



EMPLOYMENT TRIBUNALS

Claimant: Miss Kindji

Respondent: MCare 24 Limited

JUDGMENT

The Claimant's application dated **9 October 2025** for reconsideration of the judgment sent to the parties on **26 September 2025** is refused.

REASONS

There is no reasonable prospect of the original decision being varied or revoked, because:

1. Regarding the 'just and equitable' test under s123 of the Equality Act 2010, the correct legal test was identified and the factors referred to by the judge in exercising her discretion were relevant and appropriate. The Claimant's objection to the potential merits of the claim being taken into account does not constitute a good basis for reconsideration in circumstances where the judge explicitly recognized the value of testing discrimination claims in a full hearing, where the reason for referring to the strength of the claim was due to potential difficulties on its face (rather than any difficulties with establishing facts), and where it was one of several factors noted as leading to the decision.
2. The judge clearly identified the different legal tests to be applied in respect of the 'reasonably practicable' test and the 'just and equitable test'. The same findings of fact were used in relation to each test but it is clear that each test was assessed individually and applied correctly.
3. It is not in the interests of justice to reconsider on the basis of an objection to the tribunal hearing oral evidence from the Claimant or the assertion that this was procedurally unfair, amounted to 'an impromptu mini-full hearing', or demonstrated an overly rigid adherence to the earlier Case Management Orders. The purpose of the PH was set out in advance.

The CMOs stated that the Claimant may wish to give evidence about time limits. It was for the Claimant to persuade the Tribunal that the claims had been brought in time (or that time should be extended). The Claimant was not forced to give oral evidence but she elected to. These objections were in any event discussed with the Claimant's representative during the Preliminary Hearing.

4. Although it is not wholly clear, it appears that the thrust of the application for reconsideration amounts to a belief that the Claimant's claims should not have been allowed to come to an end (for whatever reason) before she had had the chance to benefit from cross-examination of the Respondent's witnesses at a full hearing. This is the gist of what the Claimant's representative submitted at various points during the preliminary hearing. It is true that a Claimant's case may be strengthened by whatever comes out at the full hearing. However, the preliminary hearing is to deal with issues beyond the simple question of the strength of the Claimant's case, although the strength of the case may be a factor. As set out in the Record of PH and Judgment that is being reconsidered, the question of merits was relevant on several occasions during the PH; in considering the Claimant's amendment applications, and when considering the preliminary issues of time limits. The full extent of the evidence is, of course, not before the Tribunal at this point. But preliminary decisions must be taken and, provided that these take a realistic view of the case that is before it, which must usually involve taking the Claimant's case at its highest (which is what I am satisfied happened here), taking account of the Claimant's case in this way does not constitute a reason for reconsideration.
5. The meaning of the Claimant's reference at para 10 to '*Failure to identify and apply 'continuing state of less favorable treatment (Paras 6.3.1 & 6.5.3)*' is unclear. The alleged failures relate to different types of complaint (breach of contract and discrimination) and the matter of whether there was a continuing act between them was not relevant to the decisions taken in the PH.
6. There is no power to reconsider a case management order which does not constitute a judgment under rule 68 of the Tribunal Procedure Rules but the matters raised in the reconsideration application are considered below nonetheless.
7. Para 12 – The test to be applied when considering amendment applications was summarised correctly in the Record of PH and Case Management Orders. Some of the Claimant's amendments were refused. The Claimant disagrees with the decision of the Judge in this regard but the matters referred to in the reconsideration do not point to an incorrect decision having taken place or to it being in the interests of justice for the judgment to be reconsidered.
8. Specifically, at 12(i) the Claimant says the judge 'applied a different test from one quoted'. This appears to refer to the judge's conclusion that 'the balance of hardship falls greater on the Respondent'. As the Claimant recognizes, the judge previously cited the test as being 'The balance of injustice and hardship'. The omission of the words '*injustice and*' is

insignificant. It may have been a typo or merely shorthand. It does not indicate that the incorrect test was applied. At 12(ii) the Claimant is objecting to an application that was in fact allowed. It is not in accordance with the overriding objective to consider this further. 12(iii) may be suggesting, although it is far from clear, that the judge misunderstood whether the Claimant's case was that pre-employment fees were paid *from* the Claimant or *to* the Claimant. This does not affect the relevant factors that were taken into account by the judge in determining the application, namely the need for additional witnesses and evidence.

9. Although the judge's case management order indicated that a costs order was appropriate, the amount and form of any costs order was left to be determined at a later date. No costs order has been made at the present time. It is anticipated that submissions (and potentially evidence) would be required from each party if the Respondent seeks to progress an order for costs.

Date: 17 October 2025

Approved by

Employment Judge Bennett