Case No: 2200019/2023

EMPLOYMENT TRIBUNALS

Claimant:	**Mr. Khalil Chikri**	**and**
First Respondent:	**Support Service Leaders**	**and**
Second Respondent:	**Investcorp International Limited.**	
SITTING AT:	**London Central Employment Tribunal in chambers**	
ON:	**12 March 2024**	
BEFORE:	**Employment Judge G Smart** **Mrs S Brazier** **Dr. C Whitehouse**	
Appearances:	The application was decided in chambers on paper after representations from the parties about whether a hearing was necessary. The First Respondent took no part in the reconsideration applications and neither supported it, nor refuted it. The Claimant made no representations about the reconsideration application, appears to have accepted the judgment and simply sought confirmation that the Respondents have breached employment law in the way they treated him more generally, about which the Tribunal is unable to comment**.**	

JUDGMENT

The Second Respondent's applications for reconsideration of the oral reasons given at the hearing and of the judgment sent to the parties on 1 February 2024 are refused. It is not in the interests of justice to vary the oral reasons and there is no reasonable prospect of the written short form judgment being varied or revoked.

REASONS

Background

1. This case was heard before the above full Tribunal on 25, 26 and 29 – 31 January 2024.

2. The Claimant was an agency worker employed by the Frist Respondent, then supplied to the Second Respondent in accordance with its instructions. There was a contract between the first and Second respondent for the supply of labour making the First Respondent the employer and the Second Respondent the Principal or "end user". The Claimant was therefore an employee of the First Respondent, but an agency worker or contract worker for the Second Respondent. None of this arrangement was disputed by any party.

3. At that start of the hearing the issues to be determined were discussed and the list of issues contained within the Case Management Order of Judge Green dated 3 May 2023 was agreed amongst the parties to be the list.

4. Unfortunately, no previous Judges or either of the Respondents, despite being represented by either Counsel or other legal advisors at all material times, engaged with how the Claimant was bringing his claims under s120 of the Equality Act 2010 before the final hearing. There may well have been reasons for this as we discuss later, but the situation was what it was.

5. In addition, neither counsel made any submissions about how the case was brought at the end of the hearing before deliberations commenced. All submissions were silent on Part 5 or any ancillary provisions in Part 8 of the equality Act 2010.

6. The Claimant was a litigant in person. He was unable to engage properly in the legal complexities of the Equality Act 2010, which are complicated, sometimes counter intuitive and often consist of an overlap of statute law, regulations and cases and/or an overlap of different internal chapters, sections and parts of the Equality Act 2010 itself. This is not criticism of the Claimant at all, it is merely a factual statement about our observations of him in this case. Many Claimants are not lawyers so we do not expect them to bring their cases as if they were.

7. For ease, and because this particular section sets the backdrop to this reconsideration situation, we set out the wording of section 120 in "Chapter 3 Employment Tribunals" of the Equality Act 2010 below as far as is relevant:

> *"**120 Jurisdiction***
>
> *1) An employment Tribunal has, subject to section 121, jurisdiction to determine a complaint relating to –*
>
> *a. a contravention of part 5 (work);*

b. a contravention of section 108, 111 or 112 that relates to part 5."

8. Section 121 is not relevant because that is about Armed Forces cases.

9. When this Tribunal read into the case, it was clear, at least to us, that the claims being brought by the Claimant against the First Respondent were brought under section 39 of the Equality Act 2010 because it was common ground that the Claimant was the First Respondent's employee.

10. When considering the case against the Second Respondent, which is the relevant case for the purposes of this judgment, the list of issues said as follows, again, as far as is relevant:

*"**2. Direct age discrimination (Equality Act 2010 section 13**)*

2.1 The claimant's age at the time of dismissal was 56.

2.2 It is accepted that the claimant was dismissed by the first respondent on 29 July 2022.

2.3 Did the second respondent encourage the first respondent to dismiss the claimant.

2.4 Was the claimant's dismissal or, if proven, the second respondent's encouragement of the first respondent to dismiss the claimant less favourable treatment?

The Tribunal will decide whether the claimant was treated worse than someone else was treated. There must be no material difference between their circumstances and the claimant's.

If there was nobody in the same circumstances as the claimant, the Tribunal will decide whether s/he was treated worse than someone else would have been treated.

The claimant says s/he was treated worse than Miguel (Team Leader and Butler) and Jamil (a Butler).

