Reference number
2301941-2024

EMPLOYMENT TRIBUNALS
London South Employment Tribunal

Claimant: Eduardo da Costa Catoquessa

Respondent: Springboard UK Charity

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

Judgment on Reconsideration
Rules 68-71 of The Employment Tribunals Rules of Procedure 2024

The Claimant's application for reconsideration dated 17 March 2025 is **REFUSED** under Rule 70(2) of the Employment Tribunals Rules of Procedure 2024, **as there is no reasonable prospect of the judgment being varied or revoked**.

REASONS

Background

1. This matter concerns an application by the Claimant, Eduardo da Costa Catoquessa, for reconsideration of my judgment of 4 March 2025 (sent to the parties on the same day) which struck out his claim. The claim was brought against the Respondent, Springboard UK Charity, for whom the Claimant worked between January and March 2018.

2. The claim form ET1 was presented to the Tribunal on 11 February 2024, almost six years after the Claimant's employment ended. In the ET1, the Claimant asserted claims for direct disability discrimination, harassment related to disability, failure to make reasonable adjustments and victimisation.

3. I note at the outset that there has been some delay in considering this reconsideration application. This was because the Claimant provided his application and supporting documentation via a cloud storage service to which I did not initially have access. Once access was arranged and the documents retrieved, I have proceeded to consider the application.

History of the Proceedings

4. The Claimant's employment with the Respondent began on 22 January 2018 and ended on 21 March 2018. He raised a grievance, which was responded to on 4 July 2018. No further action was taken by the Claimant until 22 November 2023, when he approached ACAS for early conciliation, which was approximately 5.3 years after the limitation period had already expired.

5. The ACAS early conciliation certificate was issued on 28 November 2023. The Claimant submitted his ET1 claim form on 11 February 2024—a delay of 2,062 days (or 5.66 years) beyond the applicable time limit. Even taking the end of the grievance process (30 June 2018) as the last possible date for any alleged discriminatory acts, the claim was still presented 1,961 days (over five years) beyond this adjusted time limit.

6. Upon receipt of the claim, the Tribunal issued standard case management orders. The Respondent filed its ET3 response on 22 April 2024, which was accepted by the Tribunal on 2 May 2024.

7. On 11 July 2024, the Respondent submitted a letter to the Tribunal requesting that the claim be struck out on the grounds that it was substantially out of time with no reasonable prospect of success. The Respondent also wrote directly to the Claimant on the same date, advising him to

withdraw his claim given the time limitations and warning of potential costs consequences if he continued.

8. On 30 July 2024, Employment Judge Robinson issued a strike-out warning to the Claimant, giving him until 20 August 2024 to provide reasons why his claim should not be struck out. The Claimant responded on 30 July 2024, citing "complex health issues and personal familial factors" that inhibited him from effectively pursuing his case, as well as the impact of the COVID-19 pandemic on tribunal operations and a mistaken belief in a "five-year rule" for bringing such claims.

9. On 30 August 2024, Employment Judge Heath converted the previously scheduled case management preliminary hearing to a public preliminary hearing and issued case management orders. These included requirements for the parties to exchange documents by 22 November 2024 and for the Claimant to provide any medical evidence upon which he intended to rely.

10. On 4 October 2024, the Respondent wrote to the Claimant requesting the medical and other documentary evidence he intended to rely on, copying the Tribunal on this correspondence. Despite this request, the Claimant did not provide any documents.

11. On 28 October 2024, the Respondent wrote to the Tribunal noting the Claimant's failure to comply with the case management orders. On 17 December 2024, Employment Judge Rice-Birchall instructed the parties to confirm compliance with the orders for document exchange. The Respondent confirmed their own compliance on 18 December 2024, noting that they had not received any documents from the Claimant.

12. On 23 January 2025, Employment Judge Heath extended the deadline for document exchange to 17 January 2025 (a date which had already passed) and the deadline for bundle preparation to 24 February 2025. The Claimant was reminded that if he did not provide documents by the extended deadline, he might not be permitted to refer to them at the hearing.

13. On 5 February 2025, the Claimant asserted to the Respondent that he had sent documents "countless times," but provided no evidence of these alleged communications when challenged.

14. On 6 February 2025, the Respondent, now represented by DAC Beachcroft LLP, applied for a strike-out of the claim under Rule 37 of the Employment Tribunals Rules of Procedure 2013, on the grounds that it was not being actively pursued and had no reasonable prospect of success. The Respondent noted the Claimant's persistent non-compliance with case management orders and failure to explain his significant delay in bringing the claim.

15. A public preliminary hearing was scheduled for 13 March 2025 at 10:00 am to address the time point and the Respondent's strike-out application. However, on 4 March 2025, I issued a judgment striking out the claim on the papers, having concluded that:

    a. The claim was significantly out of time with no adequate explanation for the extended delay;

    b. There was no evidence to suggest that it would be just and equitable to extend time;

    c. The claim had no reasonable prospect of success given the substantial time delay and the Claimant's persistent non-engagement with the tribunal process.

    d. The open preliminary hearing listed for 13 March 2025 was cancelled.

16. On 17 March 2025, the Claimant applied for reconsideration of the strike-out judgment, attaching approximately 80 pages of documentation and explaining that he had experienced technical difficulties in submitting his responses to the Tribunal.

The Reconsideration Application

17. In his application for reconsideration, the Claimant contends:

    a. He was diagnosed with multiple disabilities including Schizoaffective Disorder, Bipolar

Affective Disorder, Obsessive-Compulsive Disorder, and dyslexia.

b. He experienced technical difficulties when trying to respond to the Tribunal's communications, stating that the file size limit prevented him from attaching his medical evidence.

c. These disabilities and technical challenges prevented him from engaging effectively with the proceedings, and that this should be considered when deciding whether to extend time.

d. His claim has merit and should proceed to a full hearing.

18. The Claimant's application is supported by extensive medical documentation, including:

a. A GP summary letter dated 22 April 2022

b. Hospital discharge summaries from 2017 and 2018

c. Psychiatric assessment reports from 2013-2015

d. A dyslexia assessment dating back to 2011

e. Medical reports that were shared with the Respondent during his employment in 2018

19. The Tribunal has not received any submissions from the Respondent in relation to the Claimant's reconsideration application. The Respondent has not indicated its position on the application or provided any observations regarding the medical evidence now submitted by the Claimant.

20. In the absence of submissions from the Respondent, I have considered the reconsideration application on its merits based solely on the material provided by the Claimant, the original strike-out application from the Respondent, and the applicable legal framework.

The Legal Framework for Reconsideration

21. Rule 68 of the Employment Tribunals Rules of Procedure 2024 provides:

> *"(1) The 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.*
>
> *(2) A judgment under reconsideration may be confirmed, varied or revoked.*
>
> *(3) If the judgment under reconsideration is revoked the Tribunal may take the decision again. In doing so, the Tribunal is not required to come to the same conclusion."*

22. Rule 70(2) states:

> *"If the Tribunal considers that there is no reasonable prospect of the judgment being varied or revoked (including, unless there are special reasons, where substantially the same application has already been made and refused), the application must be refused and the Tribunal must inform the parties of the refusal."*

23. The leading authorities on reconsideration include *Outasight VB Ltd v Brown [2014] UKEAT/0253/14/LA* and *Ebury Partners UK Ltd v Acton Davis [2023] EAT 40*, which provide essential guidance on the proper approach to reconsideration applications.

Relevant Case Law

24. In *Outasight VB Ltd v Brown [2014] UKEAT/0253/14/LA*, the Employment Appeal Tribunal (EAT) considered the test for admitting fresh evidence on reconsideration. HHJ Eady QC (as she then was) held:

a. The principles from Ladd v Marshall [1954] 3 All ER 745, CA continue to apply under the newer ET Rules when considering whether to admit fresh evidence:

i. The evidence could not have been obtained with reasonable diligence for the original hearing;

ii. The evidence would probably have an important influence on the result; and

iii. The evidence is apparently credible.

b. The "interests of justice" test does not give tribunals a broader discretion to admit fresh evidence than was available under previous rules.

c. Justice requires consideration of the interests of both parties, not just the party seeking reconsideration.

d. There is a strong public interest in the finality of litigation.

25. The case made clear at paragraph 40 that while there might be exceptional circumstances where fresh evidence could be admitted despite not strictly meeting the Ladd v Marshall criteria, these would be limited to situations involving "additional factors or mitigating circumstances" such as where a party was genuinely ambushed or wrongly denied an adjournment.

26. In *Ebury Partners UK Ltd v Acton Davis [2023] EAT 40*, the EAT reinforced and expanded upon these principles. HHJ Shanks emphasised:

a. The public interest in finality of litigation is a central aspect of the "interests of justice" test.

b. It is "unusual for a litigant to be allowed a 'second bite of the cherry' and the jurisdiction to reconsider should be exercised with caution" (paragraph 24).

c. Reconsideration may be appropriate "where there has been some procedural mishap such that a party had been denied a fair and proper opportunity to present his case" but not simply to correct a supposed error (paragraph 24).

d. Errors of law are "more appropriately corrected by the EAT" through appeal (paragraph 24).

e. A tribunal must properly assess whether reconsideration is in the "interests of justice" before proceeding to reconsider the merits (paragraph 27).

Analysis and Decision

27. Having carefully considered the Claimant's application and the supporting documentation in light of the applicable legal framework, I have concluded that the application must be refused under Rule 70(2) as there is no reasonable prospect of the judgment being varied or revoked.

28. My reasons are as follows:

Failure to Meet the Ladd v Marshall Test for Fresh Evidence

29. The substantial medical documentation that the Claimant has now produced fails the first and most fundamental requirement of the Ladd v Marshall test - that the evidence "could not have been obtained with reasonable diligence for the original hearing."

30. The medical evidence provided was predominantly, if not entirely, available to the Claimant long before he filed his claim:

a. The GP summary letter is dated 22 April 2022, nearly two years before the claim was filed.

b. The hospital discharge documentation is from 2017 and 2018.

c. The psychiatric assessment reports date from 2013-2015.

d. The dyslexia assessment dates back to 2011.

e. Medical reports that were already shared with the Respondent during his employment in 2018.

31. The Claimant has provided no explanation as to why this documentation could not have been obtained and submitted either with his original claim or in response to the strike-out application. His ability to compile and submit this extensive documentation for the reconsideration application demonstrates that he was capable of doing so.

No Procedural Mishap or Denial of Fair Hearing

32. The circumstances of this case do not fall within the exceptional category described in Ebury Partners where a "procedural mishap" denied the Claimant a fair opportunity to present his case. Specifically:

33. There was no ambush or surprise in these proceedings. The Claimant filed his claim, and standard directions were issued. The Respondent's strike-out application was communicated to the Claimant with adequate time to respond.

34. The Claimant was not denied an adjournment or extension of time. Indeed, he did not request one despite multiple communications from the Tribunal drawing his attention to the strike-out application and the need to respond.

35. The alleged technical difficulties with file size limitations could have been easily addressed by:

a. Contacting the Tribunal to explain the issue (which the Claimant did not do)

b. Sending the materials in multiple emails

c. Providing the documents in hard copy

d. Requesting an extension of time to resolve the technical issues

36. Nothing in the proceedings prevented the Claimant from raising these issues before the strike-out decision was made.

Inordinate and Unexplained Delay

37. The most significant issue in this case remains the extraordinary delay of five years and seven months between the end of the Claimant's employment and the filing of his claim. The Claimant did not approach ACAS for early conciliation until 22 November 2023, which was approximately 5.3 years after the limitation period had already expired.

38. Even with the benefit of the extensive medical documentation now provided, the Claimant has still not provided any adequate explanation for this delay. While the medical evidence confirms the existence of his various conditions, it does not explain:

a. Why he was unable to bring his claim at any point during the five-year period

b. Why he was able to file a claim in February 2024 but not earlier

c. What specific episodes of illness prevented action during this extended period

d. Why he could not have sought assistance earlier

e. Why he could not have provided any, or all, of that medical evidence at a far earlier stage.

39. The medical documentation shows that his conditions were diagnosed and being treated during the period 2013-2018. There is no evidence of any deterioration or change in circumstances that

would explain why a claim could not be brought within a reasonable timeframe after his employment ended.

40. Indeed, the documentation includes a medical report that was shared with the Respondent in March 2018, indicating that the Claimant could engage with employment-related matters at that time, yet no claim was pursued for nearly six years thereafter.

Interests of Justice Assessment

41. Applying the "interests of justice" test as articulated in both Outasight and Ebury Partners, I must consider not only the Claimant's interests but also those of the Respondent and the wider public interest in the finality of litigation.

42. The Claimant's interests:
    a. I acknowledge the Claimant's documented disabilities and the potential challenges these may present.

    b. However, these do not explain or justify the extraordinary delay in bringing his claim or his failure to engage with the Tribunal's communications before the strike-out.

43. The Respondent's interests:
    a. The Respondent would face substantial prejudice if required to defend allegations relating to events from over six years ago.

    b. Memories fade, witnesses may no longer be available, and documentary evidence may be lost or more difficult to locate after such an extended period.

    c. The Respondent is entitled to finality and certainty in its legal affairs.

44. The public interest:
    a. As emphasised in both Outasight and Ebury Partners, there is a strong public interest in the finality of litigation.

    b. Time limits exist for good reason, and while they can be extended where it is just and equitable to do so, an unexplained delay of over five years goes far beyond what could reasonably be accommodated, even with adjustments for disability.

    c. Tribunal resources are limited, and it would not be proportionate to allocate those resources to a claim with such fundamental viability issues.

Cases Cited by the Claimant

45. The Claimant cites numerous authorities in his application for reconsideration. I have considered each of these cases carefully:

46. *British Home Stores v Burchell [1978] IRLR 379*: The Claimant cites this case to argue that unfair dismissal claims hinge on the reasonableness of the employer's actions, which may involve evidence preserved beyond the employment period. This argument fails for two fundamental reasons. First, with only approximately two months' service (January to March 2018), the Claimant lacked the two years' continuous employment required by section 108 of the Employment Rights Act 1996 to bring an unfair dismissal claim. This is a jurisdictional bar that cannot be overcome regardless of the merits of any unfair dismissal complaint. Second, even if the Claimant had sufficient service, the case does not address the preliminary issue of time limits or the approach to reconsideration applications. The fundamental issue here is not the test for unfair dismissal but the extraordinary delay in bringing the claim.

47. *Robertson v Bexley Community Centre [2003] IRLR 434*: The Claimant refers to this case in relation to the "just and equitable" extension of time for discrimination claims under s.123(1)(b) of the Equality Act 2010. While this case confirms the breadth of the tribunal's discretion, it also emphasizes that time limits are to be exercised strictly. In Robertson, the EAT noted that "it is for the claimant to convince the employment tribunal that it is 'just and equitable' to extend time" and

that "time limits are exercised strictly in employment cases." The Claimant has not provided evidence to satisfy this threshold despite having ample opportunity to do so. His medical evidence, while substantial, does not explain the extraordinary delay in bringing his claim.

48. *Palmer v Southend-on-Sea Borough Council [1984] ICR 372*: The Claimant cites this case in relation to the "not reasonably practicable" test for unfair dismissal claims under s.111(2)(b) of the Employment Rights Act 1996. This is a stricter test than the "just and equitable" standard for discrimination claims. In Palmer, the Court of Appeal emphasized that this is a matter of fact for the tribunal to determine, taking into account the claimant's knowledge and actions. On the evidence before me, I cannot find that it was not reasonably practicable for the Claimant to bring his claim within the primary time limit or within a reasonable period thereafter. Even accounting for his health conditions, the delay of over five years remains unexplained.

49. *Hendricks v Commissioner of Police for the Metropolis [2003] IRLR 96*: The Claimant refers to this case to suggest that the grievance process could constitute a "continuing act" for discrimination claims, thus extending the time limit. Hendricks requires a link or connection between acts separated in time to constitute a continuing act. The Claimant has not demonstrated any continuing discriminatory state of affairs that persisted beyond his employment ending in March 2018 or his grievance being resolved in July 2018. Even taking the grievance conclusion date of July 2018 as the starting point for time limits, the claim remains over five years late without adequate explanation.

50. *Miller v Ministry of Justice [2016] UKEAT/0002/16*: The Claimant cites this case to argue that his health conditions could justify a "just and equitable" extension. Miller is distinguishable on its facts. It involved a much shorter delay (months rather than years) and included detailed medical evidence specifically linking the claimant's depression to his inability to bring a claim during the relevant period. In contrast, the Claimant's medical evidence, while documenting his conditions, does not explain why he was unable to bring a claim at any point during the five-year period or why he was able to do so in February 2024 but not earlier.

