



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr C McDonald

**Respondent:** University of Derby

## JUDGMENT ON A RECONSIDERATION

The Claimant's application for a reconsideration is refused because there is no reasonable prospect of the decision being varied or revoked.

## REASONS

### Background

1. The claim subject to this reconsideration is one of six claims pursued by the Claimant against the Respondent.
2. This litigation has a significant history which is set out fully in my judgment dated 25 May 2022 refusing the Claimant's application to amend his claims and striking out his direct race discrimination claim. I do not repeat it here.
3. This claim is one of equal pay pursued under the sex equality provisions of the Equality Act 2010 ("EQA") but advanced on the basis of race.
4. At an open preliminary hearing on 20 – 22 April 2022, I struck the claim out on the basis that it has no reasonable prospect of success.
5. I gave oral reasons for my decision at the hearing and my written reasons are dated 27 May 2022.

### The reconsideration application

6. The Claimant submitted his application for a reconsideration of my decision on 29 April 2022, prior to receiving the written reasons. He was at liberty to wait for them but chose not to. I have considered his application on the basis of his e-

mail alone.

7. The application itself is very confusing and runs to fifty-six paragraphs. At the outset he says that:

*“As I am deemed not to be able to raise a pay claim on the grounds of race, I do have evidence on the grounds of sex, just not as many instances as there are for race. Although I will appeal on the grounds of race, please consider my application for Equal Pay on the grounds of not being treated equally as the women”.*

8. Thereafter, he comments on matters raised during the hearing and explains why he did not present his equal pay claim earlier. He also wants to introduce a breach of contract claim.
9. The Claimant criticises a list of his grievances (he has raised twenty-seven) produced by the Respondent after the hearing which I requested to assist in the chronology when dealing with other applications.
10. He also raises my other matters which are simply not relevant to a reconsideration application. Rather, they are criticisms of the litigation to date.

### **The Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 (“the Rules”)**

11. The Rules provide:

#### ***Principles***

*70. A Tribunal may, either on its own initiative (which may reflect a request from the Employment Appeal Tribunal) or on the application of a party, reconsider any judgment where it is necessary in the interests of justice to do so. On reconsideration, the decision (“the original decision”) may be confirmed, varied or revoked. If it is revoked it may be taken again.*

#### ***Application***

*71. Except where it is made in the course of a hearing, an application for reconsideration shall be presented in writing (and copied to all the other parties) within 14 days of the date on which the written record, or other written communication, of the original decision was sent to the parties or within 14 days of the date that the written reasons were sent (if later) and shall set out why reconsideration of the original decision is necessary.*

#### ***Process***

*72.— (1) An Employment Judge shall consider any application made under rule 71. If the Judge considers that there is no reasonable prospect of the original decision being varied or revoked (including, unless there are special reasons, where substantially the same application has already been made and refused), the application shall be refused and the Tribunal shall inform the parties of the refusal. Otherwise the Tribunal shall send a notice to the parties setting a time limit for any response to the application by the other parties and seeking the views of the parties on whether the application can be determined without a hearing. The notice may set out the Judge's provisional views on the application.....*

12. Broadly, it is not in the interests of justice to allow a party to reopen matters heard and decided, unless there are special circumstances, such as a procedural irregularity depriving a party of a chance to put their case or where new evidence comes to light that could not reasonably have been brought to the original hearing and which could have a material bearing on the outcome.
13. It is insufficient for the Claimant to apply for a reconsideration simply because he disagrees with the decision.

#### **Considerations/conclusion**

14. The Claimant's application for a reconsideration does not address why I should reconsider my judgment. Rather, it seems to be an application to amend his claim to one of equal pay based on sex and an attempt to introduce a new claim of breach of contract. A reconsideration application is not for this purpose.
15. Furthermore, many matters within his e-mail were either raised at the hearing or should have been raised at the hearing.
16. The Claimant's commentary on the list of grievances produced by the Respondent has no bearing on the legal basis of his equal pay claim.
17. The Claimant does not advance any special circumstances to support a reconsideration of my judgment.
18. Having considered his application, I am satisfied that there is no reasonable prospect of the original decision being varied or revoked and it is not in the interests of justice to reconsider it. The application is, therefore, refused.

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Employment Judge Victoria Butler

Date: 31 May 2022

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