EMPLOYMENT TRIBUNALS

Claimant: Dr P Lee

Respondent: The University of Birmingham

RECONSIDERATION JUDGMENT

In accordance with rule 70(2) of The Employment Tribunal Procedure Rules 2024, the Claimant's reconsideration application is refused because the Tribunal considers there to be no reasonable prospect of the original decision being varied or revoked.

REASONS

1. Please see, by way of background and introduction:

    1.1 the Reserved Judgment and Reasons, approved on 29 January 2025 and sent to the parties the following day, of a full Tribunal consisting of me – Employment Judge Camp – and non-legal Members Mr J Reeves and Ms S Campbell (the "Judgment & Reasons");

    1.2 the Claimant's reconsideration application of 13 February 2025 (the "Application").

2. In these Reasons, I shall, unless otherwise indicated, adopt the abbreviations and terminology used in the Judgment & Reasons. There continues to be a privacy order in place in relation to the identity of the woman known as "BCD".

3. In summary:

    3.1 the Application is principally an attempt to re-argue points which we – the full Tribunal – considered and decided against the Claimant;

    3.2 we were entitled to make the decisions we made and there is nothing in the Application that makes me think there is a significant risk we made an error of law;

    3.3 to the extent that the Claimant raises new points in the Application, they are points he could and should have made at the final hearing in November 2024 and they are anyway points that if they had been made at the hearing would have made no difference to our overall decision on any of his complaints;

3.4 reconsideration exists primarily to provide an opportunity for the Tribunal to correct mistakes it has made, avoiding the need to pursue an appeal which would take up the parties' and the Employment Appeal Tribunal's time and resources;

3.5 reconsideration does not exist so that the losing party can have 'another bite at the cherry' and attempt to persuade the Tribunal to change its mind;

3.6 there is a strong public interest in the finality of litigation. As is almost always the case, there will be decisions we made on particular issues that a different Tribunal would have decided differently. Conceivably, there are issues that we would decide differently if we had another final hearing (although none come to mind). But that does not make any part of the decision we made wrong, nor, applying rule 3 and the overriding objective, does it make reconsideration remotely appropriate.

4. Many days of administrative and judicial time have already been spent on the Claimant's case. The final hearing alone took 9 days. Our Reasons were long – over 36 pages. The Application is even longer: 44 pages, in relatively small font, including a dense 7 page "*Appendix Table Timeline of Continuous acts of Victimisation by R leading to detriment*". Parts of it are a little difficult to follow. It would be disproportionate to deal individually with all of the points the Claimant makes. The whole of the Application has been considered, but I shall just cover what I see as his main arguments.

5. Based on the Claimant's "*Summary*", he thinks:

5.1 that the critical finding we made was that the University followed its Grievance Policy and its Harassment and Bullying Policy (see from paragraph 74 of our Reasons);

5.2 that if he can unpick that finding then our whole decision unravels.

6. The Claimant is wrong. Even ignoring the fact that he puts forward no proper basis for challenging that finding[1], none of our overall decisions on complaints he made was dependent on it. His suggestion, in paragraph iii) of the "*Summary*" section of the Application, that if the University unlawfully breached the Grievance Procedure "*it follows therefore that … R did victimise and discriminate against me*" is a non sequitur.

7. Had we found that the University did not follow its Grievance Policy, or that it failed to follow the Harassment and Bullying Policy, which somehow 'trumped' the

[1] That the Claimant disagrees with it is not a proper basis; and his submissions near the start of the Application, in paragraphs 4 to 8 and pages 6 to 7, about what was happening in October 2023 when it was decided temporarily to suspend the grievance process so that a disciplinary process could be considered (in which he puts forward arguments that I do not recall him putting forward during the hearing) is confused. See also paragraph 14 below.

Grievance Policy (despite the latter being part of the University's Ordinances), this would not have affected our findings that:

7.1 the reason the University followed the procedure it followed was a genuine belief that it was required to do so (see paragraphs 82.2, 86 and 111 of the Reasons);

7.2 there was no less favourable treatment – the only evidence before us of a potentially valid comparator was to the effect that a similar procedure had been followed in relation to a woman who had complained about sexual harassment by a man (see paragraph 86 of the Reasons);

7.3 there was no substantial basis in the evidence for a finding that the reason the University followed the procedure it did was the protected characteristic of sex (see paragraphs 86, 97 and 100 to 101 of the Reasons) or was the Claimant raising the 2020 Grievance (see paragraphs 111 and 132 to 134 of the Reasons).

8. The second main point made in the "*Summary*" (according to the Claimant, in paragraph iv) of the Application, "*Part 2*" of "*the logical equation to be resolved*") appears to concern the research complaint and the whistleblowing / protected disclosure detriment claim, but is rather obscure. Insofar as it is possible to discern what the Claimant is getting at:

8.1 the Claimant mixes up his victimisation claim with his whistleblowing claim, using the verb 'to victimise' to refer to both of them (e.g. in paragraph vii), "*After I made a Protected Disclosure it was important for R not to be subject to transparency and so victimised me as a result*");

8.2 the Claimant has also got mixed up in terms of chronology, in that he suggests there was "*a continuous act from September 2020 to May 2022*" (paragraph vii) again) of "*victimisation*" – by which he seems to mean detriment for making protected disclosures – in circumstances where the only alleged protected disclosure was the research complaint of August 2021. If he is seeking to suggest that instances of victimisation and instances of protected disclosure detriment can be put together to form a continuing act, he is wrong in law;

8.3 in paragraphs iv) and v) of the Summary, the Claimant purports to give evidence about what he believed in terms of what the information he allegedly disclosed within his [alleged] protected disclosure tended to show about breach of a legal obligation. From paragraph 152 of the Reasons, we explained what the position was in relation to this at the final hearing and why we thought no protected disclosure had been made. If what he is saying now is different from what was being put forward then (as it seems to some extent to be), there is no proper basis for him to introduce new evidence at this stage. If he has not changed his case, I stand by the decision we made (see paragraphs 154.7 and 155 of the Reasons in particular). In addition, putting together the findings we made in paragraph 154 of the Reasons with what the Claimant is now saying in the Application, the Claimant's submission amounts to making the fanciful allegation that: because Parliament scrutinises the HE sector via the Education Select Committee

(by the same token it could be said that Parliament scrutinises everyone and everything), he believed that the University had a legal duty to publish in its annual statements of research integrity – statements it was under no legal obligation to publish at all – information about the number of instances of research misconduct which, given the correct technical definition of research misconduct, it considered to be inaccurate;

8.4 there is a suggestion (paragraph vi) of the "*Summary*") that the Claimant "*had evidence of widespread failure to report research misconduct across the Russell Group – the main beneficiaries of public research funding. R stopped me in my tracks and the period between August 2021 and February 2022 were a series of coordinated behind the scenes manoeuvres to prevent scrutiny by appropriate senior academic persons external to the university*". What the Claimant seems to be saying is that these "*manoeuvres*" were because he made a protected disclosure. However, he did not pursue any such claim during the final hearing and no such allegations were put to any of the University's witnesses. There were only two detriment complaints. The first concerned alleged lack of investigation of his grievance, not his research complaint. The second concerned a line in an email sent on 14 January 2022. Both failed for multiple reasons, including on the basis of findings of fact we made (see e.g. paragraphs 147 and 150 to 151 of the Reasons). There was no complaint about the process followed in relation to, or outcome of, the research complaint.

9. That brings me to a broader point hinted at throughout the Application. Although the Claimant does not say so in terms, I think it is part of his case that his claim went beyond what was in the List of Issues and therefore that by (substantially) limiting ourselves to what was in the List of Issues we – the Tribunal – failed to deal with everything we should have dealt with. There are a number of reasons why this would not be a valid basis for reconsideration:

9.1 if it is his case that we failed to deal with particular complaints he was pursuing and entitled to pursue, the Claimant does not anywhere in the Application identify with any clarity what complaints we supposedly missed out;

9.2 that mirrors what happened during the final hearing. We explained in the Reasons (see paragraphs 27 to 31) that although the Claimant never challenged the List of Issues at any point, during the hearing he did at times do things that suggested he wanted to venture outside it. However, at no stage did he articulate a particular coherent complaint that was not in the List of Issues that he wanted to pursue. For example, in paragraph 29 of the Reasons we mention the Claimant putting in his written closing submissions an allegation that the University's Vice Chancellor, "*indirectly discriminated against me on grounds of sex because he failed to recognise or act on a protected disclosure*". That allegation was confused on the face of it even as a 'headline', and we had next to no idea what in concrete terms the University's Vice Chancellor was supposed to have done;

9.3 since we gave judgment, the Court of Appeal has provided further guidance on Lists of Issues in **Moustache v Chelsea and Westminster Hospital NHS Foundation Trust** [2025] EWCA Civ 185. On my reading of it,

amongst other things, it confirms: that an Employment Tribunal should depart from an agreed list of issues, or the equivalent that we have in the present case[2], only where there has been a material change of circumstances or where there is some very particular reason that makes it necessary in the interests of justice to do so; and that the Employment Tribunal "*has no general duty to take pro-active steps to prompt some expansion or modification of the case advanced by a party where that might be to their advantage*";

9.4 it was impracticable at the start of the final hearing to do a side-by-side comparison of, on the one hand, the claim form and Details of Claim and, on the other, the List of Issues and decide whether they contained the same complaints. Doing so would have taken up a considerable amount of time where time was already tight because of the length and quantity of statements and documents we had to read. As was explained in paragraphs 21 and 22 of the Reasons, it was "*difficult to say with any certainty just from* [the Claimant's] *claim form and …* [the Details of Claim] *precisely what complaints he was making*".[3] The job of going through the claim with the Claimant to identify what complaints he was making and what the issues were was done at two preliminary hearings. Even if we had had time to repeat this exercise, this would not have been appropriate, particularly not given that (see paragraph 28 of the Reasons): the List of Issues was discussed near the start of the hearing; the Tribunal expressed the provisional view that it was final and, broadly, invited the parties to challenge the List of Issues if they wanted to do so; they did not do so.

10. We shall now deal with some of the other points the Claimant makes in the Application.

11. The Claimant repeatedly makes allegations, e.g. of deceit, that are inconsistent with findings of fact we made and that were not put to witnesses properly or in some cases at all; and he does so in a way that suggests he mistakenly believes that if he can show wrongdoing of some kind by the University that will mean he wins his case. Different types of mistreatment, e.g. deceit and discrimination, are different and proving one does not automatically prove the other.

12. Similarly, the Claimant repeatedly raises arguments, of dubious merit, e.g. that he was misled by Ms Oakes using the phrase "*appropriate person*" in an email of 23 October 2020, that, to the best of my recollection[4], were not part of the case he pursued during the final hearing.

13. The Claimant continues to allege that "*a group of women*" (paragraph 167 of the Application) within the University conspired together to do him down, seemingly

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[2] Arguably (see in particular the last sentence of paragraph 26 of the Reasons) this was in all relevant respects an agreed list of issues; it was certainly the equivalent of an agreed list or an as-good-as-agreed list.

[3] We also noted, "*it is, sadly, a rare claim form in relation to which there can be no reasonable dispute as to what complaints are being made*".

[4] Recollection supported by reminding myself of the contents of the Claimant's written closing submissions.

on the basis of little more than a belief that women are automatically biassed in favour of other women and against men. To the extent that the allegation has any basis in the evidence, it relates to the evidence referred to and dealt with in paragraphs 99 to 102 of the Reasons, to which I refer. The Claimant's allegation that Ms Oakes was part of the supposed conspiracy is without foundation. She was not the HR professional involved in the decisions made by Ms Hackforth Williams in November 2020 around BCD and was neither the sender nor the recipient (nor did she have knowledge at the time) of the email of 22 November 2020 to which the Claimant repeatedly, directly and indirectly, refers in the Application, e.g. in paragraph 67: "*BCD colonised my area of research and was supported by R's HR staff when they ignored her serial lying and allowed her to lie at a secret meeting which merely fuelled their prejudice and made them further question my motives for bringing forward a complaint of sexual assault and harassment by BCD*".

14. Connected with the point just made, the Claimant keeps returning to his allegation that the meeting between Ms Hackforth Williams and BCD in or around November 2020, referred to in her email of 22 November 2020 just mentioned, was a "*clandestine, unlawful act*" (paragraph 65 of the Application) that breached the Grievance Procedure, during which she told lies, and which irremediably "*poisoned*" (paragraph 165 of the Application) the University's subsequent dealings with his grievance. In fact, based on our findings:

    14.1 the meeting was not unlawful, nor was it held in breach of the Grievance Procedure. Although the grievance process was suspended while a brief disciplinary process – which included the meeting – was undertaken, the meeting took place under the disciplinary procedure. The two processes / procedures are separate and distinct and operate independently of one another. See paragraphs 90 and 94 of the Reasons;

    14.2 that the Claimant was not told about the meeting does not make it secret or clandestine in any pejorative sense. He and his trade union representative were told that a disciplinary process was underway, but he had no right to know about the meeting and one would not expect him to be told about it. See paragraphs 92 to 94 of the Reasons;

    14.3 we are not satisfied that BCD did tell Ms Hackforth Williams lies at the meeting (see paragraph 102 of the Reasons) and even if she did, that meeting had no impact at all on the grievance process, in that –

        14.3.1 "*The individuals involved in that short disciplinary process were not involved in the Claimant's grievance*" (paragraph 47 of the Reasons);

        14.3.2 the only available information about what happened and what was said at the meeting was in the email of 22 November 2020;

        14.3.3 the only evidence that anyone thought less of the Claimant because of what BCD allegedly said at the meeting is the email of 22 November 2020 and it relates only to Ms Hackforth Williams and, arguably, Ms Smith (the email's recipient);

14.3.4 neither Ms Oakes nor Mr Hodge was conscious of the email's contents at any relevant time (see paragraph 101 of the Reasons);

14.3.5 Mr Hodge – the only individual to adjudicate on the merits of the Claimant's grievance – made his decision on the basis of what he was himself told by BCD, which did not include the thing the Claimant alleges was the important 'lie' told to Ms Hackforth Williams in November 2020 (see paragraph 102 of the Reasons);

14.3.6 in short, any lies or other information from the meeting went no further than Ms Hackforth Williams and Ms Smith and they weren't involved with the Claimant or his grievances in any relevant sense.

14.4 Finally on this point, I remind myself that there was no complaint before the Tribunal about that meeting or that email. There couldn't have been because the Claimant didn't know about them when he presented his claim. At best for the Claimant, the email was potentially evidence to support one of the complaints he was making. We explained why in practice it did not assist him in paragraphs 99 to 102 of the Reasons.

15. The Claimant continues to try to blame the University for the delay in the 2020 grievance being progressed beyond stage 1. Even if he were right and the University were responsible for the initial delays (and we found otherwise – see e.g. paragraphs 84, 93, 106 & 107 of the Reasons), on any reasonable view it was his choice not to progress it between 22 January 2021 and 17 June 2021 (see paragraphs 109 to 110 of the Reasons).

16. The Claimant also continues to criticise the University for allegedly not investigating his complaints of sexual harassment against BCD fully and properly in circumstances where: the university endeavoured to investigate them at the appropriate stage – stage 2 – after the Claimant's belated activation of that stage; the main reason there were difficulties was the Claimant choosing to do things which frustrated the process (see paragraphs 121, 124, 128.3, 128.4, and 146 of the Reasons; also note paragraph 99 of them).

17. In conclusion, this case was not about whether the Claimant had been treated well, or fairly, or reasonably by the University in any general sense; nor was it much about whether procedures were correctly followed. Instead, it concerned whether, to the extent he was treated badly in a number of particular respects, this was because he is a man, because he complained of discrimination, or because he raised the research complaint. We – the full Tribunal – made a fully reasoned and comprehensive decision about this in the Judgment & Reasons; there is nothing in the Claimant's reconsideration application that makes me think our decision was wrong; and the Application is no more than an attempt to re-run the final hearing. It would be contrary to the overriding objective to vary or revoke the Judgment and there is no reasonable prospect of that happening.

Employment Judge Camp

Approved on 12 March 2025