EMPLOYMENT TRIBUNALS
London South Employment Tribunal

Claimant:	Christopher Francis
Respondent:	The Pensions Regulator
Before:	Judge M Aspinall (sitting alone as an Employment Judge)

Decision

Rules 70-72 of The Employment Tribunals Rules of Procedure 2013 (as amended)

The respondent's application for reconsideration of my judgment which was issued to the parties on 18 July 2024 is refused as I find that there is no reasonable prospect of it being varied or revoked.

REASONS
Background

1. The Claimant, Mr Christopher Francis, was employed by the Respondent, The Pensions Regulator, as a Case Manager – Specialist. The Respondent is a public body that regulates pension schemes in the UK.

2. Mr Francis commenced employment with the Respondent on 10 July 2023. His employment was subject to a 6-month probationary period in line with the Respondent's Probationary Policy.

3. On 14 November 2023, a meeting was held between Mr Francis, his union representative and Mr Michael Mann, the Respondent's Business Lead. At this meeting, Mr Mann informed Mr Francis that his employment was being terminated.

4. Mr Francis subsequently presented various claims to the Employment Tribunal against the Respondent, including unfair dismissal, disability discrimination and breach of contract.

5. The Respondent filed its Response to Mr Francis' claim out of time, beyond the 28-day time limit stipulated under Rule 16(1) of the Employment Tribunal Rules of Procedure 2013. The Response was filed 53 days late.

6. The Respondent applied to the Tribunal for an extension of time to file its late Response under Rule 20. This application was opposed by Mr Francis.

7. In my judgment issued on 16 July 2024 and sent to the parties on 18 July 2024, I refused to grant the extension of time sought by the Respondent. I found the Respondent had failed to provide an adequate explanation or evidence for the 53-day delay, which appeared to be due to its own administrative failings.

8. The Respondent has now applied for reconsideration of my judgment refusing the extension of time to file the Response. I have considered the application and supporting documents provided.

Application for reconsideration

9. The Respondent made an application dated 31 July 2024 seeking reconsideration of my

judgment refusing their extension of time application. The application was made under Rule 71 of the Employment Tribunal Rules of Procedure 2013.

10. The Respondent's application for reconsideration dated 31 July 2024 was referred to me by the Tribunal office on 20 September 2024.

11. The application for reconsideration was made within 14 days of the judgment being issued to the parties on 18 July 2024, as required by Rule 71(2).

12. Through the application, the Respondent requests that I revoke my judgment of 16 July 2024. They contend it is necessary in the interests of justice to do so.

13. The Respondent has provided further information and documents aimed at explaining the delays in filing their original Response. This includes the results of an internal investigation into what happened after the claim was received.

14. The application argues revoking the Judgment would be fair and just. It asserts there would be minimal prejudice to Mr Francis in permitting a late Response, whereas there would be significant prejudice to the Respondent in not allowing them to defend the claims.

15. The Respondent requests their application be considered at a hearing, unless I grant the application to accept the Response without a hearing.

The law

16. Rule 70 of the Employment Tribunal Rules of Procedure 2013 states:

> *"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."*

17. This gives the Tribunal the discretion to reconsider a judgment where it is necessary in the interests of justice, either on its own initiative or upon application by a party.

18. Rule 71 sets out the requirements for a party to make an application for reconsideration:

> *"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."*

19. Therefore, a party must make a written application within 14 days explaining why reconsideration is necessary.

20. Rule 72 provides the process for how the Tribunal should consider an application for reconsideration:

> *"(1) [The Tribunal] shall consider any application made under rule 71. If [the Tribunal] 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."

21. This requires me to firstly consider if there is a reasonable prospect of varying or revoking the original decision. If there is no such prospect, I must refuse the application.

22. Rule 72(2) states:

> *"If the application has not been refused under paragraph (1), the original decision shall be reconsidered at a hearing unless the [Tribunal] 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."*

23. Therefore, if I do not refuse the application under Rule 72(1), reconsideration will typically be at a hearing unless I decide a hearing is not needed in the interests of justice.

24. The leading modern authority on reconsideration is EAT case *Outasight VB Limited v Mr L Brown [2014] UKEAT 0253_14_2111*. This held the approach in civil litigation case *Ladd v Marshall [1954] 1 WLR 1489* continues to encapsulate the interests of justice test for fresh evidence under the ET Rules.