51. *Chief Constable of Lincolnshire v Caston [2009] EWCA Civ 1298*: The Claimant suggests that his disabilities trigger a duty to make reasonable adjustments in procedural matters. While Caston confirms this duty, it does not support the proposition that the duty extends to disregarding or indefinitely extending statutory time limits. Reasonable adjustments might include additional time or assistance with the process, but not the complete waiver of time limits for over five years without specific justification linked to the disability.

52. *Abedeji v University Hospitals Birmingham NHS Trust [2021] EWCA Civ 23*: The Claimant cites this case regarding post-filing delays and suggests that tribunals must weigh the consequences of extension rather than assume unfairness. Abedeji concerned different procedural issues, notably non-compliance with time limits for serving particulars of claim after proceedings had been initiated. It did not address the distinct issue of bringing a claim years after the primary limitation period had expired. Even applying Abedeji's principles of weighing consequences, the balance of factors in this case weighs strongly against extension given the extraordinary delay and lack of explanation.

53. *Blockbuster Entertainment Ltd v James [2006] IRLR 630*: The Claimant argues that striking out for procedural failings is only justified if they render a fair trial impossible. While Blockbuster does caution against striking out for procedural failings alone, the strike-out in the present case was not based solely on procedural non-compliance but on the fundamental issue of the claim being substantially out of time with no prospect of success. The delay here is so extensive that it would inevitably prejudice the Respondent's ability to defend the claim fairly.

54. *O'Cathail v Transport for London [2013] EWCA Civ 21*: The Claimant cites this case to argue that costs sanctions short of strike-out could address his procedural failings. O'Cathail concerned a different issue - the refusal of an adjournment request from a disabled claimant. The present case does not involve a refusal of an adjournment, as the Claimant never requested one. Moreover, the fundamental issue here is not procedural non-compliance but the substantive time-bar issue, which could not be remedied through costs sanctions or other procedural orders.

55. *Muschett v HM Prison Service [2010] EWCA Civ 25*: The Claimant refers to this case regarding the tribunal's duty to assist litigants in person. While this duty exists, it does not extend to advising claimants on the merits of their cases or excusing them from compliance with statutory time limits. The Tribunal fulfilled its duty by providing clear directions and multiple opportunities for the Claimant to respond to the strike-out application.

56. *Hargreaves v Evolve Housing [2024] EAT 18*: The Claimant suggests that vagueness in his claim should not justify strike-out unless it precludes a fair hearing. The strike-out in this case was not based on vagueness alone but primarily on the claim being substantially out of time. Even if the claim had been more precisely articulated, this would not have overcome the fundamental time-bar issue. Hargreaves is therefore not applicable to the central issue in this case.

57. *Wells Cathedral School Ltd v Souter [2022] EAT 144*: The Claimant cites this case to suggest that a preliminary hearing could clarify his claims despite initial opacity. Wells Cathedral concerned a different issue - the sufficiency of claim particularization - not the extension of time for bringing a claim years after the event. The primary defect in the present case is not the lack of clarity but the inordinate and unexplained delay, which a preliminary hearing could not remedy.

58. *Chohan v Derby Law Centre [2004] IRLR 685*: The Claimant argues that a fair trial was deemed possible despite a significant lapse of time in Chohan. This case involved much shorter delays than the present case and concerned specific circumstances not present here. Moreover, in Chohan, the EAT emphasized that tribunals must consider the prejudice to respondents caused by delay, which is precisely what I have done in this case. The prejudice to the Respondent after a delay of over five years would be substantial and unjustified.

59. *Dunn v Parole Board [2020] EWCA Civ 1289*: The Claimant refers to this case to argue that the Court emphasized balancing efficiency with access to justice for vulnerable claimants. Dunn concerned judicial review proceedings with different procedural rules and time limits. Even applying Dunn's principles, the balance in this case weighs heavily against reconsideration given the extraordinary delay, the lack of explanation for that delay, and the prejudice to the Respondent. Access to justice is important, but it must be balanced against other factors including finality of litigation and fairness to all parties.

60. *Remploy Ltd v Abbott UKEAT/0405/14/DM*: The Claimant cites this case to support extension based on his health conditions. Abbott involved a much shorter delay (approximately 18 months) and included specific evidence about the impact of the claimant's mental health condition during that period. In this case, the delay is substantially longer (over five years) with no specific evidence linking the Claimant's conditions to his inability to bring a claim during the entire five-year period.

