



# EMPLOYMENT TRIBUNALS

## London South Employment Tribunal

**Claimant:** Isi Omoregbee  
**Respondent:** St John's Nursing Home Limited

### Application for reconsideration

**Before:** Judge M Aspinall (sitting alone as an Employment Judge)

## DECISION

### Introduction

1. This is my decision on an application by Dr Olu Taiwo, representative for Ms Isi Omoregbee ("the Claimant"), for reconsideration of my judgment dated 9 August 2023 striking out the Claimant's claims against her former employer St John's Nursing Home Ltd ("the Respondent").

### The application

2. The application seeks reconsideration under Rule 70 of the Employment Tribunals Rules of Procedure 2013 ("the Rules") on the basis I should revoke or vary my judgment due to an error or procedural irregularity leading to the strike out.
3. The application was made on 21 August 2023, within 14 days of my judgment as required by Rule 70(4). It relies on Dr Taiwo's ill health as the reason for his non-attendance at the preliminary hearing on 9 August 2023.

### The Respondent's submissions

4. The Respondent strongly objects to the claimant's application for reconsideration of the judgment striking out her claims. In its response to the application, the respondent argues that the Claimant's representative, Dr Taiwo, failed to properly engage with the tribunal process and has not shown any error that would warrant revocation of the judgment.
5. Specifically, the Respondent submits that Dr Taiwo has provided no supporting evidence for his assertion that ill health caused his non-attendance at the open preliminary hearing. It notes he has not given details on when he was incapacitated, for how long or provided anything to demonstrate why he could not have notified the tribunal in advance if he was unwell. The respondent emphasizes Dr Taiwo's lack of engagement with the process both before and after the hearing. It contends he has failed to establish any procedural irregularity resulting in the strike out decision that would justify reconsideration under Rule 70(1). Overall, the Respondent strongly resists the application to reinstate the claimant's case, arguing this would undermine the requirement for parties to cooperate with the tribunal and comply with rules and orders.

### Applicable law

6. An application for reconsideration under Rule 70(1) requires the claimant to establish the judgment may need revoking or varying "in order to correct an error arising from an accidental slip or omission or in order to take account of new evidence which was not available at the time

that the judgment was given."

7. The threshold is high. There must be some error or procedural irregularity causally relevant to the decision made - an applicant cannot seek reconsideration simply because they believe the decision was wrong overall.
8. Under Rule 70(5), I may only reconsider the judgment if satisfied there is a real prospect my earlier decision would be varied or revoked. I must take account of the overriding objective to deal with cases justly when deciding whether to exercise my discretion to reconsider.
9. Case law indicates applications for reconsideration face a high bar requiring identification of specific errors or irregularities directly leading to the judgment, rather than just a possibility the decision could have been different. Arguments that the original decision was wrong overall are insufficient. This context is relevant when assessing whether the Claimant's representative has met the legal test here.

### **Background summary**

10. The Claimant brought various claims against the Respondent, including for race discrimination and whistleblowing detriment, which she set out in her ET1 claim form submitted in January 2023.
11. A preliminary hearing was listed for 9 August 2023 to determine limitation issues. The parties were notified of this on 17 May 2023: in writing.
12. The purpose of the preliminary hearing on 9 August 2023 was to determine whether the Claimant's claims were submitted in time or if they were out of time under relevant limitation periods. As stated in the Notice of Preliminary Hearing dated 17 May 2023, the specific issue to be decided was "...whether the claim was submitted out of time."
13. Despite proper notice being given, neither the Claimant nor Dr Taiwo attended the hearing or provided any explanation for their absence.
14. As neither the Claimant nor her representative attended the hearing, despite proper notice being given, I proceeded with the hearing under Rule 31. I decided to exercise my discretion under Rule 37 to strike out the Claimant's claims in their entirety on the basis that her unexplained non-attendance amounted to a failure to comply with Tribunal rules and practice directions requiring attendance at hearings. My judgment stated this indicated a lack of interest in pursuing the matter. I struck out the claims as I found there was no good reason provided for the Claimant's failure to attend the hearing to determine the limitation issue.

### **My decision on reconsideration**

15. I have considered the application carefully, including the Respondent's objections. However, for the reasons which follow, I find there is no reasonable prospect of my decision being revoked or varied.

### **No procedural error demonstrated**

16. The assertion of Dr Taiwo's ill health is vague and unsupported by evidence. No details have been provided on when he was incapacitated, for how long or the nature of the incapacity.
17. No explanation is given for the period between notification of the hearing being sent on 17 May 2023 and Dr Taiwo apparently becoming unable to attend on 9 August. The application does not establish any procedural error causing the non-attendance.

### **Personal responsibility**

18. While the reconsideration application focuses on the conduct and health issues of the Claimant's representative, Dr Taiwo, the claimant herself also had personal responsibilities to the tribunal as the party bringing the claims. As the Claimant, she would have been aware of the preliminary hearing to determine limitation issues and the importance of attending this. She had a duty to

ensure her legal representative was adequately instructed, to communicate any difficulties regarding attendance, and to make alternative arrangements if needed.

19. The Claimant does not appear to have taken any such steps, offering no explanation for her own non-attendance. As the represented party, the Claimant is generally viewed as being responsible for the conduct of her legal representative in the proceedings. Even if Dr Taiwo was suddenly incapacitated, the Claimant seemingly did nothing to engage with the tribunal herself regarding this issue. Her unexplained failure to attend the hearing or notify the tribunal of any problems suggests a lack of interest and cooperation on her part. While Dr Taiwo's conduct is central to the reconsideration application, the Claimant's own omissions and liability for her representative's behaviour are also highly relevant considerations.

### **Compliance with rules and orders**

20. While I note Dr Taiwo's apology, this does not excuse lack of compliance with Tribunal rules and practice directions. The right of reconsideration does not mean an apology alone suffices where no valid reason for non-attendance/engagement has been provided.

### **Prejudice to the Claimant**

21. If the claimant's claims are struck out, it effectively prevents her from having her day in court and the opportunity to have her claims fully determined on their merits. This could cause significant prejudice as she loses the chance to obtain any compensation or remedies that may have been awarded if her allegations of unlawful discrimination and whistleblowing detriment had been proven.
22. However, there can still be lawful justification for striking out claims, even though it impacts the claimant's rights. The Employment Tribunal Rules of Procedure give judges discretion to strike out claims where there has been a failure to comply with tribunal rules, practice directions or orders. This is founded on the legal principle that parties in litigation must properly adhere to procedural requirements.
23. In this case, the Claimant failed to attend a properly notified preliminary hearing without explanation. As the judge, I determined that non-compliance with the requirement to attend, and the lack of any engagement prior to the hearing, warranted strike out as a sanction, notwithstanding the consequences for the claimant. This exercise of discretion to strike out was lawful under the tribunal rules. While impactful on the claimant, it maintains the need for parties to cooperate with the tribunal process. My decision took account of the specific circumstances in concluding that strike out was appropriate, even though it prevents determination of the merits.

### **Prejudice to the Respondent**

24. If I were to reconsider and reinstate the Claimant's claims after they were struck out, this would cause prejudice to the Respondent in various respects. Most obviously, after the case was closed by my judgment, the Respondent has now been forced to incur the additional time and cost of responding to this application to revive the claims.
25. Additionally, reinstating the claims after the Claimant's default in complying with the rules could set an undesirable precedent. It risks undermining the Respondent's and other parties' confidence in the finality of judgments and the enforcement of procedural requirements. Constantly reopening cases increases time and costs and allows parties to ignore rules without consequence. This procedural uncertainty prejudices parties who rely on compliance with the tribunal process.

### **Overriding objective**

26. Under Rule 2, I must consider all the circumstances and deal with the case justly, including enforcing compliance with rules, practice directions and orders.
27. Proper notice of the hearing was given on 17 May 2023, but neither the Claimant or her Representative complied or gave any forewarning of absence. At the hearing, I considered the

relevant law and concluded the Claimant's non-attendance and non-engagement amounted to a failure to comply warranting strike out.

### **Interests of justice**

28. I recognise the claim raises allegations of a serious nature. However, strike out resulted from the Claimant's own default. The right to determination does not override the requirement to comply with Tribunal rules. You cannot fail to do things properly and then complain that you have been refused the right to continue.

29. In all the circumstances, I find reinstatement would undermine rather than serve the interests of justice. I see no proper basis to exercise my discretion to revoke or vary my earlier judgment.

### **Conclusion**

30. I conclude the high threshold for procedural irregularity sufficient to justify reconsideration under Rule 70 has not been met.

31. For the foregoing reasons, the application for reconsideration dated 21 August 2023 is refused. The Claimant's claims remain struck out.

**Employment Judge M Aspinall**  
**Date: 21 August 2023**