. 57 of her application, she makes reference to submission of the claims on 28 July 2019, and why that was in time. The Tribunal did not hold that those claims (or at least some of them) were not presented in time , it held that the in time claims that were so presented had no reasonable prospects of success , and they were struck out. Without disturbing the Tribunal's ruling striking out the post – 2017 claims, which the claimant has failed to achieve in two applications , the only in time claims remain struck out, which is fatal to any attempt to save any prior out of time claims on the basis of s.123(6).

56. In terms of the claimant's grounds for seeking reconsideration of the Tribunal's judgement not to grant an extension of time, she largely again repeats and rehearses arguments that were advanced before the Tribunal in the preliminary hearing. She attributes some blame to her union representation. The Tribunal was already aware of that, and the fact that the claimant received legal advice, and what she did in consequence of it, was considered in the Tribunal's reserved judgment. The claimant sets out in some considerable length in these paragraphs of application evidence , which was before the Tribunal , of her medical condition and its effects upon her. She highlights various features of the evidence in her witness statement , and before the Tribunal , and contained in the bundle , as to her personal circumstances in 2016 2017, 2018 and 2019. These are all matters which were before the Tribunal, and were taken into consideration in the Tribunal's reserved judgment.

57. After much rehearsal of facts that were already before the Tribunal in paragraphs 67 to 96 of the bundle, paragraphs 97 to 99 perhaps set out the crux of the basis upon which the claimant seeks reconsideration of the Tribunal's ruling on time limits, and extension of time. In these paragraphs she says this:

"97. If the Respondent had not misinformed Claimant with regards the IAW scheme as mentioned at paragraph 1A and 11 above and if the AIW scheme had been dealt with in a timely manner, armed with the correct information claim could have been brought before the Employment Tribunal much earlier.

98. If the Respondent had correctly informed the Claimant as mentioned in paragraphs 1B and 2 above, that her sick record could be cleared on the conclusion of the Grievance and thereby resolve matters. On failing to receive the requested remedy in the conclusion of the Grievance and armed with the correct advice , the Claimant would have raised the matter within her Appeal Grievance alongside the reasonable adjustments.

99. If the Respondent had acted in the true objectives of justice this whole matter would have been dealt with through mediation. It is Respondent's failure to consider mediation due to relying on the claim being out of the Tribunal's jurisdiction timewise, lack of communication, willingness to accept their failings, misguidance and the lack of the duty of care which has resulted in legal proceedings and the delay of." (sic)

58. A number of points arise. The first is that the relevant time period in which the Tribunal was concerned was that from 2015 to September 2016. Much of what the claimant refers to in these paragraphs , and her application as a whole, particularly in relation to the conduct of the respondent , occurred after that period, not during it. The willingness or otherwise of the respondent to mediate can have no relevance to the claimant's delay in bringing claims upon which she was seeking advice , as the Tribunal has found in paragraph 47 of its Reasons , from her union, and a firm of solicitors from October 2015. The second is that matters of jurisdiction are not matters for the respondent, but for the Tribunal. Even if a respondent does not raise time-limit issues, the Tribunal has to be satisfied that the claims have been brought in time, and if not, has then to decide whether to exercise its discretion to extend time. Extension of time is not in the gift of the respondent. Thirdly, whatever the respondent did or did not do in relation to advice about the AIW scheme, the pre-2017 claims do not relate to the outcome of that process, but do , as they arguably should, relate to the delays in it being processed. Those are matters of which the claimant was aware, and about which she could , and in the Tribunal's view should, have brought these claims far sooner than she did. Instead , for reasons that she has explained , she did not bring these claims until the final outcome of that process in early 2019. As the Tribunal observed in its reserved judgment, a weighty factor in its decision was the length of the delay. The reasons for it were considered, and taken into account, but the very length of the delay was considerable , especially for all claims which pre-dated 2017.

59. In paragraph 101 the claimant seeks to refute the respondent's contention that it was unknown where Andrea Feehan (a likely witness) lived or worked. The Tribunal takes that point, and the Tribunal did indeed enquire of the respondent as to whether any enquiries had been made to locate her , but none in fact had. The Tribunal accordingly did not take her alleged unavailability into account when deciding whether or not to exercise the discretion to extend time. It is not , therefore, mentioned as a factor in para. 100 of the Reasons.