2.5 If so, was it because of age?

2.6 Did the respondents' treatment amount to a detriment?"

11. The list of issue is silent on the section of Part 5 or ancillary provsions the claim was being brought under.

12. Having read the Claimant's and both Respondent's witness evidence, combined with the list of issues paragraph 2.3 – 2.5 we considered this to be a case where the Claimant was alleging that the Second Respondent had encouraged the First Respondent to dismiss him because of his age. In our view, whilst the statutory language of s111 of the Equality Act 2010 was not used, encouraging someone to dismiss some as an act of age discrimination was interchangeable with inducing them or causing them to commit age discrimination, and, was very similar to instructing them to

commit age discrimination.

13. The Claimant's case, it appeared to us, could only have been brought under sections 39, 41, 111 or 112 of the equality Act 2010. Section 39 was not relevant to the Second Respondent directly, because it was common ground that the Second Respondent did not employ the Claimant. Section 41 was relevant because it was clear the Second Respondent was a principal of the Claimant under an agency contract. Sections 111 and 112 are relevant to basic contraventions, which in the case were possible breaches of section 39 by the First Respondent.

14. In our view, this case therefore squarely fell within s111 (regardless of the merits of that claim) where the Second Respondent was alleged to have induced, caused or instructed the First Respondent to dismiss the Claimant because of his age, therefore causing the First Respondent to commit a basic contravention. We proceeded on that basis.

15. It is clear that this was not now (with hindsight) the best way of proceeding, because what appeared to have been clear to us was not in accordance with the Second Respondent's view of the issues, which unfortunately only became apparent after Judgment had been given. It is now apparent that the better course would have been to have discussed this at the start of the hearing to resolve the issues, before concluding the case. However, as we will come onto later, we believe the application made by the Second Respondent is misconceived for a number of reasons, which we will come on to discuss.

16. The Tribunal gave a detailed oral judgment at the end of the hearing. The crucial finding of fact the Tribunal made in that oral judgment (later repeated in the written reasons sent out after being requested by the Claimant), relevant to the reconsideration applications, was that there was insufficient evidence to show that either Respondent had made any of the decisions it made about the Claimant's employment or assignment because of his age.

17. The Respondents then wanted to take instructions when asked if there was anything else the Tribunal could assist them with.

18. Upon recommencing the hearing, the Second Respondent stated that it was concerned the Tribunal had decided a claim the Claimant hadn't brought. It made an oral application for the oral reasons to be reconsidered. The arguments put forward by the Second Respondent at the time are recorded in the written reasons sent to the parties after the short form judgment was sent out and as requested by the Claimant as follows:

*"**Second Respondent's comments about the oral judgment and reconsideration request***

29. After oral judgment was given, counsel for the Second Respondent raised concerns about the case being decided under section 111. He submitted five key points:

29.1. The Tribunal had decided a claim which had not been brought;

29.2. The case should have been decided fully under section 13 Direct Discrimination and no other section;

29.3. The Tribunal was unable to go past the list of issues unless it was a jurisdictional point being put forward;

29.4. Section 111 could not have applied to the Claimant's case because of the closeness of relationship needed between the relevant people identified in that section; and

29.5. Regardless of the application for reconsideration, it would still make no difference to the outcome of the case overall or the findings of fact made by the Tribunal.

30. Rather unusually, despite it successfully defending the claim and despite there being no written judgment at that time, the Second Respondent applied for a reconsideration of the oral decision.

31. There was insufficient time at the end of the hearing to deal with the reconsideration request other than to set down directions for it and, in any case, the Claimant as a litigant in person and struggled to understand why such an application had been made by a party who has won its case, which was reasonable.

32. In addition, Counsel for the Second Respondent submitted that, despite the Claimant not understanding the application, he requested the Tribunal grant the application there and then. We refused that request because all parties have the right to properly consider the application, and it was not a reasonable stance for the Second Respondent to take to simply waive the application through, whether or not it eventually makes any difference to the overall result of the case. We suggested the Claimant might benefit from legal advice about the application, given he could not understand why the application was being made by the Second Respondent.

33. The First Respondent made no comment about the application as it didn't affect it."

19. The short form Judgment was sent out together with directions about the application.

20. Following this, the Second Respondent submitted its written submissions about its oral application. However, contained within those submissions was a request to amend the short form written judgment that had been sent out after the hearing, that could not have formed part of the initial application to reconsider the oral reasons. We have therefore treated that part of the letter as a second reconsideration application, namely to reconsider the short form judgment wording.

