



# EMPLOYMENT TRIBUNALS

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## BETWEEN:

Mr K Dargle  
**Claimant**

and

University of Leicester  
**Respondent**

## **Application for Reconsideration**

Held at: In Chambers

On: 10 February 2021

Before: **Employment Judge R Clark**

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## **JUDGMENT**

1. The Claimant's application for reconsideration of the judgment dated 15 December 2020 is refused.

## **REASONS**

1. At a remote hearing on 15 December 2020, I gave judgment striking out the claimant's claims of direct race discrimination and harassment related to race. The written judgment was sent to the parties on 17 December 2020. By an email dated 25 December 2020, the claimant applied for a reconsideration of that judgment. The application is brief. It says: -

*"I would like the Tribunal to reconsider the judgments. I would like this to be done on the basis of bullying occasioning constructive dismissal without reference to race."*

2. Such an application falls to be considered under rules 70-72 of schedule 1 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013. By rule 71, an application for reconsideration must be made in writing within 14 days of the decision being sent setting out why reconsideration of the original decision is necessary. The claimant's email application was submitted in time.
3. By rule 70, the tribunal may reconsider any judgment where it is necessary in the interests of justice to do so and, if it decides to do so, may vary, revoke or confirm the original decision. There is now a single threshold for making an application. That is that reconsideration is necessary in the interests of justice. There must therefore be something about the nature of how the decision was reached, either substantively or procedurally, from which the interests of justice would be offended if the original decision was allowed to stand.
4. By rule 72(1) I am to give initial consideration to the prospects of the application which determines whether it is necessary to seek the views of the respondent and whether the matter can be dealt with on paper or at a further hearing before the same tribunal. Where the application can be said to carry no reasonable prospects of being varied or revoked, the rules dictate that I shall refuse the application without being required to consider the matter further.
5. I am satisfied that there are no prospects at all of the original decision being varied or revoked. First, the application for reconsideration does not challenge the determination of the claim related to the protected characteristic of race. As that was the focus of the claim and the question of its reasonable prospects, there is nothing before me to engage with. What the application seems to be suggesting is that the claim should be viewed instead as a claim of bullying occasioning constructive dismissal. There are a number of reasons why that will not result in a successful reconsideration.
6. First, there are no stand-alone claims of "bullying" or "constructive dismissal" that can be presented to the Employment Tribunal. Claims must be framed within one or other statutory cause of action for which the tribunal has jurisdiction. Both could form the underlying facts of various prohibited forms of discrimination. As that has been considered and struck out, it cannot simply be re-run and, in any event, it is explicit in the application that the claimant is seeking to remove the question of race from the equation.
7. Another obvious cause of action would be unfair dismissal and I suspect that may be what the claimant means. That cause of action was not claimed and was not, therefore, considered at the preliminary hearing. It is not possible to amend a claim that has been struck out but even if the claimant had sought to bring a claim of bullying occasioning (constructive) dismissal, he did not have the necessary two year's qualifying service and none of the limited exceptions would have applied on the facts. Such a claim would therefore have been doomed to be dismissed. Even ignoring that, I cannot see that the

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claimant resigned in response to a breach of a term of the contract of employment such that it is impossible to make sense of an allegation of constructive dismissal.

8. Consequently, I refuse the application for reconsideration.

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Employment Judge R Clark  
Date: 10 February 2021

JUDGMENT SENT TO THE PARTIES ON  
11 February 2021  
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FOR SECRETARY OF THE TRIBUNALS