



EMPLOYMENT TRIBUNALS

Claimant

Mr G. Emokpae

Respondent

Foremost Care UK Limited

v

Before: Employment Judge M. Hunt

JUDGMENT ON RECONSIDERATION

1. The application for reconsideration of the judgment dated 19 September 2025 is refused.
2. The Respondent's application for costs is refused.

REASONS

3. At a hearing that concluded on 19 September 2025, I dismissed the Claimant's claim to have suffered disability discrimination contrary to sections 15 and 20-21 of the Equality Act 2010.
4. The Claimant has sought reconsideration of this decision in accordance with Part 12 of the Employment Tribunal Procedure Rules 2024 (the "Rules"). The guiding principle for me to consider is whether it is necessary in the interests of justice to reconsider the judgment. Finality of judicial decisions is an important component of the interests of justice.
5. If I consider that the Claimant has no reasonable prospect of having the judgment varied or revoked, Rule 70(2) states that I must refuse the application. Due to the length and detail provided in the Claimant's application, I decided to seek the Respondent's observations before considering that matter further.
6. Upon consideration of all of the documents, I determined that there was no reasonable prospect of the judgment (i.e. the dismissal of the claim) being varied or revoked. This is because my core finding was that the Respondent had no knowledge (whether real or constructive) of the Claimant's disability.

This was a finding of fact that was reasonable on the evidence. Both parties had the opportunity to present their case in this respect and the Tribunal must be slow to reconsider such findings. The Claimant has not presented any submissions or evidence that my finding was clearly wrong. That issue alone was determinative of the claim.

7. The Claimant had greater prospects of establishing that I might consider varying or revoking my conclusion it was not just and equitable to permit the “reasonable adjustments” claim to proceed outside the 3-month period for presenting it laid down in section 123 of the Equality Act 2010. However, that issue did not affect the outcome of the claim so it was plainly not proportionate or necessary in the interests of justice to list a hearing of that matter or to request any further submissions on it, especially in light of the detail the Claimant had already provided.
8. I will address the Claimant’s submissions in the order they were presented.

Section 60, Equality Act 2010

9. Firstly, the Claimant refers to section 60 of the Equality Act 2010, which prohibits a potential employer from making enquiries as to the health of an applicant for work. The matter was not raised at the hearing. The citation was also partial, omitting to record, firstly, that any contravention is a matter for the Equality and Human Rights Commission in the first instance and, secondly, that a potential employer is permitted to ask questions about an applicant’s ability to perform the job applied for (see sub-section (6)).
10. The context was my reference to a health questionnaire the Claimant completed at the outset of his employment indicating that he had no mobility or physical issues that would impact on his ability to perform his duties (see paragraphs 16-17 of the reasons for my judgment (the “Reasons”)). No questions were obviously irrelevant or unnecessary in establishing whether the Claimant could be charged with caring for vulnerable people. It appears the questionnaire was completed after the Claimant had already been offered employment, I may have found it was before; the precise timing was irrelevant to my decision.
11. The relevance of the matter was two-fold: (1) establishing whether the Respondent had knowledge of the Claimant’s disability (see paragraphs 39 and 75 of the Reasons) and (2) considering whether it would be just and equitable to allow the “reasonable adjustments” claim to proceed (paragraphs 88-89 of the Reasons).
12. The first point was simply a matter of fact; nothing in the questionnaire informed the Respondent of the Claimant’s health condition or disability. Section 60 of the Equality Act 2010 is more relevant to the second point to that extent that, if the Respondent should not have asked the questions, it might render any dishonesty in the Claimant’s completion of the questionnaire more excusable. However, as mentioned above, they were in my view sensible and necessary questions to ask when considering the physical and

professional domiciliary care role the Claimant was due to perform. Additionally, paragraph 89 of the Reasons addresses the importance of the Claimant's honesty and transparency about his physical limitations bearing in mind the nature of his role caring for vulnerable people, a role he knew was physically demanding. Accordingly, the reference to section 60 of the Equality Act 2010 does not change my analysis that it was not just and equitable to allow the "reasonable adjustments" claim to proceed.

13. It is worth highlighting again that this was, in any event, not the main reason for dismissing the "reasonable adjustments" claim.
14. As to the remainder of the Claimant's submissions, they largely amount to bare assertions that demonstrate a misunderstanding of the law or the decision or a failure to have properly read it in context, fairly and as a whole. None of the submissions come close to establishing it is necessary in the interests of justice to revoke or vary it.

Failure to consider evidence

15. It is clear from the Reasons that I thoroughly considered the available evidence and made findings on the balance of probabilities. Only if any of those findings were manifestly unsound will an application for reconsideration be able to succeed.
16. The Claimant appears to fail to appreciate the difference between the Respondent having knowledge of the Claimant's health condition (lipoma) and knowledge that it amounts to a disability for the purposes of the Equality Act 2010. The Respondent only knew about the former (see paragraphs 74-80 of the Reasons). The Claimant rightly says he was under no obligation to inform the Respondent of his lipoma's effects on him, or that he believes they amounted to a disability, or to provide relevant medical records. However, as he did not, he cannot then expect the Respondent to know about his disability and complain that the Respondent discriminated against him because of it.

Certificate of sponsorship

17. The timing of the certificate of sponsorship or visa application/grant was of no relevance to my decision, as specifically stated in paragraphs 46 and 90 of the Reasons.

Failure to recognise previous Tribunal finding

18. The Tribunal had previously determined that the Claimant should be considered disabled for the purposes of the Equality Act 2010 at all relevant times. The details and reasons for that finding were unclear. Nevertheless, I accepted it, as is clear from paragraphs 7, 15, 73, 74 and 80. There was no "departure" from that finding.

