EMPLOYMENT TRIBUNALS

Claimant: **Jamilla Griffin**

Respondent: **Lloyds Bank plc**

RECONSIDERATION DECISION

The Respondent's application dated 30 June 2025 for reconsideration of the decision in relation to an amendment application sent to the parties on 13 June 2025 is refused because it is out of time.

REASONS

1. The Claimant was employed by the Respondent between 15 February 2023 and 31 March 2024 on a fixed term contract. By a claim form presented on 30 August 2024 the Claimant brought complaints of discrimination on the grounds of disability and race.

2. I allowed the Claimant's application to amend her claim after hearing submissions from both parties at the Preliminary Hearing for Case Management which took place on 5 June 2025. The Respondent's representative, Ms Collins, had not been able to take instructions and was not able to do so in time offered during the hearing, but did not object to the amendment application being heard. I gave oral reasons in the hearing.

3. The case management orders, which included reasons for the decision regarding the amendment application were sent to the parties on 13 June 2025.

4. The Claimant made a reconsideration application on 30 June 2025 on the following grounds.

   "*The amendment application, which was granted at the preliminary hearing, sought to include two new allegations. These were:*

- *An allegation of direct race discrimination, that Ms Cody selected Alexie Kalenga to attend a leadership course in or around March 2023, which the Claimant was not selected to go on ("Allegation 1"); and*
- *An allegation of discrimination arising from disability / harassment related to disability, that on 6 December 2023, the Claimant was given as "Always Late" Award. This was created by Ms Kalenga and approved by Ms Dando ("Allegation 2").*

Having now had the opportunity to take instructions, the Respondent wishes to provide further context to these allegations.

In respect of Allegation 1, Ms Cody was not a decision maker or proposer in this decision. Becky Danson selected Alexie Kalenga to attend the course. I am instructed that there was one place on the career confidence course available, and Ms Danson had to select one individual from all Band D colleagues that worked in the team, and therefore many other colleagues were also not selected to attend the course. As a result, if this allegation is allowed to progress, the Respondent will need to bring an additional witness to defend this allegation (Becky Danson), which the Respondent submits is disproportionate.

In respect of Allegation 2, the Claimant did not win an "Always Late" award. At the Christmas party, two of the Claimant's colleagues (Alexie Kalengie and Rebecca Fowler) created the awards, where individuals would be nominated and then a vote would be conducted of those nominated. The Claimant was nominated for the award, and was one of two 'Runners up'. Ms Dando did not 'approve' the awards, as alleged or at all.

At present, the Respondent is hopeful that the witnesses already called can speak to Allegation 2. If, following witness interview, this is not the case, the Respondent may have to call an additional witness.

As such, the Respondent requests reconsideration of the decision to allow the application to amend to proceed, on the basis that there is further prejudice to the Respondent. We request this application is considered solely on the papers. If the reconsideration request is refused, the Respondent further requests that the allegations are amended to make clear the individuals with decision making responsibility in connection with these allegations."

5. The Tribunal notes that the reconsideration application was submitted by the same representative who attended the hearing, Ms Collins.

6. The Tribunal wrote to the parties asking the Claimant to provide any response to the reconsideration application. It appears this was misunderstood as the Claimant's response appeared to relate to the Respondent's amended Grounds of Resistance rather than the reconsideration application.

The law on reconsideration

7. Rules 68 to 70 of the Employment Tribunal Procedure Rules 2024, make provision for the reconsideration of tribunal judgments as follows:

*"**Principles***
68.—(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.

Application for reconsideration
69. Except where it is made in the course of a hearing, an application for reconsideration must be made in writing setting out why reconsideration is necessary and must be sent to the Tribunal within 14 days of the later of—
(a) the date on which the written record of the judgment sought to be reconsidered was sent to the parties, or
(b) the date that the written reasons were sent, if these were sent separately.

Process for reconsideration
70.—(1) The Tribunal must consider any application made under rule 69 (application for reconsideration).
(2) 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.
(3) If the application has not been refused under paragraph (2), the Tribunal must send a notice to the parties specifying the period by which any written representations in respect of the application must be received by the Tribunal, and seeking the views of the parties on whether the application can be determined without a hearing. The notice may also set out the Tribunal's provisional views on the application.."

8. Under these rules, the Tribunal therefore has discretion to reconsider a judgment if it considers it is in the interests of justice to do so.

9. Under rule 70(2), the judge must dismiss the application if they consider that there is no reasonable prospect of the original decision being varied or revoked. It is a mandatory requirement for a judge to determine whether there are reasonable prospects of a judgment being varied or revoked before seeking the other party's response and the views of the parties as to whether the matter can be determined without a hearing, potentially giving any provisional view, and deciding how the reconsideration application will be determined: *T.W. White & Sons Ltd v White, UKEAT/0022/21*.

