



EMPLOYMENT TRIBUNALS

Claimant: Ms D Baker
Respondent: Bar Standards Board
Heard at: Birmingham
On: 06 October 2025 to 07 October 2025
Before: Employment Judge Smart sitting alone in public

Appearances

For the Claimant: Herself
For the Respondent: Mr T Baker (Counsel)

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

1. This was the latest hearing in a long running case.
2. The purpose of the hearing was to consider the respondent's strike out application for breaching the tribunal's order to fully particularise claim 5.1.9 in the current list of issues as at that date.
3. Judgement was given verbally at the hearing and written reasons were requested by the Claimant at that hearing.
4. Also at the hearing, the Claimant withdrew a number of the claims in the list of issues. The Judgment also dismissed those upon withdrawal.
5. The written reasons for that decision were sent to the parties on 14 November 2025.
6. Accompanying the Judgement was also a Case Management Order detailing what was discussed at the hearing and the next steps including the listing for future hearings etc.
7. On 24 November 2025, the Claimant requested a reconsideration of the judgment which was in time.

8. I was referred the reconsideration application on 1 December 2025.
9. The reconsideration is on two fronts; first the Claimant takes issue with the decision to strike out the claim at 5.1.9 of the issues. The Second, is that the Claimant believes that parts of her claim have been dismissed upon withdrawal about claims she did not withdraw and also seeks to vary the CMO when it discusses these withdrawals.

RECONSIDERATION

10. The Application for reconsideration of the strike out judgment of claim 5.1.9 is refused.
11. The interests of justice required a review of the recordings of the hearing, to progress the second part of the application about the dismissal upon withdrawal judgment. The recordings have been requested, and the parties will be updated once the recordings have been received or in a few weeks' time whichever is the sooner.

REASONS

THE LAW

“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.

(4) If the application has not been refused under paragraph (2), the judgment must be reconsidered at a hearing unless the Tribunal considers, having regard to any written representations provided under paragraph (3), that a hearing is not necessary in the interests of justice.

(5) If the Tribunal determines the application without a hearing the parties must be given a reasonable opportunity to make further written representations in respect of the application.”

12. Only a judgment of the tribunal is capable of being reconsidered. A judgment is defined as being:

“judgment” means a decision made at any stage of the proceedings (other than a decision under rule 14 (reconsideration of rejection of claim) or 20 (reconsideration of rejection of response)), which finally determines—

(a) a claim, or part of a claim, as regards liability, remedy or costs (including preparation time and wasted costs);

(b) any issue which is capable of finally disposing of any claim, or part of a claim, even if it does not necessarily do so (for example, an issue whether a claim should be struck out or a jurisdictional issue);

(c) the imposition of a financial penalty under section 12A of the Employment Tribunals Act;”

13. All other decisions that are case management orders or case management decisions which aren’t capable of finally disposing of the proceedings, should therefore be reviewed under the general case management powers.

14. It is an error of law not to first consider whether there were no reasonable prospects of the judgment being varied or revoked, before going on to hold a reconsideration hearing or seeking the submissions of the party who are responding to the application **Jarosinski v Nestle UK Limited [2023] EAT 157**. The paper sift must

be done first.

15. Reconsideration of a judgment is usually not appropriate where both parties have had a fair opportunity to present their case and the decision was made in light of all available arguments put forward **Trimble v Super Travel Limited [1982] ICR 440**.
16. Similarly, the interests of justice test is not open ended and must be exercised in a principled way and past case law cannot be ignored about it **Newcastle on Tyne City Council v Marsden [2010] ICR 743**.
17. When exercising the power, appropriate weight must be given to the principle of finality **Flint v Eastern Electricity Board [1975] ICR 395** and **Ebury Partners UK v Davis [2023] IRLR 486**. In **Ebury**, HHJ Shanks said at paragraph 24:

“...The employment tribunal can therefore only reconsider a decision if it is necessary to do so 'in the interests of justice.' A central aspect of the interests of justice is that there should be finality in litigation. It is therefore unusual for a litigant to be allowed a 'second bite of the cherry' and the jurisdiction to reconsider should be exercised with caution. In general, while it may be appropriate to reconsider a decision where there has been some procedural mishap such that a party had been denied a fair and proper opportunity to present his case, the jurisdiction should not be invoked to correct a supposed error made by the ET after the parties have had a fair opportunity to present their cases on the relevant issue. This is particularly the case where the error alleged is one of law which is more appropriately corrected by the EAT.”

