



# EMPLOYMENT TRIBUNALS

**Claimant: YR**

**Respondent: ZU**

## JUDGEMENT ON RECONSIDERATION

The claimant's application dated **3 February 2025** for reconsideration of the judgment sent to the parties on **9 December 2024** is refused.

## REASONS

### Introduction

1. By application dated 3rd February 2025 the claimant applied for reconsideration of the tribunal's judgment in this case.
2. It is a matter of regret that determination of the application has taken so long. It may be helpful to briefly set out the reasons for the delay.
3. The application was referred to me on 11 March 2025. Upon reviewing the application it became apparent to me that the claimant had not copied her application to the respondent and that some of the documents which the claimant sought to rely upon were covered by legal professional privilege and would potentially be detrimental to the claimant's position if they were disclosed

to the respondent (since they contained advice to the claimant that she likely to lose her claim and would be ordered to pay the respondent's costs). I, therefore, gave directions that the claimant should confirm whether she was content for the documents which she had attached to her application to be sent to the respondent. That direction was communicated to the parties on 18 March 2025, but did not set out that my concern that the documents appeared to be covered by legal professional privilege. The claimant replied, on 20 March 2025, indicating that she was content for the tribunal to forward the documents to the respondent and, on 16 April 2025, a legal officer directed that the documents be forwarded to the respondent and provide comment.

4. The respondent replied on 7 May 2025 and the matter came to my attention again. Upon reviewing the file it became apparent to me that only one page of the claimant's 62 page application had been sent to the respondent. I also noted that it had been premature to ask the respondent to comment on the application until the tribunal had considered the application under rule 70 The Employment Tribunal Procedure Rules 2024.
5. If the claimant wanted tribunal to consider all 62 pages when it made its initial determination under rule 70, it remained necessary for those documents to be sent to the respondent. However, I remained concerned about the question of legal professional privilege and given that the direction sent to the parties on 18 March 2025 did not state that the documents were likely to be covered by legal professional privilege, I directed that a detailed review of the current position be sent to the parties, which was sent on 12 May 2025.
6. The claimant replied on 26 May 2025, to confirm that she did wish to rely upon all of the documents and I directed that they be sent to the respondent in those circumstances.
7. I now proceed to deal with the merits of the application.

## **The Law**

8. An application for reconsideration is made pursuant to rule 68 The Employment Tribunal Procedure Rules 2024, which provides as follows.

*68. A 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. On reconsideration, the decision ("the original decision") may be confirmed, varied or revoked. If it is revoked it may be taken again*

9. The application for reconsideration is made under rule 69 of the rules. An application should be made within 14 days of the date on which the written record was sent to the parties.
10. The process under rule 70 is for the tribunal to consider the application and determine, first, whether it considers that there is no reasonable prospect of the

original decision being varied or revoked. If the tribunal is of that view, the application must be refused otherwise the views of the other parties to the case must be sought.

11. In approaching the application for reconsideration I have considered the cases of *Flint v Eastern Electricity Board* [1975] ICR 395 and *Outasight VB v Brown* [2015] ICR D11. The principles set out in those judgments are helpfully summarised in the more recent case of *Ministry of Justice v Burton* [2016] ICR 1128, where at paragraph 21 the Court of Appeal stated “An employment tribunal has a power to review a decision “where it is necessary in the interests of justice”: see rule 70 of the *Employment Tribunals Rules of Procedure* 2013. This was one of the grounds on which a review could be permitted in the earlier incarnation of the rules. However, as Underhill J pointed out in *Newcastle upon Tyne City Council v Marsden* [2010] ICR 743, para 17 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; and in *Lindsay v Ironsides Ray & Vials* [1994] ICR 384 Mummery J held that the failure of a party’s representative to draw attention to a particular argument will not generally justify granting a review. In my judgment, these principles are particularly relevant here”

## **Analysis**

12. The claimant’s application is substantially out of time. Nevertheless the tribunal has the power to extend any time limit specified by the rules pursuant to rule 5. At this stage I am simply considering whether the application has a reasonable prospect of success. I will consider the application on the basis that I assume, in the claimant’s favour, that she has a reasonable prospect of succeeding in an application for extension of time.
13. The claimant’s application dated 3 February 2025 lists a number of “issues” by way of bullet point being:
- Health struggles
  - Recent bereavement
  - Interruptions of internet connection on email service
  - Disappearance of emails sent (no evidence in outbox to verify send)
  - Document attachment failures
  - Functionality of file transfer site
  - Ability to follow how to upload documents to E-Filing, although an account was created to do so
  - Hardware issues

- Consumables expenses

14. The application does not state in what way those matters should cause the tribunal to reconsider its decision. Most of those matters were not raised in the course of the hearing although the claimant's health struggles were referred to. As set out in the judgment, the claimant was told that she could move around during the hearing and ask for breaks at any time and if at any point she did not understand any part of the process or any question, she should feel free to ask for guidance. An additional full set of bundles was made available for the claimant's use at the hearing, and she was permitted to remain in the tribunal room during breaks. On one occasion she asked a clerk to heat her scarf on the radiator for her, which the clerk did.
15. The claimant's need to attend a medical appointment was accommodated. The claimant indicated that she did not seek an adjournment of the final hearing.
16. Form T444 states that the tribunal's judgment contained a number of factual errors and that the claimant is making a note of those as she reads through the judgment but they have not been provided to the tribunal. The Form also states that the claimant could not follow the bundle. The claimant indicated during the course of the hearing, on a number of occasions, that she had not read the bundle but also indicated that she was not seeking an adjournment of the hearing. I explained to the claimant that she could send or bring to the tribunal any documents which she wanted it to look at and make applications for disclosure.
17. T444 also states that the respondent's witnesses were sitting in court (the tribunal) looking at her and smirking and talking between themselves. I witnessed no inappropriate behaviour by the respondent's witnesses.
18. None of the matters raised by the claimant in form T444 or her letter of 3 February 2025 gives rise to a reasonable prospect that the original decision will be varied or revoked. The matters which the claimant raises were either dealt with in the course of the hearing as case management matters (and, to the extent that the decisions made on them were wrong, it is a matter for the Employment Appeal Tribunal to correct), or were not raised by the claimant even though they could have been. It would contravene the principle of finality in litigation to reconsider the judgment for those reasons.
19. The claimant has also sent documents in support of her application including a complaint against Lyons Davidson, her former solicitors, and a complaint against Unison.
20. The complaint against Lyons Davidson largely (although not exclusively) centres around the desire by the claimant to add additional allegations of sexual harassment to the list of issues which had not been permitted. At the outset of the hearing I considered that question and refused to allow the list of issues to be widened. In a case management order dated 12 November 2024, I explained my reasoning. There is nothing in the complaint to Lyons Davidson which would give rise to a reasonable prospect of me varying or revoking my decision. which was largely based on the prejudice which would be caused to the respondent if

the claimant's application were granted as compared to the prejudice which would be caused to the claimant if I did not grant the application. Moreover, the claimant had the opportunity to advance any arguments she wished to in support of her application at the outset of the hearing, including those matters about which she complained to Lyons Davidson. To the extent that she did so, they were taken into account, to the extent that she did not do so, it would contravene the principle of finality of litigation to re-open the argument at this stage.

21. Further, there is nothing in the additional correspondence with Lyons Davidson which would give rise to a reasonable prospect of the judgment being varied or revoked. Indeed, the correspondence tends to support the decision which was made by the tribunal. On 21 November 2023 in a notably stark warning, Mr Leslie Group Leader (Partner) for Lyons Davidson wrote to the claimant stating

“my current thoughts below:

1-you are going to lose your claim

2-the point the respondent makes about the manner in which the claim has been pursued and the merits of the claim of valid

3-the tribunal will therefore likely order that you pay the respondent's costs when you lose

4-the amount of costs you are likely to be ordered to pay could easily be over £120,000 as indicated by the respondent”

22. Although the tribunal makes its own decision, nothing in the correspondence causes me to think that the decision I made was (or might be) wrong.

23. In respect of the complaint against Unison, the claimant's complaint is not in the documentation sent to the tribunal. There is, however, a letter dated 22 November 2022 in which Unison dismissed the complaint and went on to state “the legal view was that, with regards to direct race discrimination, there is no identifiable comparator available to make a claim viable. With regards to harassment, you were advised that there was insufficient evidence to support that any mistreatment was related to race. The legal advice deemed that there was not a case with reasonable prospects of success for Unison to pursue on your behalf”. It might be said that, in that correspondence, Unison has overlooked the possibility of a hypothetical comparator in respect of the direct race discrimination claim, but the position remains that there is nothing within that correspondence which gives rise to a reasonable prospect of the tribunal reconsidering or revoking its decision.

24. For all those reasons, I have reached the conclusion that the application for reconsideration must be dismissed under rule 70 The Employment Tribunal Procedure Rules 2024 because there is no reasonable prospect of the judgment being varied or revoked.

Employment Judge Dawson

Date 12 June 2025

JUDGMENT SENT TO THE PARTIES ON  
12 June 2025 By Mr J McCormick

FOR THE TRIBUNAL OFFICE

**Notes**

**Appeal**

You can appeal to the Employment Appeal Tribunal in some circumstances. Strict time limits apply. There is more information here: <https://www.gov.uk/appeal-employment-appeal-tribunal>