60. Paragraphs 107 to 112 of the application relate to the legal advice the claimant received from DAS Law in 2015. The claimant seems to go into further detail about the advice she received, which may amount to new evidence that was not before the Tribunal. She does , however, in paragraph 111 refer to receiving an ACAS certificate on 16 October 2015, but there then being delays , which would have led to any legal action being out of time. The Tribunal does not quite understand what she means, but if she is suggesting that she was contemplating bringing a claim then, but did not do so because of advice given by her then solicitors, those are not matters which the Tribunal would consider warrant reconsideration of its decision on whether to extend time on the just and equitable basis.

61. The ensuing and remaining paragraphs do little more than rehearse arguments that the claimant has previously deployed , and which were considered by the Tribunal in the preliminary hearing. The claimant also reiterates various points made in other parts of application, which have already been considered.

62. In summary , at paras. 149 to 151 , the claimant says this:

"149. The Claimant would seek the Tribunal's assistance in the reconsideration of her Claim as a link between the pre-2017 and post-2017 claims, to date amounting to conduct extending over a period of time for the purposes of section 123(6) of the Equality Act 2010 and making her claim within time for limitation purposes and within the Tribunal's jurisdiction and that they are continuing acts.

150. In the alternative the Claimant seeks the reconsideration of the Tribunal to exercise his discretion to extend the time for presentation of any claims found to be presented out of time on the grounds that it would just and equitable to do so.

151. This being in light of the Claimant's disability, the amended response, the respondent's misguidance and continuing detrimental acts as a consequence of the Claimant having made a protected act (the Grievance in the first instance , and the Tribunal in the second) and further as set out in the Claimant's ET1 Claim Form and the Particulars of Claim dated the 7th November 2019."

63. The Tribunal's response is this. As explained above, there are no in time post – 2017 claims which have survived the striking out application to which the claimant can seek to attach any earlier claims, so as to give rise to any argument in respect of conduct extending over a period of time. Secondly , in relation to the just and equitable extension, the claimant has advanced nothing new , or relevant, that would give rise to any possibility of the Tribunal reconsidering its judgement on this issue. The Tribunal took into account all relevant factors (and factors arising after the presentation of the claim in 2019 are not relevant factors) and conducted the balancing exercise that is required when exercising the discretion. Nothing in the claimant's application persuades the Tribunal that it should consider exercising its discretion differently.

64. In terms of any second protected act that the claimant refers to in her final paragraph, this is irrelevant to the claims as presented to the Tribunal in 2019. The presentation of these claims doubtless was a further protected act, but the claimant cannot simply add to these proceedings further claims which were not before the Tribunal when they originally presented, and in respect of which no application to amend the claims has been made. If any application were now to be made, rather as with the other potential amendment application that the claimant sought to advance previously, the fact is that these claims have now been struck out , and hence there are no claims capable of amendment. If the claimant seriously intends to complain of any further acts of victimisation following the presentation of these claims she would need to commence further proceedings. Whether she does so is, of course , entirely a matter for her, but she will doubtless appreciate that , as in these claims, she would be likely to face further issues in relation to time limits in respect of any subsequent claims.

65. Finally, the claimant did not expressly in her extensive application make any reference to , and did not therefore seem to seek reconsideration of, the Tribunal's determination ("C.") in respect of the two post-2017 claims which were not struck out as having no reasonable prospects of success, but were then struck out on the basis that they were out of time. As explained in the Tribunal's reserved judgement, these claims which relate to Joanne Town delaying the claimant's application up until August 2017, regarded as part of her victimisation claim no. 1 . These claims are dealt with in paragraphs 110 to 114 of the Tribunal's Reasons. The claimant's application does not

address these paragraphs. It appears, therefore, that there is no application for reconsideration of this element of the judgement.

66. For completeness, however, were there to have been, and the claimant had relied upon the same matters advanced in the preliminary hearing, and advanced in support of this application for reconsideration of the remainder of the Tribunal's judgement, the Tribunal would equally have considered that there was no reasonable prospect of the Tribunal reconsidering this aspect of its judgement either.

67. The Tribunal therefore concludes, pursuant to rule 72(1) that there is no reasonable prospect of the original judgement being varied or revoked, and the claimant's application is dismissed. These proceedings are now at an end, and the claimant would perhaps be better served now by focussing on her current employment, her health, and trying to put these matters , which were obviously upsetting for her, behind her.

Employment Judge Holmes
7 October 2021

RESERVED JUDGMENT
AND REASONS SENT
TO THE PARTIES ON
8 October 2021

FOR THE TRIBUNAL OFFICE