



## EMPLOYMENT TRIBUNALS

**Claimant:** Dr M Kulczynska

**Respondent:** AQA Education

### RECONSIDERATION JUDGMENT

**The Claimant's application for reconsideration of the Tribunal's Judgment dated 19 January 2026 striking out her race discrimination complaint is refused. The original Judgment is confirmed.**

#### REASONS

1. The Claimant applies for reconsideration of the Tribunal's Judgment that her complaint of direct race discrimination has no reasonable prospects of success and is struck out under rule 38(1)(a) of The Employment Tribunal Procedure Rules 2024.

#### **The Application for Reconsideration**

2. In email dated 31 January 2026, the Claimant sought reconsideration of the Judgment striking out her race discrimination complaint.
3. The grounds for reconsideration run to 11 pages. They refer to a wide range of issues, some of which are not in any way relevant to the reconsideration application or the proceedings before the Employment Tribunal. I refer in these reasons only to matters that are relevant to dealing with the reconsideration application which relates solely to the striking out of the Claimant's race discrimination complaint.
4. At page 2, and throughout the grounds, the Claimant refers to indirect discrimination. At page 3 the Claimant states that certain documents were not provided before the decision was made on the strike out application. At page 4 (paragraphs 5 and 6) and page 9 (at paragraph 16) the Claimant makes submissions regarding the race discrimination complaint.
5. Much of what is written in the application for reconsideration relates to the Claimant's health conditions and her disability discrimination complaints. For the avoidance of doubt, the Claimant's disability discrimination complaints were not

struck out and the proceedings in respect of those aspects of her claim continue. The Claimant also appears to refer to the making of a deposit order at page 3 of the application. Although a separate matter from the strike out Judgment, for the avoidance of doubt no deposit order has been made in this case.

## The Relevant Law

6. The rules relating to reconsideration applications are set out at 68 to 71 of The Employment Tribunal Procedure Rules 2024. Under Rule 69 an application for reconsideration must be made within 14 days of the date on which the decision (or, if later, the written reasons) were sent to the parties. The Claimant's application has been submitted within the relevant time frame. The grounds for reconsideration are only those set out in Rule 68(1), namely that it is necessary in the interests of justice to do so. On reconsideration, the original decision may be confirmed, varied or revoked. If it is revoked it may be taken again.
7. Pursuant to Rule 70(2), if the Tribunal considers that there is no reasonable prospect of the original decision being varied or revoked that application must be refused and the parties informed of that refusal.
8. There is an underlying public interest in the finality of litigation. Reconsideration is therefore not a means by which a disappointed party to litigation can get a "second bite of the cherry" if they do not agree with the original decision. In (1) *Flint v Eastern Electricity Board* [1975] ICR 395 (High Court, Queen's Bench Division) it states at 404:

*"But over and above all that (the interests of the parties), the interests of the general public have to be considered too. It seems to me that it is very much in the interests of the general public that proceedings of this kind should be as final as possible; that is should only be in unusual cases that the employee, the applicant before the tribunal, is able to have a second bite at the cherry."*
9. In *Newcastle City Council v Marsden* [2010] ICR 743 (EAT) it was said, at paragraph 17:

*"In particular, the weight attached in many of the previous cases to the importance of finality in litigation—or, as Phillips J put it in Flint (at a time when the phrase was fresher than it is now), the view that it is unjust to give the losing party a second bite of the cherry—seems to me entirely appropriate: justice requires an equal regard to the interests and legitimate expectations of both parties, and a successful party should in general be entitled to regard a tribunal's decision on a substantive issue as final (subject, of course, to appeal)."*
10. In *Ministry of Justice v Burton* [2016] ICR 1128, the Court of Appeal said, at paragraph 21:

*"... 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..."*

11. In *Outasight VB Ltd v Brown 2015 ICR D11, EAT*, Her Honour Judge Eady QC stated that the wording 'necessary in the interests of justice' gives Employment Tribunals a broad discretion to determine whether reconsideration of a judgment is appropriate in the circumstances. However, this discretion must be exercised judicially, "*which means having regard not only to the interests of the party seeking the review or reconsideration, but also to the interests of the other party to the litigation and to the public interest requirement that there should, so far as possible, be finality of litigation*".

### **Conclusions on reconsideration application**

12. In determining the strike out application, the Claimant's submissions in relation to strike out, dated 22/7/2025, which ran to 15 pages, were before me and I took them into account when reaching my decision. I also had before me further submissions made by the Claimant dated 3/8/2025, which ran to 7 pages and h were provided following the order referred to at paragraph 5 of the reasons. The Claimant's submissions were referred to and summarised at paragraphs 30 to 33 of the reasons.
13. Full reasons were provided at paragraphs 48 to 60 as to why the language cannot, in isolation from other characteristics, come within the definition of 'race' for the purposes of the Equality Act 2010. It is on that basis that the Claimant's race discrimination complaint was struck out.
14. I am satisfied that the Claimant had a fair and reasonable opportunity to put her case regarding the discreet issue that resulted in her race discrimination complaint being struck out. She made lengthy submissions on both the 22/7/2025 and 3/8/2025.
15. The Claimant refers to indirect discrimination throughout her application for reconsideration. However, even if her race discrimination complaint has been incorrectly categorised (and I make no finding on that) this would not assist her because she would still have to demonstrate that any such complaint was founded on the protected characteristic of race.
16. Whilst the Claimant has made specific reference to the race discrimination complaint at page 4 (paragraphs 5 and 6) and page 9 (at paragraph 16) of her application, there is nothing within what is said within those paragraphs which would result in the original decision being varied or revoked.
17. Having carefully considered all of the points made by the Claimant, I am satisfied that there is no reasonable prospect of variation or revocation. Acting in accordance with rule 70(2), I do not consider that the interests of justice require that the Judgment on strike out of the race discrimination complaint or its reasons be varied or revoked. The Judgment and its Reasons are confirmed.

**Case No: 3307733/2024**

Approved by:

**Employment Judge Boyes**

**Date: 13/4/2026**

Sent to the parties on:  
15 April 2026

For the Tribunal Office: