



EMPLOYMENT TRIBUNALS

Claimant: Miss S McParland

Respondent: Hexagon Care Services Limited

RECONSIDERATION JUDGMENT

The claimant's application dated 16 June 2025 for reconsideration of the judgment sent to the parties on 6 June 2025 is refused.

REASONS FOR REFUSAL

The Law

1. An application for reconsideration is an exception to the general principle that (subject to appeal on a point of law) 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 68 of the 2024 Rules of Procedure).
2. Rule 70(2) empowers the refusal of an application for reconsideration based on preliminary consideration if there is no reasonable prospect of the original decision being varied or revoked.
3. 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”.

4. In common with all powers under the 2024 Rules, preliminary consideration under rule 70(2) must be conducted in accordance with the overriding objective which appears in Rule 3, namely, to deal with cases fairly and justly. Achieving finality in litigation is part of a fair and just adjudication.

Scope of the Application

5. The claimant has submitted lengthy grounds of application for reconsideration, accompanied by a significant amount of documentation. Most recently the claimant has submitted a 121 page bundle of evidence. This mostly relates to her health issues.

Claimant's claims

- 5.1. The claimant states in her grounds for reconsideration that her ‘*central claims*’ are:
 - 5.1.1. Discrimination by failure to make reasonable adjustments;
 - 5.1.2. Harassment; and
 - 5.1.3. Unspecified breaches of Equality Act 2010.

Previous Hearings

- 5.2. The claimant's reconsideration application appears to relate to matters at the hearing before Employment Judge Buzzard and two prior hearings before different Employment Judges.
- 5.3. In the judgement reasons sent to the parties (pages 4-5) the history of these claims is summarised. That history shows the following relevant points about the claims that the claimant could theoretically pursue related to the protected characteristic of disability under the Equality Act 2010.
 - 5.3.1. Discrimination by failure to make reasonable adjustments:
 - 5.3.1.1. This potential claim was considered by Employment Judge Horne at a hearing on 19 August 2024. He determined that the claimant's claim did not include any allegation of discrimination by failure to make reasonable adjustments.
 - 5.3.1.2. Employment Judge Horne refused the claimant permission to amend her claim to include discrimination by failure to make reasonable adjustments at the hearing on 14 August 2024, as recorded in the note sent following that hearing and sent to the parties on 19 August 2024.

5.3.1.3. Employment Judge Shotter entered a judgment dismissing any discrimination by failure to make reasonable adjustments claim that the claimant pursued, after any such claims were withdrawn by the claimant at a hearing on 3 March 2025.

5.3.1.4. Accordingly, the claimant has no claim of discrimination by failure to make reasonable adjustments. Any such claim if it existed has been dismissed on withdrawal and permission to add such a claim by amendment has been expressly refused. These were decisions taken by other judges at earlier stages in this process. The time limit to seek a reconsideration of these decisions appears to have long since passed.

5.3.2. Discrimination arising from disability:

5.3.2.1. This potential claim was considered by Employment Judge Horne at the hearing on 14 August 2024. His note following that hearing records a clear attempt to suggest to the claimant that such a claim appeared to be appropriate. His note goes on to record that the claimant very clearly made factual assertions and allegations that were not consistent with such a claim. He records that the claimant confirmed that she did not pursue any such claim.

5.3.2.2. The claimant did not seek to challenge or change that position either following the hearing before Employment Judge Horne, or it appears at the hearing before Employment Judge Shotter.

5.3.2.3. At the hearing which resulted in the decision that the claimant now seeks to have reconsidered she reaffirmed that she did not make such a claim. That was unsurprising given the factual assertions the claimant appears to have made at the earlier hearing before Employment Judge Horne.

5.3.2.4. Accordingly, despite the claimant referring to '*breaches of the Equality Act 2010*' as being part of her '*central claims*', it is clear that this cannot extend to a claim of discrimination arising from disability.

5.3.3. Indirect discrimination:

5.3.3.1. It is not clear that the claimant has at any point sought to pursue a claim of indirect discrimination.

5.3.3.2. In any event, Employment Judge Shotter gave a judgment dismissing any indirect discrimination claims that the claimant pursued, after any such claims were withdrawn by the claimant at a hearing on 30 March 2025.