21. Written reasons were then sent out, confirming the oral reasons given at the hearing before the Tribunal reconvened to consider the reconsideration applications further.

22. It is important to note, before moving onto the law in detail, that the Second Respondent's evidence was clear that it had not encouraged the First Respondent to do anything. It was the First Respondent's decision to dismiss the Claimant. We found that evidence to be false, but we also found that any encouragement was not tainted in any way with the Claimant's age being any part of the reason why either Respondent (or any of their employees) acted as they did or made the decision they did.

The Law

23. Reconsideration is covered by the Employment Tribunal rules 2013 rules 70 – 73, which state:

"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.

(2) If the application has not been refused under paragraph (1), the original decision shall be reconsidered at a hearing unless the Employment Judge considers, having regard to any response to the notice provided under paragraph (1), that a hearing is not necessary in the interests of justice. If the reconsideration proceeds without a hearing the parties shall be given a reasonable opportunity to make further written representations.

(3) Where practicable, the consideration under paragraph (1) shall be by the Employment Judge who made the original decision or, as the case may be, chaired the full Tribunal which made it; and any reconsideration under paragraph (2) shall be made by the Judge or, as the case may be,

the full Tribunal which made the original decision. Where that is not practicable, the President, Vice President or a Regional Employment Judge shall appoint another Employment Judge to deal with the application or, in the case of a decision of a full Tribunal, shall either direct that the reconsideration be by such members of the original Tribunal as remain available or reconstitute the Tribunal in whole or in part.

24. An application for reconsideration is an exception to the general principle that (subject to appeal on a point of law or perversity of the factual findings) 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).

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

26. 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."

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

"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."

28. More recently in **Ebury Partners UK v Davis [2023] IRLR 486**, HHJ Shanks said at paragraph 24:

"…The employment Tribunal can therefore only reconsider a decision if it is necessary to do so 'in the interests of justice.' A central aspect of the interests of justice is that there should be finality in litigation. It is therefore unusual for a litigant to be allowed a 'second bite of the cherry' and the jurisdiction to reconsider should be exercised with caution. In general, while it may be appropriate to reconsider a decision where there

has been some procedural mishap such that a party had been denied a fair and proper opportunity to present his case, the jurisdiction should not be invoked to correct a supposed error made by the ET after the parties have had a fair opportunity to present their cases on the relevant issue. This is particularly the case where the error alleged is one of law which is more appropriately corrected by the EAT."

29. 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.

Specific legal arguments raised by the Second Respondent at the final hearing and the written application

30. This case is not only about reconsideration of the Tribunal's decision in its purest form. The Second Respondent raises specific submissions about the importance of the list of issues. These are summarised below:

30.1. At the final hearing, it effectively submitted that when the list of issues had been agreed, it is fixed and it should neither be revisited nor amended by anyone unless it is on a jurisdictional ground. In its written application the authority relied upon in support of this submission was **Scicluna v Zippy Stitch Ltd and others 2018 EWCA Civ 1320, CA** specifically quoting paragraphs 15 and 16 as follows:

"15. In paragraphs 32-33 of Land Rover v Short (2011) UKEAT/0496/10/R Langstaff J approved the submission of counsel that:-

"it was trite law that it was the function of an Employment Tribunal to determine the claims which the claimant had actually brought, rather than the claims which he might have brought and that accordingly the claimant was limited to the complaints set out in the agreed list of issues."

So likewise must the respondent be limited to the defences set out in the agreed list of
issues.

16. In similar vein, Mummery LJ in Parekh v London Borough of Brent [2012] EWCA Civ 1630 (with whom Patten LJ and Foskett J agreed) said:-

"31. A list of issues is a useful case management tool developed by the Tribunal to bring some semblance of order, structure and clarity to proceedings in which the requirements of formal pleadings are minimised. The list is usually the agreed outcome of discussions between the parties or their representatives and the employment judge. If the list of issues is agreed, then that will, as a general rule, limit the issues at the substantive hearing to those in the list: see Land

Rover v Short at [30] to [33]."

30.2. In addition, the Second Respondent argued that it was concerned that the section 13 allegations for direct age discrimination had not been dealt with, despite saying later in the letter:

"1. The Second Respondent recognises that the factual findings made by the Tribunal – including, materially, the finding that age played no part in the Claimant's treatment by the Second Respondent (and First Respondent) – are such as to be fatal to the Claimant's claims under s.13 EqA 2010.

2. Further, the Judgment's natural reading is that it dismisses the s.13 claim against the Second Respondent, that being the only claim against the Second Respondent that was ever brought.

In light of those two points, it may be that reconsideration of the written Judgment is not strictly required. Indeed, on receipt of the Tribunal's written Judgment the Second Respondent was not minded to press its application for reconsideration. The Second Respondent now notes the Claimant has requested written reasons in an email of 12 February 2024. Further, the Tribunal has notified the parties that it intends to reconvene on 12 March 2024 to consider the application for reconsideration. Against that background, and for the avoidance of further doubt, the Second Respondent maintains an application for the Judgment and the reasons given orally at the hearing to be reconsidered under Rule 70.

Specifically, the Second Respondent applies for the Judgment and reasons given orally to be varied to confirm that the discrimination claim against the Second Respondent that has been dismissed by the Tribunal is one brought under s.13 EqA 2010."

30.3. That the written short form judgment should be varied to say as follows:

"Specifically, the Second Respondent applies for the Judgment and reasons given orally to be varied to confirm that the discrimination claim against the Second Respondent that has been dismissed by the Tribunal is one brought under s.13 EqA 2010.

By way of illustration, paragraph 2 of the written Judgment might be varied as follows:

> *'The Claimant's claim against the Second Respondent, that it encouraged the First Respondent to dismiss him as an act of <u>direct</u> age discrimination <u>contrary to s.13 Equality Act 2010</u>, is not well founded and is dismissed.'*

For the avoidance of further doubt, the Tribunal may consider it appropriate to confirm what appears to have been a finding that even if the Claimant's claim against the Second Respondent had been brought under s.111 EqA 2010 (which it was not), it would have dismissed such claim (as well as the s.13 claim) on the fact findings

that it made."

Relevant specific law about the Second Respondent's submissions

31. A list of issues, is a case management tool enabling an employment Tribunal and the parties to identify the matters that will be considered at a hearing, so they can focus their preparations accordingly.

32. Their use has been considered in a number of recent cases, in particular **Parekh v London Borough of Brent [2012] EWCA 1630, Scicluna v Zippy Stitch Limited & Others [2018] EWCA Civ 1320, Saha v Capita plc UK EAT 0800/18/DM and Mervyn v BW Controls Ltd [2020] EWCA Civ 393, CA 41.**

33. In **Saha**, Mrs. Justice Slade says at paragraph 37:

"In my judgment, far from being authority for the proposition that the ET and the parties are bound by the list of issues, Mummery LJ in Parekh Case Number: 2207012/2018 8 made it clear that the core duty of an Employment Tribunal is to determine the case in accordance with the law and the evidence."

34. Having reviewed these authorities the overall principles of them can be summarised as this, a list of issues is a tool of general use to assist the Tribunal in identifying the issues in dispute so that everyone can prepare accordingly. It is not set in stone and does not override the evidence and the application of the law to the case. The list of issues is usually adopted by the Tribunal, but where it identifies an issue that is missing or a misunderstanding of a case, then the list of issues can (and often does) get amended at the final hearing itself.

Analysis and conclusions

Procedure

35. Applying the guidance in **Ebury**and having considered the case was not a request for a second bite of the cherry as per **Liddington,** we decided that a procedural mishap was being argued by the Second Respondent namely that the Second Respondent and Tribunal had not been in tandem with the list of issues to decide.

36. Given that argument, the fact the Claimant did not understand the application and we considered it fair to give the Claimant sufficient time to respond to the application after it had been made orally at the hearing without notice, we decided at the final hearing that we would hear the reconsideration application.

37. In our view, to do so would allow all parties a reasonable time to consider what had been discussed and to make written representations about it after allowing time for the Claimant, if he so wished, to seek professional advice about it. In our view, this best served the overriding objective and placed the parties on an as equal a footing as we could give them.