25. *Ladd v Marshall* established four criteria for admitting fresh evidence: (a) it could not have been obtained with reasonable diligence for the original hearing; (b) it must be relevant and credible; (c) it would probably have an important influence on the result; and (d) it must be apparently credible.

26. The EAT in *Outasight* held the 2013 ET Rules did not substantially change the principles or interests of justice test for reconsideration. The Ladd v Marshall criteria will apply in most fresh evidence cases with discretion to depart in exceptional circumstances.

27. The interests of justice encompass finality in litigation and avoiding “second bites at the cherry” (per *Outasight)*. Reconsideration based on arguments parties could have raised originally is rarely justified given the public interest in finality.

28. A further key authority is EAT case *Ebury Partners UK Ltd v Mr M Acton Davis [2023] EAT 40* which concerned an EJ's reconsideration of his original judgment dismissing the claimant's claims.

29. The EAT in *Ebury Partners* confirmed the interests of justice allow reconsideration only where strictly necessary. There is a strong public interest in litigation finality, so parties cannot reopen matters they had a fair chance to argue originally.

30. The EAT held reconsideration is not justified by an EJ reaching new conclusions on evidence available for the original judgment, as this undermines finality.

31. *Ebury Partners* found the EJ erred in law by failing to properly assess the interests of justice including finality when reconsidering. Applications to reconsider should specify which precise decisions the party seeks to revisit.

32. I must assess reconsideration applications against the interests of justice including the public interest in litigation finality as established in these authorities. Reconsideration is only permitted where strictly necessary, not merely where a different conclusion could be reached.

Materials considered

33. In considering the application for reconsideration, I have reviewed the following documents:

    a) The Respondent's written application dated 31 July 2024 setting out their request for

reconsideration and grounds relied upon. This explains why the Respondent contends reconsideration is in the interests of justice.

b) The envelope showing the Tribunal's original claim documents were sent to the Respondent without postage on 5 April 2024. The Respondent says this demonstrates administrative errors by the Tribunal contributing to delay.

c) The e-mail chain dated 25 April 2024 indicating when the claim documents were received by the Respondent's mailroom. The Respondent argues this shows they only had 7 days to file a Response before the deadline.

d) The Respondent's investigation report explaining their internal processes and administrative failings leading to the late Response. The Respondent argues this provides context justifying reconsideration.

e) The existing claim file, my original 16 July 2024 judgment, and the parties' submissions on the Respondent's extension of time application. These set out the factual matrix and my prior decision.

f) The applicable Employment Tribunal Rules and leading authorities on reconsideration principles, which establish the legal test I must apply in assessing whether to reconsider my earlier Judgment.

34. In considering the application, I have carefully reviewed these documents and the parties' arguments regarding how each is said to support reconsideration being in the interests of justice. I have taken all these documents into account in determining the application.

Findings

Overriding Objective and Merits of Potential Defences

35. The Respondent contends that revoking my earlier judgment refusing their extension of time application would be in line with the overriding objective of dealing with cases fairly and justly.

36. They argue the Claimant's short service, probationary status, reason for dismissal and nature of claims mean any award would be unjust and disproportionate. They also dispute the disability claim has been determined.

37. The Respondent says refusing an extension prevents them defending the merits, removes their ability to argue Polkey reductions or contributory conduct, and risks an appealable award being made.

38. They argue they have good defences, so granting an extension would serve justice and not further delay matters or prejudice the Claimant.

39. However, in an application for reconsideration, I cannot simply re-exercise my discretion based on the overriding objective or potential merits of the defences.

40. The correct test is whether there are compelling reasons making reconsideration strictly necessary in the interests of justice based on the legislative provisions and binding case law.

41. The Respondent has not identified any such exceptional circumstances. That they dispute liability and wish to argue defences does not meet the high threshold.

42. There is always a public interest in cases being determined on their merits. But this must be balanced against the public interest in litigation finality.

43. As such, I find the 'overriding objective' arguments made do not establish grounds making it essential in the interests of justice to reconsider my earlier refusal of an extension of time. This ground is therefore dismissed.

Article 6 ECHR Right to a Fair Hearing

44. The Respondent argues that refusing to allow their late Response denies them the right to adduce evidence defending the claims, in breach of Article 6 ECHR.

45. They say this prevents all evidence being considered, risks an unmerited award being made, and constitutes an unfair and disproportionate restriction on their rights.

46. The Respondent contends there is unfairness as they have a genuine dispute but cannot participate to test the claims, prejudicing the public purse.

47. However, Article 6 ECHR does not provide an absolute right for a party to present any evidence whenever they wish. It must be balanced against the Tribunal's process.

48. Here, the Respondent had a fair opportunity to provide reasons and evidence justifying an extension of time in the original application.

49. I fully considered their position but found a further 53-day delay could not be justified. Upholding time limits and proportionality are relevant factors.

50. Even on the most benevolent view of the timeline, the Respondent received the claim documents on 25 April 2024, before the response deadline had expired. Despite this, they did not file any Response or extension application until 26 June 2024, more than 2 months later.

51. The Respondent has not shown any fundamental unfairness or breach of Article 6 ECHR by refusing the late evidence. Reconsideration is not warranted on human rights grounds.

52. Whilst Article 6 seeks to ensure cases are determined fairly on their merits, this must be balanced with the principle of finality in litigation. On balance, refusal of the extension was proportionate given the significant delay.

53. While the ECHR was conceived as a system for protecting the civil and political rights of individuals, the jurisprudence of the European Court of Human Rights has recognized that companies and other legal entities can, in certain circumstances, invoke and benefit from safeguards in the Convention. The Court has not ruled out corporate ECHR claims on principle. However, the precise scope and nature of ECHR rights as applied to non-natural legal persons remains complex. Companies and organizations do not enjoy the full spectrum of protections under the Convention in the same manner as natural persons. There is often a need for adaptation of ECHR principles to reflect the distinct nature of corporate entities pursuing particular interests. The contours of these corporate ECHR entitlements continue to evolve in the Court's jurisprudence.

54. Nonetheless I find no basis has been shown that refusing the late Response, in the circumstances here, breached Article 6 ECHR or human rights principles. This ground of reconsideration therefore fails.

The late response

55. The Respondent contends their late Response is a proper pleading, following guidance in C v D UKEAT/0132/19.

56. However, C v D concerned the use of unhelpful narrative pleadings obscuring the core issues. It does not assist the Respondent here.

57. C v D underscores that pleadings should clearly identify the legal claims relied upon and connect them to a summary of key facts.

58. The judgment in C v D does not support the Respondent's reconsideration arguments. It dealt

with a different issue of narrative pleadings.

59. The correct test here remains whether reconsideration is strictly necessary in the interests of justice based on the 53-day delay, which I fully considered already.

60. Wishing to dispute the claims does not meet the high reconsideration threshold, given the public interest in litigation finality after a fair chance.

61. Overall, I find the Respondent's reliance on C v D does not establish any basis for reconsideration. Their Response arguments do not satisfy the stringent legal test. This ground fails.

Conclusions

62. Having carefully considered the Respondent's application and grounds for reconsideration, I have reached the following conclusions:

63. The Respondent has not demonstrated that reconsideration of my earlier judgment is warranted or necessary in the interests of justice. The high threshold for reconsideration has not been met.

64. The Respondent's arguments regarding the potential merits of defending the claim do not amount to exceptional circumstances. There is always some public interest in cases being determined on their merits. However, this is outweighed by the even greater public interest in upholding litigation finality.

65. The Respondent has not shown any fundamental unfairness or breach of its rights caused by the refusal of a 53-day extension of time. Procedural time limits and proportionality are relevant and legitimate considerations when assessing any extension request.

66. The Respondent's reliance on the C v D case regarding narrative pleadings is misconceived. That authority dealt with different issues and does not support the Respondent's position regarding its late Response.

67. The Respondent has not demonstrated that my earlier decision contained any error of fact or law. Nor have they shown any vital evidence or matter was overlooked that might have impacted the outcome.

68. Overall, the Respondent has not satisfied the stringent test for reconsideration. The arguments made do not establish it is essential for the interests of justice to revisit my earlier refusal of an extension of time.

69. In accordance with Rule 72, I have considered whether an oral hearing is necessary to determine this reconsideration application.

70. Given the extensive written materials and submissions already provided, I am satisfied that a hearing would not assist my determination of the issues raised. The application can be fairly and proportionately determined on the papers.

71. For these reasons, I do not consider a hearing to be necessary in the interests of justice. I have exercised my discretion under Rule 72 to dispense with holding a hearing for this reconsideration application.

72. In conclusion, the Respondent's request for reconsideration of my earlier judgment is refused. The application does not meet the high legal threshold, and I find there is no reasonable prospect of the judgment being varied or revoked.

Judge M Aspinall
22nd September 2024