



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr M Hassaballa

**Respondent:** United Lincolnshire Hospitals NHS Trust

## JUDGMENT ON A RECONSIDERATION

1. The Claimant's application for a reconsideration is refused because there is no reasonable prospect of the decision being varied or revoked.
2. The Claimant's application to vary, suspend or set aside my order to reject his amendment application is also refused.

## REASONS

### Background

1. The parties attended a preliminary hearing before me on 16 May 2024 at which I made the following determinations:
  - i. The Claimant's application to amend his claim was refused ("the order"); and
  - ii. His claims were dismissed because they were presented out of time ("the decision").

### The reconsideration application

2. The Claimant presented his application for a reconsideration on 31 May 2024 based on the three grounds with supporting documents.
3. My decision to refuse the amendment application is a case management order and not therefore capable of reconsideration under Rule 70 of the Employment Tribunal Rules of Procedure 2013 ("the Rules"). However, I have considered

whether it is in the interests of justice to vary, suspend or set aside my order under Rule 29.

### **Grounds for the application**

*“1) Doctors who refer colleagues or witness against them at the GMC are immune to suit” – ground one*

*“2) It is the claimant’s responsibility to chase the employer about his grievance, as it is not the employer’s responsibility to reply to the grievance if not chased by the employee” – ground two.*

*“3) The claimant was able to engage in ACAS proceedings and other hearings, so he had the mental capacity to draft the ET1, without the need for amendments” – ground three.*

4. Ground one relates to my decision to refuse amendments 1, 2, 3, 4, 5, 6 and 11 because of judicial proceedings immunity. In support, he includes an article from Doctors Defence Service UK, an extract from Wikipedia about the judiciary, an extract explaining what the GMC is, and guidance called ‘*providing witness statements and expert evidence in legal proceedings*’.
5. Ground two appears to be a challenge to my finding that he had the relevant facts in his possession about his wages/breach of contract claim within the primary time limit, supported by information, including from ACAS and the CAB, about grievances.
6. Ground three appears to be a challenge to my finding that he was not medically prevented from including the amendments in his originating claim and presenting the claim on time, supported by information about brain fog and cognitive dysfunction linked to depression and anxiety, and e-mail correspondence in relation to his divorce proceedings and MPTS hearing.
7. The Claimant concludes his application by saying that based on the information provided and ‘*in the interest of justice*’ he wants the hearing to proceed (presumably including his proposed amendments), no orders for a deposit to be made and the hearing itself should take place in London via CVP.

### **The Employment Tribunals Rules of Procedure 2013**

8. The Rules provide:

#### ***Case management orders***

**29.** *The Tribunal may at any stage of the proceedings, on its own initiative or on application, make a case management order. The particular powers identified in the following rules do not restrict that general power. A case management order may vary, suspend or set aside an earlier case management order where that is necessary in the*

*interests of justice, and in particular where a party affected by the earlier order did not have a reasonable opportunity to make representations before it was made.*

**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.....’*

9. 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. It is not sufficient for the Claimant to apply for a reconsideration simply because he disagrees with the decision.
10. Rule 29 provides that an order can be varied, revoked, or set aside where it is necessary in the interest of justice. The interests of justice test should be applied narrowly for example where there has been a material change of circumstances or if the order was based on a material omission or misstatement.

## Conclusion

11. I deal with the judicial proceedings' immunity point first (ground one) and understand the Claimant to be saying I was wrong in law to reject amendments 1, 2, 3, 4, 5, 6 and 11 because they are covered by judicial proceedings immunity. He says that the GMC is not a judicial body and further relies on an article from the website of Doctors Defence Service UK which discusses the case of *Paul Wynne Jones v Sue Kaney* [2011] UKSC 13. The article opens with: "*The Supreme Court has determined that expert witnesses, in most legal cases, should not be immune from being sued by the party who has instructed them to act. The decision has far reaching implications for doctors who act as expert witnesses in court and tribunal cases*".
12. The Claimant is attempting to reargue matters already heard and decided which does not meet the interests of justice test. In any event, the witnesses about which the Claimant complains were witnesses of fact, not expert witnesses. As such, this case is not relevant, and I am satisfied that my original decision was correct applying *Avari v Birmingham Heartlands and Solihull Hospitals NHS Trust* UKEAT/0355/07.
13. The Claimant has not explained why my decision should be reconsidered or why my order should be varied, revoked, or set aside based on grounds two and three. Nor has he addressed why it would be in the interest of justice to do so.
14. However, the overall thrust of his application is that he disagrees with them and wants to re-argue my conclusions that i). he had the facts in his possession about the claim for wages/breach of contract within the primary time limit and ii). he was not medically prevented from including his proposed amendments in his originating claim and presenting his claim in time. Again, attempting to reargue matters already heard and decided does not meet the interests of justice test. Furthermore, the supporting material could reasonably have been brought to the preliminary hearing.
15. As such, the Claimant's application for a reconsideration of my decision to dismiss his claims is rejected on the basis that there is no reasonable prospect of it being varied or revoked.
16. For the same reasons, there has been no material change of circumstances or any material omission or misstatement and his application to vary, suspend or set aside my order to reject his amendment application is also refused.

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Employment Judge Victoria Butler

Date: 28 June 2024

JUDGMENT SENT TO THE PARTIES ON

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FOR THE TRIBUNAL OFFICE

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