



# EMPLOYMENT TRIBUNALS

**Claimant:** Mrs V T Barran

**Respondent:** Ministry of Justice

**Employment Judge:** Mr J Macmillan (sitting alone)

## JUDGMENT ON AN APPLICATION FOR A RECONSIDERATION

The Claimant's application for a further reconsideration of a judgment dated 21<sup>st</sup> May 2015 and a judgment on reconsideration dated 23<sup>rd</sup> February 2017 is refused on the rounds that it has no reasonable prospect of success

### REASONS

1. By an application dated 10<sup>th</sup> March 2017 Mrs Barran applies for a further reconsideration of my judgment dismissing her claim and that of a colleague, Mr AJ Andrew, on the 21<sup>st</sup> May 2015 and a reconsideration of my later judgment of the 23<sup>rd</sup> February 2017 dismissing her first application, made jointly with Mr Andrew, for a reconsideration of that judgment. Mr Andrew is not a party to this renewed application.
2. The grounds of the application could be said to be that fresh evidence has come to light which casts doubt on my original decision although it is not expressly cast in that way. Accompanying the latest application is a letter from Ms Barran's former Chamber President, Judge Siobhan McGrath, to which is attached a further document which appears to be a print out of a recently generated Judicial Office computer record relating to the pension status of a former colleague of Ms Barran's, Judge Aileen Hamilton Farey. The reconsideration application turns on the single point that the computer record describes Judge Hamilton Farey's status when she held the position described in the record as 'Valuer Chairman' between 1<sup>st</sup> July 2011 and 30<sup>th</sup> June 2013 as 'fee paid' whereas I had held on the basis of largely uncontested evidence (and Ms Rachel Crasnow QC who appeared for Ms Barran had indeed submitted) that the status of former Vice-Presidents of the

Residential Property Tribunal Service, including Ms Barran and Judge Hamilton Farey, was part-time salaried.

3. In Judge McGrath's letter which is addressed to Mr David Collins of MoJ Corporate Finance and is copied to Ms Barran in her capacity as lead claimant for RPTS Vice Presidents in these proceedings, Judge McGrath sets out 10 brief extracts from my original judgment and suggests that the extract from Judge Hamilton Farey's Judicial Office record 'addresses the evidential requirements' identified by me in four of those extracts.

4. In response, the Government Legal Department on behalf of the Respondent gives 6 reasons why the renewed reconsideration application should be regarded as an abuse of process and confines its submissions on the substance of the application to the unsubstantiated claim that the extract from Judge Hamilton Farey's Judicial Office record is a clerical error – it appears to be a choice from a drop down menu presumably made by a relatively low grade civil servant.

5. There is a more fundamental objection to the application. If I may say so with great respect Judge McGrath appears to have confused two concepts. After explaining why the new evidence shows that Judicial Office regarded the Vice-President's as fee paid rather than as salaried part-timers as I had held, she states, correctly, that *'The point here is not whether the judiciary were salaried or fee paid for employment purposes ...'* but continues incorrectly *'... rather it is how they were treated for pension purposes.'* How the Vice Presidents were treated for pension purposes has never been in doubt. The issue is why they were treated in a particular way; more exactly whether they were treated in that particular way because of their part-time status. She continues: *'In the past it was not possible to pay pensions to part-time judiciary and therefore it was necessary to have specific provision in the Rent Act 1977 to provide pensions for VPs. That pension was not in relation to the judicial functions of the judiciary but in relation to their responsibilities as judicial managers.'*

6. There then follows what, given the context of the letter – the Hamilton Farey Judicial Office Record – appears to be a non-sequitor. *'Taking all of the above into account it seems to me that the reason why there was less favourable treatment for the RP[T]S salaried [ sic – she is of course now contending that they were in fact fee paid] judiciary in the provision of pension entitlement was clearly because of their part-time judicial status.'* That seems to be a contention that although the point here is not whether for employment purposes they were fee paid or part time salaried, the point is whether they were regarded by their sponsoring department as fee paid or part-time salaried and because they were regarded as falling into one category and not explains why they were denied access to the then existing judicial pension scheme. It seems to conflate the basis of payment of remuneration with the status of being part time.

7. In my judgment whether the RPTS Vice-Presidents were regarded by their sponsoring department as fee paid or salaried part timers is wholly beside the

point. To claim, as Judge McGrath apparently does in her letter, that it is the key to the question of why access to a judicial pension was denied to the VPs, is a contention based on labelling rather than substance. The Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000 protects workers against less favourable treatment on the grounds of their status as part-timers not the basis on which they were remunerated. The basic facts remain unchanged. The VPs were part-timers but working a fixed number of days per week. Their remuneration – which was fixed and therefore appeared to be a salary - was a multiplier of the daily sitting fee of lawyer chairs within their jurisdiction with a responsibility uplift and they were denied access to the then existing judicial pension scheme, being granted instead individual pension arrangements. I briefly set out in the original judgment the history of the development of the tribunal system in this country and I accepted the Respondent's contention that the explanation for the denial of access to the judicial pension scheme lay in that history. Whether the VPs were or were not in fact, or were or were not regarded as being, either fee paid or part-time salaried can have no bearing on that historical explanation which was upheld on appeal as justifying my finding that the reason for the less favourable treatment was not their status as part-timers.

8. I regard the new point as being without substance and as having no reasonable prospect of success. The application for a reconsideration is therefore refused.

Employment Judge Macmillan  
25 May 2017