38. Given that:

38.1. We had decided to reconsider the oral judgment;

38.2. no party submitted that a hearing was necessary;

38.3. the only party actively engaged in the application was the Second Respondent;

38.4. The Claimant had not supported the application, engaged with it or made any application to reconsider the judgment himself;

38.5. The application was not withdrawn; and

38.6. The Tribunal, in our view, has no discretion but to consider applications for reconsideration given rule 72(1) says:

"An Employment Judge shall consider any application made under rule 71"

and rule 72 (3) states:

"Where practicable, the consideration under paragraph (1) shall be by the Employment Judge who made the original decision or, as the case may be, chaired the full Tribunal which made it; and any reconsideration under paragraph (2) shall be made by the Judge or, as the case may be, the full Tribunal which made the original decision."

We were obliged to decide the application, and we considered it in the interests of justice and in accordance with Rule 2 to consider the application on the oral submissions made at the final hearing and on the papers of any further written representations made by the parties afterwards.

Reconsideration of the oral judgment

39. We discuss each of the Second Respondent's submissions about this part of the reconsideration application in turn.

40. The first is the argument that we decided a claim that was not brought by the Claimant. We reject that submission because:

40.1. The Claimant clearly alleged that the Second Respondent had brought about his dismissal because of his age by encouraging the First Respondent to do so.

40.2. We believe the section 111 claim whilst not overtly referred to was present in the factual allegation being made, in the same way that the list of issues makes no reference to section 39 about the First Respondent. It is still clearly a case against the First Respondent under the Employer provisions.

41. That the claim should have been decided under section 13 alone and no

other section. We also reject that submission because:

41.1. Counsel for the Second Respondent has erroneously considered that section 13 is a claim before the Employment Tribunal. It is not although we accept it is often expressed to be one. Section 13 is nothing more than a description of a type of prohibited discriminatory conduct that was alleged to have occurred, which formed or can form the basis of a Claim. Once direct discrimination has been proven, it must then amount to a detriment or otherwise fit a cause of action in Part 5 or the other provisions we have mentioned.

41.2. Nowhere in the Equality Act 2010, do its provisions give the Employment Tribunal jurisdiction to decide a case based on section 13 alone.

41.3. The general premise upon which the Second Respondent's submission is based that section 13 gives rise to a claim in its own right is therefore misconceived.

42. It was further submitted that the Tribunal was unable to go past the list of issues. The Judge asked counsel for the Second Respondent, at the final hearing when the oral application for reconsideration had first been raised, whether he was submitting that once a list of issues had been discussed and agreed, the Tribunal was unable then to apply the law to the case. He confirmed that our understanding of his submission was correct and the Tribunal should not consider claims that might be present or ones which could have been brought. Counsel also conceded that a list of issues could only be amended if there was a jurisdictional point in issue. We reject those submissions because:

42.1. Here there clearly was a jurisdictional issue. We say this because no one that we could identify before the final hearing, appeared to have turned their minds to the actual cause of action the Tribunal has jurisdiction to hear under section 120 of the Equality Act 2010. We can see that this may well have been because the Claimant had difficulty in articulating his claims clearly, people became distracted with the descriptions of discrimination and forgot about the actual cause of action. However, we were where we were.

42.2. We accept that a better course of action would have been to discuss the issue of jurisdiction and how the claims were being brought under Par 5 etc. with the parties before hearing the evidence. However, in our view, it would have made absolutely no difference to the outcome of this case, regardless.

42.3. The Second Respondent identified in its application letter that, clearly, having found that none of the Respondents' decisions alleged to be discrimination were motivated in any way in whole or part by the Claimant's age, the Respondents could not have been guilty of either direct age discrimination, which we clearly explained when giving oral reasons, but also they could not have given an instruction, induced or caused the First Respondent to commit direct age discrimination.

42.4. In any case, the Second Respondent's defence, given the evidence

from Mr. O'Neill at the final hearing, was that he did not make or influence the decision to dismiss the Claimant. That was solely a decision the First Respondent made. It is difficult to see why that defence would have changed under a section 111 claim.

42.5. Given that we have decided the section 111 claim was in the list of issues albeit, like section 39, not expressly referred to, deciding the case in accordance with section 111, was in our view compliant with **Saha.** We had to decide the case under the cause of action actually brought and the fact that the Claimant is a litigant in person with insufficient knowledge of the complexities of the Equality Act 2010 could not articulate his legal case in a precise way referring to section 12 or Part 5 etc., should not have been a bar for his case to be heard. Indeed it would have been unjust to do so.

42.6. We had a duty to consider the case in accordance with the law and evidence for the allegations being brought and we believe we did so.