10. In *Outasight VB Ltd v Brown UKEAT/0253/14* the EAT held (at [46-48]) that the Rule 70 ground for reconsidering judgments (the interests of justice) (which was the predecessor under the Employment Tribunal Rules of Procedure 2013) did not represent a broadening of discretion from the provisions of Rule 34 contained in

the replaced 2004 rules. HHJ Eady QC (as she then was) explained that the previous specified categories under the old rules were only examples of where it would be in the interests of justice to reconsider. The rules removed the unnecessary specified grounds, leaving only what was in truth always the fundamental consideration: the interests of justice. This means that decisions under the old rules remain pertinent under the new rules. I apply the same analysis in relation to the interpretation of the 2024 procedure rules, which refer to the same test: the interests of justice.

11. The key point is that it must be in the interests of justice to reconsider a judgment. That means that there must be something about the case that makes it necessary to go back and reconsider, for example a new piece of evidence that could not have been produced at the original hearing or a mistake as to the law. It is not the purpose of the reconsideration provisions to give an unsuccessful party an opportunity to reargue his or her case. If there has been a hearing at which both parties have been in attendance, where all material evidence had been available for consideration, where both parties have had their opportunity to present their evidence and their arguments the interests of justice are that there should be finality in litigation. An unsuccessful litigant in such circumstances, without something more, is not permitted to simply reargue his or her case, to have 'a second bite at the cherry' (per Phillips J in *Flint v Eastern Electricity Board [1975] IRLR 277*).

12. The expression 'necessary in the interests of justice' does not give rise to an unfettered discretion to reopen matters. The importance of finality was confirmed by the Court of Appeal in *Ministry of Justice v Burton and anor [2016] EWCA Civ 714* 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; and in Lindsay v Ironsides Ray and Vials [1994] ICR 384 Mummery J held that the failure of a party's representative to draw attention to a particular argument will not generally justify granting a review.*"

13. Rule 70 gives the Tribunal a broad discretion to determine whether reconsideration of a decision is appropriate. Guidance for Tribunals on how to approach applications for reconsideration was given by Simler P in the case of *Liddington v 2Gether NHS Foundation Trust UKEAT/0002/16/DA*. Paragraphs 34 and 35 provide as follows:

> "*34. […] a request for reconsideration is not an opportunity for a party to seek to re-litigate matters that have already been litigated, or to reargue matters in a different way or adopting points previously omitted. There is an underlying public policy principle in all judicial proceedings that there should be finality in litigation, and reconsideration applications are a limited exception to that rule. They are not a means by which to have a second bite at the cherry, nor are they intended to provide parties with the opportunity of a rehearing at which the same evidence and the same arguments can be rehearsed but with different*

emphasis or additional evidence that was previously available being tendered. Tribunals have a wide discretion whether or not to order reconsideration.
35. Where […] a matter has been fully ventilated and properly argued, and in the absence of any identifiable administrative error or event occurring after the hearing that requires a reconsideration in the interests of justice, any asserted error of law is to be corrected on appeal and not through the back door by way of a reconsideration application."

Assessment of the application under Rule 70(2)

14. The reasons for the decision having been sent to the parties on 13 June 2025, the 14 day deadline for submitting a reconsideration application expired on 27 June 2025. The reconsideration application was submitted three days later on 30 June 2025. The Respondent was aware of the decision and reasons from the hearing date of 5 June 2025 and no reason for the delay has been given.

15. In relation to Allegation 1, the Respondent's position is that a further witness is required because the decision maker was a different individual than it was understood to be at the time of the amendment decision. In relation to Allegation 2, the reconsideration application simply sets out that the Respondent denies the facts as alleged by the Claimant.

16. Even though the application is late, I have considered the merits of the application as follows.

    a. Allegation 1: Although I took into account in making the amendment decision whether any additional witnesses were required, the consideration is multi-factorial and is an exercise in considering the balance of prejudice between the parties. Even though one further witness is required, the Tribunal considers that the length of the hearing will be unaffected and that overall this would not have tipped the balance of prejudice in favour of refusing the amendment given the early stage of proceedings. Taking this additional point into account, there would have been no reasonable prospect of the amendment decision being revoked or varied in relation to this point.
    b. Allegation 2: The fact that a Respondent denies certain allegations is not a relevant factor in relation to the amendment decision because without hearing evidence, the Tribunal cannot resolve a dispute of fact between the parties. On that basis, there would have been no reasonable prospect of the amendment decision being revoked or varied in relation to this point.

17. As set out in Liddington, a reconsideration is not an opportunity for a party to seek to re-litigate matters that have already been litigated, or to reargue matters in a different way or adopting points previously omitted. Any asserted error of law is to be corrected on appeal.

18. Having carefully considered the merits Respondent's application and bearing in mind the importance of finality in litigation and the interests of both parties, I am not satisfied that there would have been any reasonable prospect of the decision being varied or revoked. No reason has been given for the lateness of the

application. Taking these factors into account, the application is dismissed because it is out of time.

Approved by
Employment Judge Volkmer
Date: 8 September 2025

SENT TO THE PARTIES ON
30 September 2025

FOR THE TRIBUNAL OFFICE