61. *Baldeh v Churches Housing Association [2019] UKEAT/0290/18/JOJ*: The Claimant refers to this case regarding knowledge of disability. Baldeh dealt with the substantive consideration of disability discrimination where knowledge of disability was acquired after dismissal. It did not address the question of substantial delay in bringing a claim or the test for reconsideration. The principle from Baldeh that later-acquired knowledge of disability can be relevant to a discrimination claim does not assist with the fundamental issue in this case - the unexplained five-year delay.

The Claimant's Paragraph-by-Paragraph Arguments

62. The Claimant structures his application as a series of responses to each paragraph of the original judgment. I will address each of these arguments:

63. ***Regarding Paragraph 1 of the Original Judgment***: The Claimant argues that the brevity of employment and delay do not preclude his claim's validity, citing British Home Stores v Burchell and section 108 of the Equality Act 2010 for post-employment discrimination.

64. The Tribunal finds that with only approximately two months' service, the Claimant lacks the two years' continuous employment required by section 108 of the Employment Rights Act 1996 to bring an unfair dismissal claim. This is a jurisdictional bar that cannot be easily overcome and which the Claimant has done little to address in the intervening seven years. Regarding discrimination claims,

while post-employment acts can indeed be covered under section 108 of the Equality Act 2010, the Claimant has not identified any specific post-employment discriminatory acts beyond the grievance process that concluded in July 2018. Even accounting for this, the claim remains substantially out of time.

65. ***Regarding Paragraph 2 of the Original Judgment***: The Claimant acknowledges the time limits but argues that tribunals have discretion to extend time under the "just and equitable" test for discrimination claims and the "not reasonably practicable" test for unfair dismissal.

66. The Tribunal finds that the legal tests are correctly identified, but a hearing is not required where the evidence provided cannot possibly justify an extension. In Robertson, the EAT emphasized that time limits are exercised strictly and that the burden is on the claimant to convince the tribunal that extension is justified. Despite having ample opportunity to do so, the Claimant has not provided evidence that could justify a five-year extension on either test. Even accepting his health conditions at face value, he has not explained how they prevented action for the entire five-year period.

67. ***Regarding Paragraph 3 of the Original Judgment***: The Claimant argues that the grievance process could constitute a "continuing act" under Hendricks, extending the time limit.

68. The Tribunal finds that the concept of a "continuing act" requires a link between acts separated in time. The Claimant has not identified any acts after the grievance conclusion that could form part of such a continuing act. Even taking the grievance conclusion date of July 2018 as the starting point, the claim remains over five years late. The Tribunal is entitled to decide on the papers where the facts, even viewed most favourably to the Claimant, cannot justify the relief sought.

69. ***Regarding Paragraph 4 of the Original Judgment***: The Claimant disputes the rejection of his explanations for delay (health issues, COVID-19, and a mistaken "five-year rule") without a hearing.

70. The Tribunal finds that the cases cited by the Claimant are distinguishable. In Miller, the delay was much shorter with specific evidence linking the condition to the inability to bring a claim. Here, despite extensive medical evidence, there is no explanation of how the Claimant's conditions prevented action for over five years yet allowed filing in 2024. Regarding COVID-19, this cannot possibly explain the delay, as COVID-19 restrictions and lockdowns did not come into force until March 2020 – almost precisely two years after the Claimant's employment ended. By this point, the time limit had already long expired. A mistaken belief in a "five-year rule" is not a basis for extension under either test as the law expects individuals to take reasonable steps to ascertain their legal rights.

71. ***Regarding Paragraph 5 of the Original Judgment***: The Claimant argues that non-compliance with case management orders requires proportionality, suggesting an unless order or costs sanctions would be more appropriate.

72. The Tribunal finds that the strike-out was not based solely on non-compliance with case management orders but primarily on the claim being substantially out of time with no reasonable prospect of success. Even if an unless order or costs sanctions had been imposed instead, this would not overcome the fundamental time-bar issue. Blockbuster cautions against strike-out for procedural failings alone, but here the primary issue is substantive - the expiry of the limitation period without grounds to extend it.

73. ***Regarding Paragraph 6 of the Original Judgment***: The Claimant suggests his assertion of sending documents "countless times" indicates a genuine belief in compliance and argues that the Tribunal's duty to litigants in person includes ensuring understanding of the strike-out application.