42.7. Even if the claim was brought under section 41, the any other detriment question would still have arisen and the case would also have been decided in the same way. There was no detriment because there was no direct discrimination by either Respondent.

43. The Second Respondent also argued that the section 111 claim could not be brought due to the closeness of the relationship between the First and Second Respondent:

43.1. For the purposes of this application, that argument was wholly inconsequential to the outcome of the case. The case fell at the first hurdle under section 111. There was no instruction, inducement or decision by the Second Respondent that was tainted with age that could have amounted to a basic contravention or indeed caused one.

43.2. Many claims are brought in the Tribunal where, after hearing all the evidence, it becomes clear that one part of the prerequisites needed to founder that case was missing or disproven. It doesn't prevent the claim being brought at all, only its prospects of succeeding and any other consequences that flow from them such as a risk of the claim being struck out if the flaw is identified at the case management stage in the proceedings.

44. Consequently, whilst we accept that the better course of action would have been to have discussed the cause of action for the claim at the start of the hearing with the parties when confirming the issues in dispute, having now analysed the Respondent's submissions, it is clear that there is no valid reason to vary the oral judgment when, in our view, for the reasons set out in the Second Respondent's letter, reconsideration was unnecessary after the written short form judgment was promulgated.

45. The Tribunal is obliged to consider any reconsideration application made in time by a party after a judgment is given. Consequently, given the Second Respondent had effectively conceded that in its view reconsideration was not necessary, the fact that a provisional day had been put in the calendar by the Tribunal to consider the application the

Second Respondent submitted is no good reason to press ahead with that application. We had to hear the application as made and that needed to be done with the full panel sitting together either in chambers or at a hearing so the listing of that date was neither here nor there.

46. Neither was the fact the Claimant had submitted a request for written reasons a good reason for pressing ahead with the application, when the findings of fact were not being challenged by any party and those findings of fact had been given orally stating clearly, and with detailed reasons why, that neither Respondent had made any decisions, acts or omissions that were tainted with age discrimination.

47. Our view may have been different if the written reasons had been challenged by a reconsideration application too, but they were not because these were not promulgated until 7 March 2024 after the written application was submitted by the Second Respondent.

48. In our view, the Second Respondent could and should have withdrawn the application at that stage, instead of referring to weak reasons why it wished to press ahead with the application and, indeed added to it, with a second application to vary the written short form judgment, which clearly had no reasonable prospect of success. We discuss that second application below.

Application to reconsider and vary the written short form judgment

49. Whilst at the time the oral application for reconsideration was made it was in furtherance of the overriding objective to reconsider the oral judgment at a hearing, the same cannot be true of the second application to amend the short form written judgment.

50. In our view, the wording of the short form judgment is clear that it rejects all the Claimant's claims for age discrimination and it is not in the interests of justice to vary it simply to appease the Second Respondent's view of its drafting when it makes absolutely no difference whatsoever to the outcome of the case or to the Second Respondent itself. That strikes us as being a waste of time, particularly from a party who won its case.

51. The resources of the Tribunal are limited, expensive and in short supply. The outcome of the Claimant's case would remain the same and indeed it is not the Claimant who is seeking reconsideration of the Judgment. The First Respondent has not become involved in this application because it doesn't affect them and in our view, that was a helpful and reasonable stance to take. To vary the judgment also wouldn't assist the Second Respondent with the outcome of its case. It has still successfully defended the Claim.

52. Consequently, any variation of the Tribunal's written short form Judgment would serve no practical or reasonable purpose, would only increase time and expense unnecessarily and is not proportionate given it doesn't and wouldn't change the outcome of the case in any way for any party. Consequently, the written short form Judgment has no reasonable prospect of being varied or revoked.

Conclusion

53. In coming to our decisions we had added sufficient weight to the need for finality of litigation and find that finality prevails here in favour of confirming the oral judgment in all the circumstances of this case and in refusing to reconsider the written short form judgment.

54. Having considered all representations made by the Second Respondent, the application to vary the oral reasons after reconsidering the oral judgment is refused under Rule 72 (2) of the Tribunal rules.

55. The application to reconsider the written short form judgment is refused after being considered under Rule 72 (1) of the Tribunal Rules, because there is no reasonable prospect of that judgment being varied or revoked.

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EMPLOYMENT JUDGE G SMART

29 April 2024

JUDGMENT AND REASONS SENT TO THE PARTIES ON

16 May 2024

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FOR THE TRIBUNAL OFFICE