EMPLOYMENT TRIBUNALS

Considered at: **London South** **On: 6 June 2025**

By: **Employment Judge Ramsden**

In the matter of Mr J Atkinson v SGN Contracting Limited

Consideration of judgments reached on: 22 April 2025 (liability) and 3 May 2025 (costs)

JUDGMENT ON RECONSIDERATION

1. The Claimant's application for reconsideration of the liability judgment dismissing his claim with case number 2304651/2022 and upholding the Respondent's counterclaim with case number 2305010/2023 given in this matter on **22 April 2025** is refused. The Claimant has no reasonable prospect of the judgment being varied or revoked. The decision in that judgment is confirmed.

2. In that same application the Claimant also applied for reconsideration of the Tribunal's judgment on the Respondent's application for costs given in this matter on **3 May 2025**. The Claimant has no reasonable prospect of the judgment being varied or revoked. The decision in that judgment is confirmed.

BACKGROUND

3. Following a period of ACAS Early Conciliation which began on 24 September and ended on 5 November, both of 2022, the Claimant presented a claim to the Employment Tribunal on 5 December 2022 (the **Claim**), which was given the case number 2304651/2022 by the Tribunal.

4. In the Claim the Claimant said that:

   a) He was constructively unfairly dismissed by the Respondent;

   b) He was owed pay in lieu of the holiday that he had accrued but not taken on the termination of his employment;

   c) He was wrongfully dismissed and was owed notice pay; and

d) The Respondent made unauthorised deductions from his wages, or alternatively breached his contract of employment by the amount he was paid, in respect of a period of sick leave when the Claimant was not paid in full when he says he should have been.

5. In its Response, presented on 15 February 2023, the Respondent both resisted these complaints and presented a counterclaim, seeking:

a) Repayment of the sick pay paid to the Claimant by it in the period 7 March 2022 to 29 August 2022. The Respondent says that it offset some of that sick pay against the payment in lieu of accrued but untaken holiday that the Claimant would otherwise be entitled to, so it sought repayment of the balance of £2,746.97; and

b) The value of its property which it says the Claimant retained, amounting to £5,625.42

(the **Counterclaim**). This was given the case number 2305010/2023 by the Tribunal.

6. The Counterclaim was served on the Claimant by the Tribunal on 19 September 2023. The Claimant was informed that if he wished to contest it he would need to send a response within the next 28 days (i.e., on or before 16 October 2023). The Claimant did not send a response to the Counterclaim.

7. Judgment was given on the Claim and the Counterclaim orally on 2 April 2025. The Claimant requested written reasons, and those were completed on 22 April 2025 and promulgated by the Tribunal on 29 April 2025.

8. The Respondent made an application for costs on 2 April 2025. The Tribunal Ordered the Claimant to send a statement of means, which he did on 13 April 2025. The Tribunal's decision on the Respondent's costs application was made on 3 May 2025, and sent to the parties on 8 May 2025.

APPLICATION

9. On 9 May 2025 the Claimant applied to revoke the costs judgment in a five page letter (the **First Application**).

10. On 12 May 2025 the Claimant applied for an extension of time to present an application for reconsideration, citing:

a) An unforeseen domestic disruption; and

b) Ongoing mental and physical health challenges.

11. The Claimant applied, under Rule 69 of the Employment Tribunal Procedure Rules 2024 (the **ET Rules**), for reconsideration of the decision on liability promulgated on 29 April 2025, and the decision on costs was sent to the parties

on 8 May 2025 in a 66-page document with a four page cover letter (the **Second Application**). The Claimant's Second Application was made on 20 May 2025.

12. The Claimant's reasons for applying for reconsideration of the liability decision are that:

    a) Ground 1: The Tribunal reached the wrong decision on the evidence;

    b) Ground 2: The Tribunal failed to engage with the statutory protections afforded to the Claimant by sections 43B, 44, 98, 100 and 103A each of the Employment Rights Act 1996 (the **1996 Act**);

    c) Ground 3: The Tribunal failed to give adequate or *Meek*-complaint reasons;

    d) Ground 4: There was no legal basis for the success of the Counterclaim given, the Claimant says, section 9 of the Health and Safety at Work Act 1974 prohibits an employer from charging an employee for personal protective equipment or safety equipment (**PPE**);

    e) Ground 5: The Tribunal failed to allow proper agreement of a List of Issues, instead adopting the Respondent's framing, which resulted in whistleblowing, rota safety breaches and occupational health failures being sidelined;

    f) Ground 6: The Claimant's expert background in gas safety, health and safety and regulatory practice was disregarded by the Tribunal;

    g) Ground 7: The Tribunal failed to take account of the impact that the Respondent's placement of a job advert on the side of its van on the Claimant's driveway had on the breakdown of the relationship between him and the Respondent;

    h) Ground 8: The Tribunal inferred that the Claimant had been dishonest in relation to the Fit Notes he submitted to the Respondent, but Fit Notes are known for being generally vague and lacking in clarity;

    i) Ground 9: The Respondent acknowledged that, at law, it is possible for an employee to be off sick from work with one employer and to lawfully undertake work for another, and this is what the Claimant did. It was inappropriate for the Tribunal to conclude that that breached the Claimant's contract of employment with the Respondent;

    j) Ground 10: The Tribunal failed to consider the cumulative nature of the Respondent's breaches of the Claimant's contract of employment;

    k) Ground 11: The Claimant's request for the hearing venue to be moved was ignored or dismissed without explanation;

    l) Ground 12: The Tribunal repeatedly lost, left off the file, or left unanswered correspondence from the Claimant, whereas all correspondence sent by

the Respondent received immediate replies. This disparity gives an appearance of procedural bias;

m) Ground 13: The Tribunal failed to make adjustments sought by the Claimant to the conduct of the hearing;

n) Ground 14: The Claimant requested a preliminary hearing to deal with procedural issues including a strike-out application, a possible unless order and other directions to cure procedural defects;

o) Ground 15: The Respondent was permitted to serve key documents late in the preliminary hearings; and

p) Ground 16: The Tribunal misapplied the burden of proof to the Claimant's constructive unfair dismissal complaint. Once the Claimant showed that his resignation was in response to a potential breach by the Respondent, it is for the Respondent to show a fair reason and that it acted reasonably in all the circumstances.

13. The Claimant's reasons for applying for reconsideration of the costs decision are that:

In the First Application:

a) Ground (A): The costs judgment is based on a flawed statement that no evidence of means was provided;

b) Ground (B): The costs application was considered by the Tribunal immediately after judgment was given, with no opportunity for further reply or hearing;

c) Ground (C): The Tribunal did not consider repayment terms, despite that being raised; and

d) Ground (D): The costs in the Counterclaim are inflated;

In the Second Application:

e) Ground (I): The Tribunal made no findings of vexatious or unreasonable conduct on the part of the Claimant;

f) Ground (II): The Tribunal made no analysis as to the Claimant's means;

g) Ground (III): There was a public interest basis for the claims;

h) Ground (IV): The Tribunal relied on the Claimant's resistance of the Counterclaim as a basis for imposing costs when there was no basis for the part of the Counterclaim that related to the return of PPE;

i) Ground (V): The costs award was disproportionate to the value of the items in question;

j) Ground (VI): The costs decision was procedurally flawed; and

k) Ground (VII): The Claimant was not afforded a fair opportunity to respond to the costs application.

14. The Tribunal has not received any representations on these applications from the Respondent, and nor has the Tribunal requested any.

LAW

A judgment must explain why a party has won or lost

15. Rule 60(7) provides that the reasons contained in a (written or oral) judgment must:

> "*(a) identify the issues which the Tribunal has determined,*
>
> *(b) state the findings of fact made in relation to those issues,*
>
> *(c) concisely identify the relevant law, and state how that law has been applied to those findings in order to decide the issues, and*
>
> *(d) where the judgment includes a financial award, identify by means of a table or otherwise, how the amount to be paid has been calculated*".

16. This rule, or its then-equivalent, was considered by the Court of Appeal in *Meek v City of Birmingham District Council* [1987] IRLR 250. The Court held that a tribunal decision:

> "*must contain an outline of the story which has given rise to the complaint and a summary of the Tribunal's basic factual conclusions and a statement of the reasons which have led them to reach the conclusion which they do on those basic facts. The parties are entitled to be told why they have won or lost. There should be sufficient account of the facts and of the reasoning to enable an appellate court to see whether any question of law arises.*"

Reconsideration

17. The Rules on reconsideration are set out in Rules 68 to 71 of the ET Rules.

18. Rule 68 provides as follows:

> "***Principles***
>
> *(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 on 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.*"

19. The requirement that tribunals should only reconsider decisions if it is "*necessary in the interests of justice to do so*" has been considered by a number of cases. One recent example is the decision of the EAT in *Ebury Partners UK Ltd v Acton Davies* [2023] IRLR 486, where Shanks J held:

"*The employment tribunal can 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 tribunal 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*".

20. Similarly Simler P observed in *Liddington v 2Gether NHS Foundation Trust* EAT/0002/16 that:

"*Where, as here, a matter has been fully ventilated and properly argued, and in the absence of any identifiable administrative error or event occurring after the hearing that requires a reconsideration in the interests of justice, any asserted error of law is to be corrected on appeal and not through the back door by way of a reconsideration application.*"

21. Rule 69 sets out the conditions on which a party may make an application for reconsideration:

"***Application***

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."

22. Rule 70 deals with the process the tribunal must follow regarding an application made under Rule 69:

"***Process for reconsideration***

(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… 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…".

23. On time limits, Rule 5 includes the following:

"***Time***

...

(3) Where any act is required to be, or may be, done within a certain number of days of or from an event, the date of that event must not be included in the calculation. (For example, a response must be received within 28 days of the date on which the respondent was sent a copy of the claim: if the copy of the claim was sent on 1st October the latest date for receipt of the response by the Tribunal is 29th October).

…

(7) The Tribunal may, on its own initiative or on the application of a party, extend or shorten any time limit specified in these Rules or in any decision, whether or not (in the case of an extension) it has expired."

JURISDICTION TO RECONSIDER THE JUDGMENTS REACHED

<u>The timing of the applications</u>

24. The First Application, of 9 May 2025, was made within the timeframe specified in Rule 69.

25. The Second Application, of 20 May 2025, was made outside the timeframe specified in Rule 69 in respect of the liability judgment, and within the timeframe specified in Rule 69 in respect of the costs judgment.

26. The Claimant's application of 12 May 2025 for an extension of time made under Rule 5(7) to present an application for reconsideration in respect of the liability judgment is to be assessed in light of the interests of justice. The Claimant cites two bases on which his says the extension should be granted: a domestic disruption, and ongoing physical and mental health challenges. It is not in the interests of justice to extend time in relation to the latter, as the Claimant has

provided no evidence of any health challenges he is facing. As for the former, there can be little more evidence provided by the Claimant than his say-so that he has experienced a domestic disruption, and on that basis the Tribunal considers that it *is* in the interests of justice that the extension be granted.

"Necessary in the interests of justice"

27. Rule 68 also refers to the power of the Tribunal to reconsider being conditional on it being "*necessary in the interests to do so*". This is effectively an examination of the merits of the bases for the applications, and so that is considered in the Reasons section below.

REASONS

28. Each of the Claimant's grounds for seeking reconsideration of the liability judgment is considered in turn below.

Ground 1: The Tribunal reached the wrong decision on the evidence

29. The Claimant has presented no new evidence. His application on this ground is seeking to relitigate the case that has been heard and determined. The arguments made by the Claimant in the hearings were properly ventilated. It is not in the interests of justice to give the Claimant a "second bite at the cherry" and revisit those decisions (*Ebury*, *Liddington*).

Ground 2: The Tribunal failed to engage with the statutory protections afforded to the Claimant by sections 43B, 44, 98, 100 and 103A of the 1996 Act

30. The reason the Tribunal did not engage with the statutory protections in sections 43B, 44, 100 and 103A of the 1996 Act is that complaints under those provisions did not form part of the Claimant's claim. The Claimant had applied to amend the Claim to include complaints of those kinds, but that application was rejected by EJ Truscott KC at a Preliminary Hearing on 7 September 2023, and it was not open to me to revisit that decision. It is also noteworthy that the Claimant did not appeal EJ Truscott KC's decision.

31. The Tribunal did engage with the statutory protections afforded to the Claimant by section 94 (and so 98) of the 1996 Act. That was the Claimant's complaint that he was constructively unfairly dismissed, which formed a significant part of the liability judgment reached.

Ground 3: The Tribunal failed to give adequate or Meek-complaint reasons

32. The Claimant has failed to say why the Tribunal did not give *Meek*-compliant reasons. The liability judgment outlines the issues, the findings of fact, the relevant law, how the law has been applied, and how the financial award for the Counterclaim has been calculated.

Ground 4: There was no legal basis for the success of the Counterclaim given the Health and Safety at Work Act 1974 prohibits an employer from charging an employee for personal protective equipment or safety equipment

33. This ground is an attempt to relitigate a point that was raised, considered and determined in the liability judgment – see paragraphs 20.d.iv and 164. This is not a basis on which it is appropriate for a judgment to be reconsidered (*Ebury* and *Liddington*).

Ground 5: The Tribunal failed to allow proper agreement of a List of Issues, instead adopting the Respondent's framing, which resulted in whistleblowing, rota safety breaches and occupational health failures being sidelined

34. A list of issues is a case management tool. The scope of the Claimant's claim was set by his Claim Form and by subsequent permission granted to him by EJ Truscott KC to amend his claim, and whilst the Claimant had applied for it, that permission did not extend to complaints pertaining to whistleblowing or health and safety matters. As noted in Ground 1 above, it was not open to the Tribunal at the Final Hearing to reopen EJ Truscott's decision to refuse the Claimant's application to amend his claim to include those matters.

Ground 6: The Claimant's expert background in gas safety, health and safety and regulatory practice was disregarded by the Tribunal

35. The Claimant's expertise in matters of gas safety, health and safety and regulatory practice was not considered, and was not relevant to the complaints to be determined.

Ground 7: The Tribunal failed to take account of the impact that the Respondent's placement of a job advert on the side of its van on the Claimant's driveway had on the breakdown of the relationship between him and the Respondent

36. The Claimant says that the Tribunal failed to give sufficient weight to the impact that the placement by the Respondent of a job advert on its van, when that van was sitting on the Claimant's during his sickness absence, had on the relationship between the Respondent and the Claimant. The Respondent acknowledged that this caused upset, and at the time said it would apologise, but that apology was never forthcoming.

37. While that is a matter to be regretted, neither the van incident nor the failure of the Respondent to apologise after saying it would was pled by the Claimant as a breach of contract, or a matter that, together with the other matters he relied on, collectively amounted to a breach of contract.

Ground 8: The Tribunal inferred that the Claimant had been dishonest in relation to the Fit Notes he submitted to the Respondent, but Fit Notes are known for being generally vague and lacking in clarity

38. The Tribunal did more than *infer* that the Claimant was dishonest when submitting fit notes to the Respondent while working for Centrica – it found that *he was in fact* dishonest. The Fit Notes he submitted stated clearly that he was *unfit for work* – that assertion was evidently incorrect when the Claimant was able to work for Centrica at the same time.

39. The Tribunal does not agree with the Claimant's contention that Fit Notes are generally vague and lacking in clarity. This aspect of Fit Notes (the aspect relied on by the Tribunal in its liability judgment) is very clear – it involves the person signing the Fit Note choosing between one of two optional boxes to advise the person to whom the certificate is presented that the Patient either:

    a) Is "*not fit for work*"; or

    b) "*may be fit for work taking account of the following advice*".

40. The certificates supplied by the Claimant to the Respondent while he was working for Centrica had the first option selected. They clearly stated that the Claimant was "*not fit for work*", which was untrue.

Ground 9: It was inappropriate for the Tribunal to conclude that that breached the Claimant's contract of employment with the Respondent by working for Centrica given that the Respondent acknowledged that, at law, it is possible for an employee to be off sick from work with one employer and to lawfully undertake work for another

41. The Tribunal found that it was the Claimant's actions in:

    a) In entering into a contract with Centrica that committed him to working for Centrica in hours of work when he was contractually bound to be available to work for the Respondent; and

    b) Fraudulently telling the Respondent that he was unfit for work at a time when he was working for someone else,

    that fundamentally breach his contract of employment with the Respondent (see paragraph 100 of the liability judgment). The fact that it may be possible for 'a person' to lawfully work for another employer while on sick leave from their first employer is not relevant. Here, the Claimant breached a fundamental term of his contract of employment with the Respondent by not being available to work in the hours he was obliged to, and by fraudulently claimed sick pay from it by telling it that he was unfit for work when he was fit for some work.

Ground 10: The Tribunal failed to consider the cumulative nature of the Respondent's breaches of the Claimant's contract of employment

42. The Tribunal found that none of the averred breaches occurred, so there was no cumulative effect to consider (see paragraph 150 of the liability judgment).

Ground 11: The Claimant's request for the hearing venue to be moved was ignored or dismissed without explanation

43. The Claimant had requested, ahead of the Final Hearing, that the tribunal venue be changed, but he withdrew that request on 17 February 2025, and so the Tribunal at the Final Hearing did not engage with that withdrawn request.

Ground 12: The Tribunal repeatedly lost, left off the file, or left unanswered correspondence from the Claimant, whereas all correspondence sent by the Respondent received immediate replies. This disparity gives an appearance of procedural bias

44. It is a matter of regret, but a feature of a significant caseload, that the London South Employment Tribunal can take some time to reply to correspondence from parties. Correspondence received by the Tribunal is triaged by HMCTS (not employment judges) to identify the most urgent matters so that they get the first attention of the duty employment judges. The levels of correspondence from the parties to cases assigned to this region varies at different times. The system is not always perfect, nor as efficient as would be desired, and it is unfortunate that this has left the Claimant with the impression that his correspondence was not treated with the same priority as the Respondent's. However, the Tribunal notes that there was also correspondence from the Respondent that was not responded to in a timely manner by the Tribunal.

45. The Employment Judge is the only person who took decisions on the merits of the Claim and Counterclaim. Those members of HMCTS who took decisions about the relative priorities of correspondence to the Tribunal were not involved in decisions on the merits of the Claim and Counterclaim.

46. If the Claimant's concern is that there were procedural points made by him that were not answered, that is not the Employment Judge's understanding. Significant time was given to dealing with preliminary matters at the outset of the hearing, and both parties indicated that all such matters had been dealt with before the Claimant, the first witness the Tribunal heard from, was called to give evidence. His evidence began at 15:42 on the first day of the hearing, after nearly a whole day spent considering and dealing with preliminary matters. The Employment Judge understood that there were no unresolved preliminary matters at that time.

Ground 13: The Tribunal failed to make adjustments sought by the Claimant to the conduct of the hearing

47. As recorded in paragraph 11 b of the liability judgment, the only adjustment sought by the Claimant was more regular breaks, and paragraph 12 records the Employment Judge's recollection that "*there were instances when the Claimant asked for additional breaks, and times when he was asked by the Employment Judge if he needed a break in light of upset or signs stress he was displaying. Every break requested by the Claimant was accommodated*".

Ground 14: The Claimant requested a preliminary hearing to deal with procedural issues including a strike-out application, a possible unless order and other directions to cure procedural defects

48. As noted above, all procedural matters were dealt with at the outset of the Final Hearing. There was no need for those to be dealt with by way of a separate hearing.

Ground 15: The Respondent was permitted to serve key documents late in the preliminary hearings

49. The decisions taken in the Preliminary Hearings are not this Employment Judge's to reconsider.

50. The only party which sought permission for late service and admission into evidence of documentary evidence in the Final Hearing was the Claimant, and some of those documents were admitted into evidence, and some refused.

Ground 16: The Tribunal misapplied the burden of proof to the Claimant's constructive unfair dismissal complaint. Once the Claimant showed that his resignation was in response to a potential breach by the Respondent, it is for the Respondent to show a fair reason and that it acted reasonably in all the circumstances

51. This is not an accurate statement of the law, and nor did the Claimant persuade the Tribunal that he resigned in response to a potential breach by the Respondent.

52. **For these reasons the Claimant has no reasonable prospect of the liability judgment being varied or revoked on the basis of Grounds 1 to 16 (inclusive).**

53. In relation to the costs judgment, again, each of the Claimant's grounds for seeking reconsideration of that judgment has been considered below.

In the First Application:

Ground (A): The costs judgment is based on a flawed statement that no evidence of means was provided

54. As described and explained in paragraph 75 of the costs judgment, the Tribunal recognised that the Claimant had made statements as to his means, but decided not to take the Claimant's statements into account.

Ground (B): The costs application was considered by the Tribunal immediately after judgment was given, with no opportunity for further reply or hearing

55. After oral judgment was given on liability on 2 April 2025, the Respondent raised the issue of costs. The Employment Judge explained that she considered herself

bound to consider costs in any event. The Employment Judge took some time to read Rule 74(2) to the Claimant, and to explain the three questions she would be considering in connection with the matter of costs. A break of 1 hour and 40 minutes then followed to allow the Claimant time to consider that Rule, and the questions the Employment Judge had outlined. Upon the resumption of the hearing, the Claimant confirmed he had had time to read the Rule and engage with the questions outlined.

56. After the Respondent made its application, the Claimant made representations in response, and then the Respondent replied to the Claimant's representations, and the Claimant had a further right of reply, which he used. After that point, the Employment Judge asked if either party wanted to say anything more, and the Claimant confirmed that he had said all he needed to say.

57. The Employment Judge had Ordered the Claimant to produce a statement of means, which he did on 15 April 2025. The Claimant included representations on the Respondent's costs application in that document, and those were considered by the Employment Judge in reaching a decision on costs.

Ground (C): The Tribunal did not consider repayment terms, despite that being raised

58. The Employment Judge took thorough notes of the representations made by the Claimant, and she does not recall, and nor do her notes record, this having been raised by the Claimant.

Ground (D): The costs in the Counterclaim are inflated

59. The Claimant provides no explanation for this assertion, or evidence to support it. He did not challenge the property valuations provided by the Respondent ahead of the Final Hearing in that hearing.

In the Second Application:

Ground (I): The Tribunal made no findings of vexatious or unreasonable conduct on the part of the Claimant

60. The Tribunal *did* find that the Claimant had behaved vexatiously and unreasonably. Those findings are described in paragraphs 67 to 69 (inclusive) in the costs judgment.

Ground (II): The Tribunal made no analysis as to the Claimant's means

61. The Tribunal did not analyse the Claimant's means, but nor is it obliged to do so. As the costs judgment sets out, Rule 82 provides that the Tribunal "may" have regard to the paying party's ability to pay, but there is nothing in that rule or the case law that obliges it to do so in the circumstances found by the Tribunal to apply. This is explained in paragraphs 74, 75 and 79 (inclusive) of that costs judgment.

Ground (III): There was a public interest basis for the claims

62. The Claimant says that the costs judgment is unjust because there was a public interest basis for his claims. The Tribunal disagreed that there was any merit at all in the Claimant's claims, and in fact concluded that it was clear to the Claimant at the outset that his complaints had no reasonable prospect of success.

Ground (IV): The Tribunal relied on the Claimant's resistance of the Counterclaim as a basis for imposing costs when there was no basis for the part of the Counterclaim that related to the return of PPE

63. As for Ground 3 of the liability judgment, the Claimant's argument that the part of the Counterclaim that related to the return of PPE was unlawful was aired, considered and determined at the liability hearing. It is not a matter that is suitable for reconsideration (*Ebury* and *Liddington*).

Ground (V): The costs award was disproportionate to the value of the items in question

64. The Claimant has provided no evidence for his assertion that the costs award was disproportionate. In the liability hearing the Claimant did not challenge the valuation of the items of property by the Respondent. In Application 2 the Claimant says the value he believes should apply to one of those items, but the determination in the judgment was that there were eight items belonging to the Respondent that were not returned by him.

65. The Respondent provided evidence that it had in fact incurred more than £90,000 worth of costs, but as it was only seeking a costs award on a summary basis it only requested £20,000 worth of costs. The costs award made was not disproportionate in the context of the work that would have been involved in resisting a Claim that was totally without merit from the outset, and where the Claimant had taken steps that increased the costs that the Respondent incurred (such as his misconceived strike-out application).

Ground (VI): The costs decision was procedurally flawed

66. It is assumed that the procedural flaws the Claimant refers to in his application are those listed under the other Grounds for reconsideration of the costs judgment, each of which the Tribunal considers to be without foundation.

Ground (VII): The Claimant was not afforded a fair opportunity to respond to the costs application

67. The Claimant confirmed in the hearing at which the costs application was made and responded to that he had said all he needed to say in response to the Respondent's application. Furthermore, the Claimant sent his statement of means to the Tribunal on 13 April 2025 he set out 19 numbered points as to why the costs application should be rejected, and those matters were considered by the Tribunal before judgment of the Respondent's application was made.

68. **For these reasons, the Claimant has no reasonable prospect of the costs judgment being varied or revoked on the basis of any of Grounds (A) to (D) or (I) to (VII) (inclusive).**

DECISION

69. For the reasons set out above, the Claimant's applications for reconsideration fail and the decisions made on liability and costs are confirmed.

Employment Judge Ramsden

Date 6 June 2025

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