Failure to find "constructive" knowledge

19. As stated above and at paragraphs 74-80 of the Reasons, I found that the Respondent had no knowledge, nor could it reasonably have had, of the Claimant's disability. This was a finding of fact that I was entitled to make on the evidence. Knowledge of a lipoma does not amount to knowledge of a disability for the purposes of the Equality Act 2010. This requires knowledge of the severity of its effects and their long-term nature. Even had the Respondent known of the effects, it could not have appreciated they had lasted, or would be likely to last, for over 12 months (see paragraphs 81-82 of the Reasons). Therefore, the Respondent could not have known that the Claimant should be considered disabled.
20. The Claimant's concern amounts to a disagreement about the assessment of the evidence, which is not a good reason to reconsider my decision.

Dishonesty

21. The Claimant rightly notes his honesty in completing the health questionnaire was not especially relevant to the decision. It was only relevant to whether it would be just and equitable to allow him to present his "reasonable adjustments" claim outside the 3-month time limit provided for in section 123 of the Equality Act 2010. That claim failed principally on the basis the Respondent had no knowledge of the Claimant's disability. The limitation issue was merely an additional reason, albeit logically antecedent. This does not provide a good reason for me to reconsider my decision. Exactly when the questionnaire was completed prior to the Claimant starting work was entirely irrelevant; whether it was before or after obtaining his certificate of sponsorship would not alter my decision or analysis.

Doctor's letter, June 2023

22. This argument is misconceived. The doctor's letter stating the Claimant was "fit and well" did not alter the Tribunal's decision that the Claimant was disabled. It simply supported my finding that the Respondent did not know, and could not reasonably be expected to have known, that the Claimant was disabled.

Erroneous assessment of disability

23. The Tribunal did not consider at this hearing whether the Claimant should be considered disabled for the purposes of the Equality Act 2010. It had already been established at the previous hearing (as referred to above).

Erroneous assessment of long-term nature of symptoms

24. The Tribunal did not consider at this hearing whether the Claimant should be considered disabled for the purposes of the Equality Act 2010. It had already been established at the previous hearing (as referred to above).
25. The reference to the long-term effects of the Claimant's health condition in paragraphs 81-82 of the Reasons was to the Respondent's knowledge of the

duration of the symptoms (which would only have been relevant if I was wrong to conclude the Respondent was not aware of the severity of the symptoms). The Claimant's argument therefore, even if correct, is not a good reason for me to reconsider my decision. In any event, there was nothing arguably wrong in law about the Tribunal's assessment. As the Respondent did not know, and could not reasonably have known, that the Claimant's symptoms had lasted, or were likely to last, for over 12 months, it could not reasonably have known he should be considered disabled for the purposes of the Equality Act 2010.

26. The Claimant suggests that he continued to suffer symptoms after his operation in 2024. I am sorry to hear that. The physiotherapist's letter of 3 March 2025 (a year after the operation) that he has only now provided to me suggests those symptoms would be capable of remedy within 12 weeks by exercise. I hope that proved to be the case. This cannot and does not affect my analysis of what the Respondent knew, or could reasonably have known, at the relevant time (between May 2023 and January 2024).

Incomplete evidence

27. It is a matter for the parties to ensure they present the evidence they wish to rely on to the Tribunal. The Tribunal will only exceptionally reconsider its decision on the provision of further evidence once a decision has been made. This amounts to allowing the party a second chance to pursue their case. The interests of justice strongly support the finality of judicial decisions. I expressly considered whether I was satisfied that a fair determination could be made on the available evidence, despite "gaps" and concluded that I could (paragraph 8 of the Reasons).
28. I have considered the difficulties the Claimant said he encountered with the Respondent in preparing the hearing file. This does not fundamentally alter the analysis. In any event, the additional documents provided to me in the course of this application do nothing to detract from my findings and would not have led to a different outcome. The existence of the ultrasound scan was not known to the Respondent at the relevant time. The appeal email dated 6 December 2023 does not alter my findings about the Respondent's knowledge of the Claimant's health condition and especially the timescales involved with regard to his surgery, even if it transpires that the email was indeed sent. The first decision to dismiss the Claimant had already been made by this point, so could not have been because of his disability.

Home Office guidance

29. Both complaints were dismissed on the basis of the Respondent's lack of knowledge of the Claimant's disability. A secondary issue in the claim to have suffered discrimination arising from disability was the reason for the Claimant's dismissal. As this was secondary, arguments about it would not constitute a good reason to reconsider my judgment. In any event, I concluded that the reason the Respondent dismissed the Claimant was due to it having lost faith in him (paragraphs 53 and 94 of the Reasons). I did not

have enough information about the Home Office guidance to make any conclusions about the impact that might have had on the decision, save to note that I could not exclude it. It was therefore not material to my decision.

Sponsorship funding

30. As mentioned above, the matter of sponsorship (or its funding) was not relevant to my decision.

Further medical evidence

31. The issue of the Claimant's disability was resolved prior to the hearing before me. The key issue for me was the Respondent's knowledge of that. Any medical evidence or conditions/diagnoses that arose after the Claimant's dismissal can have no bearing on the Respondent's knowledge of his disability at the relevant time.
32. Overall, nothing in the application or further evidence provided comes close to establishing that my decision needs to be reconsidered, so it is plainly not in the interests of justice for me to do so.
33. In relation to the Respondent's application for a costs order, the basis of that was distinctly unclear, amounting to two concluding words in its submissions. The starting point is that the Tribunal is a "costs neutral" jurisdiction and there is no basis for me to depart from that at this stage.

Approved by
Employment Judge M. Hunt

Date: 23 January 2026

Sent to the parties on: 26 January 2026

For the Tribunal Office