



EMPLOYMENT TRIBUNALS

Claimant: Lorna Allen

Respondent: Abele Care Ltd

RECONSIDERATION JUDGMENT

The Respondent's application to reconsider the decision to reject the response is refused.

REASONS

1. This is a Reconsideration decision following the Reconsideration request sent by the Respondent's legal advisers to the Tribunal on 29 August 2025 and sent to me on 3 September 2025. The Reconsideration request concerns the decision of Employment Judge Perry to reject the response, such decision being sent to the parties on 22 August 2025. The Reconsideration request has come to me to deal with as I dealt with the Case Management Preliminary Hearing in this matter on 28 August 2025, at which I was informed by the Respondent's legal representative that a Reconsideration application was to be made. I made this decision on the papers on 1 October 2025.
2. Under Rule 68 the Tribunal may reconsider any decision where it is necessary in the interests of justice to do so and a decision under Reconsideration may be confirmed, varied or revoked.
3. Under Rule 70 if the Tribunal considers there is no reasonable prospects of the decision being varied or revoked the application for Reconsideration must be refused. This reflects the public interest in the finality of litigation.
4. The Respondent's request for Reconsideration was made within the required time limit.
5. The application for Reconsideration was supported by an evidence bundle of 22 pages. Where necessary I shall refer to the page numbers in that bundle. I also had a witness statement from Maryum Uddin, Litigation Executive at Peninsula and dated 22 August 2025.

6. On 9 April 2025 the Tribunal posted the ET1 and Notice of Claim to the Respondent's address. The date for presentation of the ET3 response was confirmed to be 7 May 2025.
7. On 6 May 2025, the day before the ET3 response was due to be filed, the Respondent's representatives Peninsula applied to the Tribunal by email for an extension of time to file the response. They sought an extension of time to 20 May 2025 and stated they were experiencing difficulties in obtaining information from the Respondent, having contacted them on 24 April and 30 April 2025 respectively. They further stated that the practitioner at Peninsula to whom the case had been allocated had been ill on 30 April 2025 – 1 May 2025. 5 May 2025 was the May Day Bank Holiday. In Employment Judge Perry's decision he noted that Peninsula provided no proof of their assertions (of being unable to obtain instructions and/or of ill-health) and had not provided an explanation as to why another person at Peninsula had not been able to deal with the matter in their colleague's absence and had not explained why the Respondent had not responded to requests to provide information.
8. No response was in fact received by the Tribunal by either 7 May 2025 or 20 May 2025.
9. At the same time the Notice of Claim was posted to the Respondent, a Notice of Hearing for a Case Management Preliminary Hearing on 28 August 2025 had also been sent out by the Tribunal.
10. At 10:49 on 19 August 2025, and in advance of the forthcoming Case Management Preliminary Hearing, the Tribunal sent out an email to the parties with the log in details for that forthcoming hearing.
11. At 16:09 on 19 August 2025 Peninsula emailed the Tribunal chasing whether the ET3 response had been received and suggesting it had been filed by them on 20 May 2025 "however does not appear to show on the portal". (Page 20 of the bundle).
12. At 08:19 on 20 August 2025 the Tribunal received the ET3 response. This was three months after the date for which the extension of time had been requested.
13. Employment Judge Perry's decision to reject the response made it clear that he had made enquiries with the Tribunal's internal IT team to confirm that whilst Peninsula had started work on the ET3 response on 20 May 2025, had completed most sections of it and downloaded a copy of it, they had not in fact submitted it until 20 August 2025. He noted that had they checked the portal it would have been apparent to them that neither the form ET3 or the Grounds of Resistance document had been uploaded. Further, they would not have received notification from the Tribunal that the response had been accepted. Employment Judge Perry noted there was no issues with the Tribunal's IT system as at 20 May 2025.
14. Later in the day on 20 August 2025 at 17:22 Peninsula wrote again to the Tribunal. It was my understanding that this email (pages 2-3 of the bundle) was not before Employment Judge Perry when he made his decision to reject the response. However, his decision does refer to it briefly, such that he must have seen it.

15. In this correspondence Peninsula state that they had drafted the ET3 and were ready to submit it on 20 May 2025. They completed the necessary sections on the portal and uploaded the Respondent's Particulars of Response as a separate document. They believed they had then submitted the ET3 response. At page 19 of the bundle was an email they sent to their client (the Respondent) at 17:24 on 20 May 2025 stating "I can confirm the ET3 response has been submitted to the Tribunal ahead of the deadline... The Tribunal will receive the ET3 response and confirm acceptance of the same. It can take some time for the Tribunal to do this so you may not hear from me for a while as I most likely will not have any updates until then".
16. In the email to the Tribunal of 20 August 2025 at 17:22 Peninsula stated that "Upon further review, it has been established that all information had been inserted into the portal on 20 May 2025, but unfortunately, the last step of clicking "Submit the ET3" had not been undertaken". At page 18 of the bundle was a screenshot of Peninsula's One Drive IT system showing an ET3 form being last modified on 20 May 2025 at 17:19 and the Particulars of Response being last modified at 16:43 on the same date.
17. Peninsula also referred in the bundle and witness statement evidence to show its interaction with its client (the Respondent) leading up to 20 May 2025. Maryum Uddin confirmed they were allocated the case on 23 April 2025, but at this stage did not have "the full Claim Form" from the Respondent. No explanation as to why this was was given. Maryum Uddin sent an introductory email to the Respondent on an unknown date requesting the ET1 and information required to draft the ET3 response. This was chased on 6 May 2025, the day prior to the initial deadline for filing the response.
18. On 6 May 2025 Maryum Uddin made the aforementioned application to extend time. At this stage they were still not in receipt of the "full ET1" so did not copy in the Claimant.
19. On 16 May 2025 Maryum Uddin sent the draft ET3 response to the Respondent, page 11 of the bundle. On 19 May 2025 the Respondent replied and later that day a revised ET3 response was prepared. On 20 May 2025 Maryum Uddin chased the Respondent to agree the revised document, pages 12-14.
20. On 20 May 2025 Maryum Uddin and the Respondent exchanged further emails and at 13:36 Maryum Uddin asked the Respondent by email if they were content "for me to get this submitted", pages 15-16.
21. In the witness statement Maryum Uddin states they received verbal instructions from the Respondent at 16:22 to file the ET3 response. They converted the Particulars of Response to a PDF to upload to the HMCTS portal and began inputting the Respondent's details on the portal and uploaded the Particulars of Response. They downloaded the ET3 form from the portal and saved it on their IT system and believed the ET3 had been submitted.
22. In the witness statement Maryum Uddin states that when they received a reminder from the Tribunal on 19 August 2025 regarding the forthcoming Case Management Preliminary Hearing on 28 August 2025 they "had started preparing the bundle in readiness for the hearing. They say they logged on to the portal

and saw in answer to the question “Has the ET3 form been received?” as “No”. They do not say the date they started such preparation or when they looked at the portal, but the implication is that this was on or around 19 August 2025. They say they assumed they must have filed the ET3 by email but could not locate any such email. They went to the portal and realised they had not undertaken the final step of “Submit ET3 form”.

23. As already noted above, the Respondent made its Reconsideration application on 29 August 2025. In this it repeats the chronology set out above. It says at the time the ET3 was due, 20 May 2025, the Respondent’s representative had routinely submitted ET3 responses by email and the changing of the Tribunal Rules to require submission via the HMCTS portal involved an “unfamiliar process”.
24. The Respondent submits it genuinely believed it had submitted the ET3 on 20 May 2025 and on learning it had failed to do so it acted expeditiously on 20 August 2025 by filing the ET3. It says it is in the interests of justice to allow a late response. It says the Claimant is not prejudiced as it is relatively early in the proceedings. It refers me to the case of Pestle & Mortar v Turner [2005] and states it would be unjust for the failings of the Respondent’s representative to be visited on the Respondent.
25. As Employment Judge Perry noted the Respondent is represented by a nationwide legal services provider. Whilst it states it believed the ET3 had been submitted it did not check the portal at any time between 20 May and 20 August 2025. Had it done so, it would have been clear the ET3 had not been submitted. It had told the Respondent it anticipated receiving an “Acknowledgement of Response” communication from the Tribunal. It had not received such communication as at 20 August 2025 and had taken no steps to chase this either with the Tribunal or the Claimant’s representative.
26. Rule 17(1) of the Employment Tribunal Rules 2024 provides that an ET3 response must be submitted in accordance with any Practice Direction. Since 21 May 2025 the Presidential Practice Direction has provided four possible ways by which a Respondent can present an ET3: online using the HMCTS portal, by post, in person or exceptionally by email. The date for presenting the ET3 in this case predated this Practice Direction. It was open for the Respondent to present its ET3 by email on either 6 May 2025 or 20 May 2025, the latter date being the date it had sought by way of extension and the date it tried and failed to submit the ET3. For those using the portal the ET3 is divided into three sections to complete and after each section the user saves their progress. Once the ET3 is ready for submission the user selects “Submit ET3 form” and the system then shows a confirmation of submission receipt on the screen and an email confirmation that the ET3 has been submitted/received is sent out.
27. Rule 21 does not specify the grounds on which a Tribunal can grant an extension of time to present a response. In Kwik Save Ltd v Swain and Others (1997) ICR 49 the EAT emphasised the discretion “involves taking into account all relevant factors weighing and balancing them one against the other and reaching a conclusion which is objectively justified on the grounds of reason and justice”. I must consider the explanation offered by the Respondent. The more serious the

delay, the more satisfied I should be that any explanation is a genuine misunderstanding or understandable oversight. I must consider the balance of prejudice. I may consider the merits of the defence. On this latter point this is a claim of detriment and for automatic unfair dismissal on account of making protected disclosures. The Respondent accepts the Claimant made at least one protected disclosure but denies subjecting the Claimant to any detriment and says the reason for dismissal was poor performance.

28. In my Judgment the Reconsideration application should be refused. Employment Judge Perry's decision noted that the Respondent's representative had not provided evidence as to why the Respondent had not provided it with sufficient evidence to lodge the ET3 in time, or by 20 May 2025, and this continues to be the case. The ET1 was posted to the Respondent on 9 April 2025. It remains unclear why Peninsula were not instructed until 23 April 2025, some two weeks later, particularly when Peninsula had been instructed by the Respondent during the Claimant's employment to investigate her concerns according to the pleadings. It is further unclear why the Respondent had not furnished Peninsula with the entire ET1 as of 6 May 2025. Employment Judge Perry also noted that whilst the Respondent's representative had had two days sickness, the Respondent is a large provider of employment law advice services, and there was no explanation as to why a colleague could not have covered during any period of absence.
29. I accept the HMCTS portal is a relatively new system, however it was open to the Respondent to file the ET3 response by email at the relevant times, a method by which it would surely have had significant experience. Even when using the portal it is clear the Respondent's representatives failed to take the final step to submit the ET3 and they should have been alerted to this by the system either not sending a confirmation, by the fact no "Acknowledgement of Response" confirmation was received from the Tribunal and/or by the simple step of checking the portal.
30. I have taken into account all the relevant circumstances and the more than three months delay in the submission of the ET3 response. Whilst the Respondent's representative appears to have made a mistake, it was not assisted by the Respondent failing to fully instruct it in a timely manner and have regard to the deadlines set out in the Notice of Claim. The further delay is inexcusable.

Employment Judge Hindmarch

Approved on: 1 October 2025