74. The Tribunal finds that it fulfilled its duty by providing clear communications about the strike-out application and the need to respond. Correspondence explicitly drew attention to the application and its consequences. The duty to assist litigants in person does not extend to excusing non-engagement with the Tribunal process. Even in his reconsideration application, the Claimant provides little evidence of genuinely attempting to submit documents before the strike-out decision,

despite asserting to the Respondent on 5 February 2025 that he had sent documents 'countless times.'

75. ***Regarding Paragraph 7 of the Original Judgment***: The Claimant argues that vagueness should not justify strike-out unless it precludes a fair hearing, suggesting a preliminary hearing could clarify his claims.

76. The Tribunal finds that the strike-out was not based primarily on vagueness but on the claim being substantially out of time. The vagueness was an additional factor indicating the difficulty of conducting a fair hearing after such a long delay. Hargreaves and Wells Cathedral concerned different issues - claim particularization - not the extension of time for bringing a claim years after the event.

77. ***Regarding Paragraph 8 of the Original Judgment***: The Claimant disputes that excessive delay necessarily makes a fair hearing impossible, citing Abedeji and Chohan.

78. The Tribunal finds that Abedeji concerned different procedural issues and did not address bringing a claim years after the limitation period expired. Chohan involved much shorter delays and specific circumstances which do not present here. Moreover, Chohan emphasized considering prejudice to respondents caused by delay, which I have done. The prejudice to the Respondent after a delay of over five years would be substantial and unjustified.

79. ***Regarding Paragraph 9 of the Original Judgment***: The Claimant argues that the overriding objective requires ensuring parties can participate fully, citing Dunn on balancing efficiency with access to justice.

80. The Tribunal finds that Dunn concerned judicial review proceedings with different procedural rules. The overriding objective requires balancing various factors, including ensuring cases are dealt with fairly, proportionately, expeditiously, and cost-effectively. Allowing a claim to proceed that is over five years out of time, with no adequate explanation despite ample opportunity, would not serve the overriding objective. It would be unfair to the Respondent, disproportionate to the issues, and an inefficient use of Tribunal resources.

81. In his conclusion, the Claimant submits that the strike-out is premature, arguing that his health, disability, and unrepresented status merit further consideration. However, for the reasons given, I do not find any reasonable prospect of the judgment being varied or revoked. The strike-out was a proportionate response to a claim that was substantially out of time with no reasonable prospect of success.

82. The Claimant is correct that claims under the Equality Act 2010 provide for a greater discretionary power for the Tribunal to extend time on a "just and equitable" basis compared to the "not reasonably practicable" test for unfair dismissal claims, this discretion, though technically unlimited in its scope, must nevertheless be exercised both reasonably and proportionately and, most pertinently, on a sound evidential basis. The Claimant has not provided even an *unsound* evidential basis upon which I could reasonably exercise that power, much less a *sound* one.

83. Justice and equity must apply to both sides - not just to the Claimant. In this case, the Claimant brought his claim so very long beyond the time limit (over five years) and still, now, seven years after the events in question, has neither set out his claims in a manner which allows them to be properly responded to, nor explained the extraordinary delay or provided sufficiently good reasons to consider extending time.

84. It is also notable that, given the substantial prejudice to the Respondent in having to defend claims related to a short period in early 2018 which are still not particularised 7 years later, the question of whether it would be proportionate to extend the time limit by over 5 years to allow the claims to proceed is one which the *Man on the Clapham Omnibus* would consider is easily answered - it would be neither proportionate, just nor equitable.

85. The interests of justice require finality in litigation and allowing this claim to proceed after such an inordinate and unexplained delay would undermine this fundamental principle.

Conclusion

86. I have considered the Claimant's disabilities and the challenges these may present. However, for the reasons set out above, I am satisfied that there is no reasonable prospect of the judgment being varied or revoked.

87. The medical evidence now provided was available to the Claimant much earlier; there was no procedural mishap that denied him a fair hearing; the extraordinary delay in bringing the claim remains unexplained; and the broader interests of justice, including the interests of the Respondent and the public interest in finality, do not support reconsideration.

88. The application for reconsideration is therefore refused under Rule 70(2) of the Employment Tribunals Rules of Procedure 2024.

APPROVED
Judge M Aspinall
3 April 2025