- 5.3.3.3. Accordingly, despite the claimant referring to '*breaches of the Equality Act 2010*' as being part of her '*central claims*', it is clear that this cannot extend to a claim of indirect disability discrimination.

5.3.4. Direct Disability Discrimination

- 5.3.4.1. At the hearing that gave rise to the decision that the claimant now seeks to have reconsidered was made, the potential for direct discrimination claims was discussed.
- 5.3.4.2. Following that discussion the claimant confirmed that she did not pursue any claim of direct discrimination. A number of the matters that she had identified as direct discrimination were agreed to be allegations of harassment.
- 5.3.4.3. The claimant specifically confirmed that the reason she was dismissed was not the fact of her disability, but the impacts of her disability. This appears to contradict the clear factual position she took at the hearing before Employment Judge Horne. In any event, the claimant agreed it could not form the basis of a claim of direct disability discrimination.
- 5.3.4.4. Accordingly, despite the claimant referring to '*breaches of the Equality Act 2010*' as being part of her '*central claims*', it is clear that this does not extend to a claim of direct disability discrimination.

5.3.5. Harassment

- 5.3.5.1. The claimant's claims do include multiple allegations of harassment.
- 5.3.5.2. It is not logically possible that an act of dismissal, of itself, can amount to an act of harassment. Complete removal from a workplace cannot make that workplace environment become one in which the claimant is harassed.
- 5.3.5.3. Accordingly, whilst the claimant did seek to pursue claims of harassment, they did not include the fact that she was dismissed.
- 5.4. The only other potential claim under the Equality Act 2010 would be one of victimisation. There has not at any time been any suggestion that the claimant pursues a claim of victimisation.
- 5.5. Taking into account the above, when the claimant refers in her reconsideration application to her "*central claims*", she can only be referring to allegations of harassment.

Grounds of application

6. The claimant states in her application that it is pursued on three distinct grounds:

- 6.1. That there was a material error of law;
- 6.2. That relevant evidence was not considered; and
- 6.3. That there was a failure to ensure a fair hearing.

These grounds are discussed individually below.

7. That there was a material error of law

- 7.1. It is not clear in the explanation of the grounds for reconsideration what error of law the claimant believes was made. There is, however, a very clear assertion that an allegedly significant inaccurate fact was taken into consideration when reaching the decision to strike to the claimant's claims. This is stated by the claimant as follows:

*"Judge Buzzard's written reasons noted that I had the support from a union representative at the time of submitting my ET1. This is **factually incorrect** and highly material to the fairness of my case."* (claimant's emphasis)

- 7.2. The claimant in this assertion has misread the judgement and reasons. At paragraph 30.3 of the reasons the judgment states:

"In November 2022 the claimant was, however, well enough to submit a detailed grievance. The claimant had the benefit of a Trade Union representative when doing this."

- 7.3. As part of her reconsideration application the claimant has submitted a copy of an email from her Trade Union representative that confirms that he was supporting the claimant in relation to internal processes within the respondent.
- 7.4. On this basis, it does not appear that the claimant is correct that there was a significant factual error. The claimant was getting help from her Trade Union. It was never understood that the Trade Union had actually helped her with her Employment Tribunal claim, and this was not a factor that influenced the decision. It was taken into consideration that at the relevant time the claimant was capable of submitting and pursuing a detailed grievance of some 15 pages that cited relevant part of the Equality Act 2010, and then appealing the outcome, but that in doing so she was not acting without any help.
- 7.5. Accordingly, reconsideration on this ground is refused. The claimant does not appear to have identified any material error of law, or significant fact. It would not be in the interests of justice to reconsider the claim on this ground because there is no reasonable prospect of the original judgment being varied or revoked on this ground.