Specific points in the application – GROUND 1

18. The Claimant alleges that the law about fishing expeditions had no relevance to the issues being discussed at the preliminary hearing before me and my consideration of anything other than the breach itself went further than I should have gone and further than the respondent's application. That is incorrect for the following reasons:
 - 18.1. The issues I had to decide were simply:
 - 18.1.1. Did the Claimant breach the Tribunal's orders contained in the strike out notice sent to the parties 16 December 2024 about claim 5.1.9;
 - 18.1.2. If so what effect did the non-compliance have?
 - 18.1.3. When considering that effect and especially whether a fair trial of claim 5.1.9 could still take place was it proportionate to strike out the claim and if not what else should be done about it.
 - 18.1.4. The strike out grounds applied for by the Respondent were in rule 38 (1) (a), (c) and (e) that the claimant had breach tribunal orders and claim 5.1.9 as well as others had no reasonable prospect of success. The Respondent also reserved its position about whether the Claimant's

conduct meant that it was not going to be possible to have a fair trial of the claim (at paragraph 26 of its skeleton argument).

- 18.2. The strike out notice, about allegation 5.1.9, was sent on the basis that the Claim had no reasonable prospect of success, as then pleaded.
- 18.3. Clearly, given the discussion that took place before Judge Maxwell was focussed for a large part about compliance with the strike out warning and other orders I had made about the provision of further information (see paragraphs 8 to 24 of Judge Maxwell's Case Summary).
- 18.4. Further information had been requested about allegation 5.1.9 and the Claimant had failed to supply that information in breach of the order. I make clear findings about that at, for example, paragraphs 43.2, 43.4 and 43.5.
- 18.5. The Respondent's application for breaching that order was to apply to have the claim at 5.1.9 (as well as others) struck out for breaching the order and because they have no reasonable prospects of success at paragraph 24 b. of its skeleton argument.
- 18.6. Consequently, at the hearing before me I needed to consider whether claim 5.1.9 should have been struck out for breaching my order and/or whether it had reasonable prospects of success as a result, as first indicated in the strike out warning itself.
- 18.7. When deciding whether to strike out a claim for non-compliance with an order, I needed to consider what the effect of that non-compliance was. Strike out needs to be proportionate if it is to be lawful. My findings about the effect of the breach of the order are at paragraphs 51 – 57.
- 18.8. I found that the effects of the breach were that the Claim had no reasonable prospect of success because it was missing key parts essential to the pleadings such as naming the actual perpetrators, identifying the specific dates the alleged discrimination took place and what it was that had actually happened. My conclusions about that are at paragraphs 59 – 64.
- 18.9. The effect of this was that the Claimant could not plead her case without the Respondent needing to undertake a fishing expedition, which is impermissible.
- 18.10. Overall another effect was that no fair trial of that allegation could take place because it was unfair to expect the Respondent to entertain a fishing expedition and the claim at 5.1.9 was speculative. This is why the law about fishing was included in the judgment and the law about striking out discrimination claims because they have no reasonable prospects of success.
- 18.11. In deciding whether something had no reasonable prospect of success I needed to consider the law about liability and whether without a fully pleaded case at 5.1.9 the Claimant could succeed with the pleadings in the state they

were as at the preliminary hearing. The discussion was a matter of whether the Claimant could found claim 5.1.9 in law not in fact.

- 18.12. I undertook that exercise from a legal perspective rather than a factual one because if we needed to decide the facts, then it is rarely appropriate to strike out discrimination claims as per the quoted case law. I also took the case at its highest as evidence by the words “at best” used in paragraph 61 of the judgment.
- 18.13. I decided without actual perpetrators named, that prevented an analysis of the mental processes required to determine 5.1.9. In addition, discriminatory motivation cannot be imputed to others as a matter of law. The Claimant was totally unable to say whether the two perpetrators she named (Ms Jagger and Mr Pretty) were involved in any discriminatory act. The height of her case was they simply occupied senior roles and should therefore be liable.
- 18.14. Mr Brown argued that the discriminatory motivations of others could not be imputed to the Respondent at large or any other individual after **CLFIS v Reynolds**. It was therefore impossible for the Claimant to prove facts from which the tribunal could conclude that discrimination has happened. Without the names of any actual perpetrators, she cannot prove facts about the mental processes of anyone as required by the Khan case, and with the Claimant relying on Mr Pretty and or Ms Jagger being guilty of the discrimination of unknown others simply by occupying senior job roles in the Respondent, imputing discriminatory motivation of others to them is not legally permitted after Reynolds. There are therefore at least two legal bars to the Claimant’s claim.
- 18.15. It is not possible or indeed legally permissible for me to have jumped from the breach of the order to provide further information in the strike out warning, straight to striking out the claim without first considering the effect of the non-compliance with the order and proportionality, by considering if there was a less draconian option or whether strike out was an appropriate sanction.
- 18.16. Consequently, if no fair hearing of the allegation could take place unless the respondent went on a fishing expedition for the Claimant, then another effect of her non-compliance with the order to provide information was that no fair hearing of the issue could take place.
- 18.17. The law about the impermissibility of fishing expeditions was therefore directly relevant to what I needed to decide and indeed the Respondent argued at the hearing that without the further information it could not respond to the Claimant’s case, could not identify which witnesses to call or identify what investigations were needed in response to it.
19. The Claimant alleges that the Respondent already tried to strike out the discrimination case and failed and therefore I should not have taken the approach of going into issues about the Claimant proving her discrimination case. I decide the following about that argument:

- 19.1. There is a difference between proving a discrimination case with evidence, and a pleaded allegation being legally incapable of amounting to a discrimination case. I was clearly considering the latter.
- 19.2. It was clearly incorrect for the Claimant to state that the strike out application for allegation 5.1.9 had already been refused and had failed. The Judgment about the previous strike out applications stated as follows:
- “On hearing for the Claimant in person and Mr Adeji (Counsel) for the Respondent:*
- 1. All claims of harassment are struck out because the Tribunal does not have jurisdiction to hear them under section 53 (3) of the Equality Act 2010.*
 - 2. Allegation 5.1.1 is estopped from being brought by issue estoppel and is res judicata because of the rule in Henderson v Henderson. It is therefore struck out.*
 - 3. The Claimant will be sent a strike out warning about allegation 5.1.9 in the current list of issues.*
 - 4. All other applications to strike out various claims are refused.*
 - 5. The application for a deposit order is refused.”*
- 19.3. Clearly then, the strike out application for allegation 5.1.9 was not refused and did not fail. It caused the strike out notice we are discussing here to be sent out. It was essentially deferred, as the judgment makes clear.
20. The Claimant argues it was wrong for me to look at allegation 5.1.9 in isolation rather than in the round. I disagree. If any claim for discrimination, even if it is part of an alleged series of acts or conduct extending over a period, is fundamentally flawed as a claim as a matter of law, to extent that it is not fair to try it, then the tribunal should not consider it.
21. The claimant repeatedly refers to the strike out warning as an unless order. It clearly wasn't an unless order. It did not have automatic results.
22. The Claimant alleges that I did not consider her submissions suggesting she complied with the order in any meaningful way. That is clearly not a sustainable argument in light of paragraphs 42 – 43.
23. The Claimant is simply attempting to reargue her case at paragraphs 11 – 13 of her application.
24. At paragraph 14 of her application, the Claimant alleges that I mixed up the approach to dealing with compliance with the unless order and whether her response was sufficient to prove her case. I won't repeat the point about the nature of the order. However, I was not looking at the Claimant's evidential case. I took that at its highest.

I was looking at whether she had pleaded all the aspects of the case necessary to found the claim alleged at 5.1.9 and thus whether it was capable of being successful as a matter of law. I found it wasn't. In any case, this is not a matter I can determine upon reconsideration. That strikes me as being a matter for the EAT.

25. Finally at paragraph 15 the Claimant alleges that I failed to address her compliance with the order (again erroneously labelled as an unless order) but address matters not open to me and that had already been dealt with at the September 2024 hearing. As discussed above, these arguments are clearly unsustainable in light of the judgment from the September 2024 hearing.

Conclusion GROUND 1:

26. Ultimately, if the Claimant thinks I have erred in law, then that is a matter for the EAT after **Ebury**.

27. A large part of the application for ground one is an attempt at a second bite of the cherry and reargue compliance with the strike out warning. In my view, both parties had a fair opportunity to make submissions and did so both verbally and in writing. I am content that after **Trimble**, it would therefore be inappropriate to reconsider my decision.

28. When considering the application I have considered finality as required by **Flint** and **Ebury**. I am content that for, ground one, finality prevails.

29. It is not in the interests of justice to reconsider my decision about allegation 5.1.9 and, in any case, the reconsideration application on this ground has no reasonable prospects of success. It is refused.

GROUND 2 – reconsideration of the dismissal upon withdrawal judgment and variance of the directions in the case management order

30. Ground 2 is contained in paragraphs 3 to 5 of the Claimant's application for reconsideration or variance of the CMO under rule 30.

31. Essentially, the two are linked because the CMO talks about the same issue as the second paragraph in the Judgment the Claimant wishes to have reconsidered.

32. However, the applications have different procedures, one is reconsideration of a judgment under rules 68 onwards and the other is for variance of a case management order under rule 30.

33. The Claimant says in her application that she has applied for a transcript of the hearing. That is likely to take months to be provided in my experience.

34. Consequently, I have requested the recordings of the preliminary hearing so I can review those and check the position about withdrawal, with the hope they arrive more quickly than a transcript might.

35. I have a note of the proceedings and that is what was used to produce the Judgment

and CMO.

36. However, the official note of the proceedings is the recording and, when I receive that, I will review it, find the relevant part of the hearing and proceed accordingly.

37. I am unable to set a timeline for when that will take place until I receive the recording. However, I will endeavour to give a realistic timeline and diarise for the case to be reviewed in a few week's time in any event.

Case Management Order

38. In the meantime, the Respondent is asked to comment about the Case Management Order paragraphs 3 – 5 in light of the Claimant's submissions in her application vary the directions under rule 30 stating whether that application is opposed and the reasons why or whether any part of it is conceded. **The Respondent must respond within 14 days of this Judgment being sent to the parties.**

Judgment approved by:

Employment Judge G Smart

On 24 February 2026