8. That relevant evidence was not considered

- 8.1. The claims that were struck out were all struck out on the basis of jurisdictional time limits and a determination that the claimant had no reasonable prospects of being granted an extension of time for the claims to proceed. Only the evidence that specifically related to the jurisdictional time limit issue was considered.
- 8.2. The claimant cites in her reconsideration application a long list of evidence that she would have intended to present if her discrimination claims had proceeded to full hearing. The claimant appears to assert that this shows that her claims had a good prospect of success. None of this evidence appears to relate to the time limit jurisdictional issue that was considered at this hearing. The claimant was found to have no reasonable prospect of her claims being found to be in time, or of being granted the required extension of time. There was no finding regarding whether, if the claims had been made in time, there was a reasonable prospect that they could have succeeded.
- 8.3. It is correct that this evidence relating to the substance of her claim was not fully considered in detail. To do so would amount to hearing the full claim. Only the documentary evidence and submissions made by the parties that specifically related to the jurisdictional time limit issue were considered.
- 8.4. Accordingly, reconsideration on this ground is refused. The claimant has not identified any evidence or argument that relates to the time limit issue that was not raised at the hearing and taken into consideration. Therefore, it would not be in the interests of justice to reconsider the claim on this ground because there is no reasonable prospect of the original judgment being varied or revoked on this ground.

9. That there was a failure to ensure a fair hearing.

- 9.1. The claimant argues in her application for reconsideration that she had not properly understood the purpose of the hearing and that she was not prepared as a result.
- 9.2. It is noted that the claimant made written representations in advance of the hearing in an email received on 22 April 2025 that appear to cogently address the relevant issues to be considered at the hearing. This does not support the claimant's assertions that she was not prepared for the hearing.
- 9.3. The claimant specifically argues she was not prepared to cross-question the respondent. This ground appears to be founded in a misunderstanding. Parties are only able to question witnesses. No witness evidence was considered. Parties are not expected or generally permitted to question each other in hearings. The claimant was not questioned by the respondent,

nor was she entitled to, or expected to, question the respondent in this hearing.

- 9.4. A significant part of the hearing was concerned with seeking to ensure the claims being pursued were correctly understood by the Tribunal and the parties. The claimant was given a full opportunity to explain the claims made and the relevant chronology. This was not factually challenged as part of this decision. In effect the claimant's case, in so far as it related to time limit points, was assessed on the basis of the facts asserted by the claimant at this hearing.
- 9.5. The claimant has suggested that she gave incorrect dates at this hearing. At no point in the application to reconsider the decision does the claimant explain which dates she gave were incorrect and therefore why any inaccurate dates had a material impact on the decisions made. It would not be appropriate to reconsider a decision based on an unspecific assertion that information provided to the Employment Tribunal by the party seeking reconsideration was inaccurate.
- 9.6. The claimant asserts as a ground for reconsideration that adjustments were not made for her. The claimant has not indicated what adjustments should have been made, other than a suggestion that she should be given time to "*plan, process and prepare*".
- 9.7. The claimant was given significant notice of this hearing. The claimant was provided in advance with a detailed written application from the respondent, and prepared her own written response to that application.
- 9.8. There was no witness evidence given at this hearing, and thus no cross examination.
- 9.9. The claimant at the hearing was granted more than one break in proceedings, in addition to the normal break for lunch. The claimant at no point asked for any adjustment at this hearing that was not provided. The claimant at no point in this hearing appeared to be unduly struggling as a litigant in person.
- 9.10. At the hearing the claimant made relevant and cogent submissions regarding the application under consideration. The fact that those submissions were not found to be persuasive does not support a conclusion that the claimant, as a litigant in person, was unable to make appropriate submissions at the hearing.
- 9.11. This was not the first hearing the claimant has attended. The claimant has attended multiple previous hearings in relation to this matter. This suggests that the claimant was aware of, and had experience of, how hearings proceed.
- 9.12. Considering all the above, it does not appear to be in the interests of justice to reconsider the decision at the hearing based on this ground. The claimant engaged with the hearing making relevant oral and written submissions. The

decision reached related only to the need for, and prospects of, securing an extension of time. The parts of the reconsideration application relevant to these questions were all either points that were raised at or before the hearing in those submissions, or could have been raised in those submissions at or before the hearing.

Conclusion

10. Accordingly, for the above reasons the claimant's application for reconsideration of the judgment sent to the parties on 6 June 2025 is refused.

Approved by:
Employment Judge Buzzard

10 July 2025

Reconsideration Judgment sent to
the parties on:

22 August 2025

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For the Tribunal: