THE EMPLOYMENT TRIBUNALS

Claimant: **Olivia Tilley**

Respondent: **Barnwood Trust**

APPLICATION FOR RE-CONSIDERATION

The claimant's application for re-consideration of the Tribunal's judgement sent to the parties is refused

REASONS

1. The Tribunal gave written judgement with reasons following the conclusion of this hearing that took place between 3 -7 February 2025. The written judgment was sent to the parties on 6 March 2025. By email dated 20 March 2025, the claimant submitted a request for reconsideration (5 pages) and provided a short supporting statement (1 page), also including 4 pages of documents. The Respondent was requested to provide comments and did so (4 pages) by a document dated 5 June 2025.

2. Rule 70 of the Employment Tribunal Procedure Rules 2024 provides (in so far as is relevant) as follows:

> **Application for reconsideration**
>
> **69.** 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.

Process for reconsideration

70.—(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 (including, unless there are special reasons, where substantially the same application has already been made and refused), 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.

(4) If the application has not been refused under paragraph (2), the judgment must be reconsidered at a hearing unless the Tribunal considers, having regard to any written representations provided under paragraph (3), that a hearing is not necessary in the interests of justice.

(5) If the Tribunal determines the application without a hearing the parties must be given a reasonable opportunity to make further written representations in respect of the application.

3. In dealing with the application, the Tribunal has had regard to the overriding objective, which is at Rule 2:

Overriding objective

2. The overriding objective of these Rules is to enable Employment Tribunals to deal with cases fairly and justly. Dealing with a case fairly and justly includes, so far as practicable—

(a)ensuring that the parties are on an equal footing;

(b)dealing with cases in ways which are proportionate to the complexity and importance of the issues;

(c)avoiding unnecessary formality and seeking flexibility in the proceedings;

(d)avoiding delay, so far as compatible with proper consideration of the issues; and

(e)saving expense.

A Tribunal shall seek to give effect to the overriding objective in interpreting, or exercising any power given to it by, these Rules. The parties and their representatives shall assist the Tribunal to further the overriding objective and in particular shall co-operate generally with each other and with the Tribunal.

4. There is an underlying public policy principle in all proceedings of a judicial nature that there should be finality in litigation. An application for reconsideration is not simply an opportunity to the parties to seek a re-hearing of a case. Equally, where an applicant can show that there has been in some sense a denial of

justice, then the route of re-consideration provides the Tribunal with an opportunity to consider whether it is in the interests of justice that the original judgment should be reviewed and if necessary revoked.

5. As was explained in Ebury Partners UK Ltd v Acton Davis [2023) IRLR 486 an Employment Tribunal can only reconsider a judgment if it is necessary in the interests of justice to do so. A central aspect of the interests of justice is that there should be finality in litigation. The interests of justice include not only the interests of the person seeking a reconsideration, but also the interests of the person resisting a reconsideration on the grounds that once the hearing which has been fairly conducted is complete, that should be the end of the matter. There are also the interests of the general public in finality of proceedings of this kind. Considerable weight must be given to the public interest in the finality of judicial decisions, both to protect the opposing party and to avoid overburdening the employment tribunal system, Phipps v Priory Education Services Ltd [2023) EWCA Civ 652.

6. For these reasons it is unusual for a party to be "given a second bit of the cherry", and the jurisdiction to reconsider should be exercised with caution, paragraph 24, Ebury. 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 case on a relevant issue. Additionally, it is unlikely to be a good ground for a reconsideration for a tribunal to be invited to reach a new or different conclusion on an issue based entirely on material that was before the tribunal at the time they made their original decision.

7. In Outasight VB Ltd v Brown UKEAT/0253/14 it was explained that the change in the wording of the 2013 Rules (and in particular the removal of the specific categories which were contained at Rule 34(3)(a) - (e) of the 2004 Rules and the replacement of these by a consideration of what is in the interests of justice) does not signify a change in approach. The same basic principles are still relevant to cases under the new.

8. ln relation to the submission of new evidence, tribunals are expressly required to consider whether the new evidence submitted had become available since the conclusion of the hearing and whether its existence could not reasonably have been known of or foreseen at the time. This reflected the guidance in Ladd v Marshall 1954 1 WLR 1489**,** in which the Court of Appeal explained that to justify the reception of fresh evidence or a new trial three conditions must be fulfilled. Firstly, it must be shown that the evidence could not have been obtained with reasonable diligence for use at the trial, secondly the evidence must be such that, if given, it will probably has an important influence on the result of the case, though it need not be decisive, and thirdly the evidence must be such that it is presumably to be believed – i.e. that it must be credible although not incontrovertible.

9. In terms of reconsideration of a judgment, and as per Outasight and Flint v Eastern Electricity Board [1975] ICR 395 new evidence could also be allowed under the interests of justice even where such strict requirements were not met but where there might be some special additional circumstance or mitigating factor.

The claimant's application for reconsideration

10. The claimant relies firstly on a claim that the respondent has omitted key documents from its disclosure during the course of the proceedings. After the conclusion of the hearing in February 2025, the claimant has discovered a photograph. It is a screenshot of a phone text conversation. The message appears to show the claimant and NM interacting in February 2023. It shows the claimant being asked if she was attending work, the claimant replying that she was feeling unsteady and would prefer to work from home and a reply from NM about the claimant working from home on that day.

11. The claimant asserts that the content of the message is not material. The claimant contends that the fact that it exists is relevant to the issue of whether the respondent failed to comply with its disclosure obligations during the course of the proceedings and specifically whether it had failed to carry out sufficient searches at the relevant time because if it had done so then this was a message that would have been discovered and disclosed.

12. The claimant says that the photograph was discovered after the conclusion of the Final hearing albeit there is no further explanation of the circumstances of discovery at that time. The claimant relies on it now as part of her claim that the respondent omitted key documents.

13. In its response, the respondent rejects any suggestion of a failure to comply with its disclosure obligations. It states that at the time of searches, the messages did not exist on NM work phone and thus the respondent would have been unable to provide them in any event. It states that disclosure of all messages would not have been reasonable as the majority would not have been relevant to the claim. There had been some disclosure, which was sufficient. The claimant had not asked for specific disclosure.

14. It is not necessary for the purposes of this application to make any finding on whether the respondent did or did not comply with its duty of disclosure in this specific respect. In the present application, it must be shown that the evidence could not have been obtained with reasonable diligence for use at the trial. The claimant has not been able to do that. There is no explanation for the belated discovery of the photograph. There is no explanation as to how the claimant had previously searched herself for the messages but had not been able to locate

them or any record of them during the course of the proceedings. On the face of it, the message, if material to the case, was equally accessible to both parties.

15. More crucially is relevance. The claimant asserts that the content of the document itself is not material to the issue. Thus, there is no explanation as to how the document itself might have had a material impact on the outcome. The use to which the claimant puts the document is a secondary one, as part of seeking to undermine the respondent's approach to the litigation and its failure to be open and transparent. In those circumstances, a document which of itself is not material to the issues and not likely to have had a material impact, is not now such that, if permitted to be introduced by the Tribunal, would probably have an important influence on the result of the case. There are no compelling or exceptional reasons why the Tribunal should nonetheless admit the document and engage again on issues of the respondent's disclosure of documents and the potential for undermining the evidence given by the respondent.

16. The claimant's application for reconsideration of the judgment and/or admission of new evidence that had not previously been disclosed is therefore refused.

17. The Claimant secondly has reviewed the written reasons and in the course of her written application for reconsideration (5 pages) has set out a number of parts of the reasons that she asserts should be reconsidered. The Tribunal has not dealt with the application individually paragraph by paragraph as it is not necessary to do so.

18. In addressing the application, the Tribunal has born in mind the principles set out above and sought to exercise its decision making in accordance with the overriding objective. It is not likely to be in the interests of justice to reconsider a judgement where the evidence referred to was in front of the Tribunal at the time of the hearing and the parties have had a reasonable opportunity of cross-examining and of making their submissions to the tribunal and seeking to persuade the tribunal about the relevant findings of fact that should be made.

19. The claimant's paragraphs 2-8 amount to an attempt by the claimant to re-argue the relative importance or proportionality of the facts found by the Tribunal. It is not a sufficient basis for reconsideration. At paragraphs 9-12, the claimant suggests that the Tribunal had not taken into account points of evidence regarding NM and her initially denying an incident before then saying that she did not recall it, and then making other contradictory statements. The Tribunal's judgment and reasons cannot expressly incorporate every feature or fact in the case as it would not be feasible to do so. The Tribunal were in a position to assess the relevance and reliability of NM evidence, including the cross examination by the claimant, and this assessment is particularly evident from the fact that the majority differed from the minority in certain findings. The claimant is seeking to re-open matters that have been taken into account by the Tribunal.

20. At paragraphs 13-23, the claimant invites the Tribunal to reconsider its findings that it has made. This is not based on new or different evidence than that which was already in front of the Tribunal. For example, at paragraph 17, the claimant seeks to argue that the 9 January meeting to discuss her neuro-psychology had been arranged at the claimant's request. In its findings, the Tribunal referenced the agreement to hold such a meeting. The Tribunal had been alive to the circumstances of the meeting and during the course of the hearing had been able to make its assessment of both the claimant and the respondent witnesses. A similar point in respect of paragraph 21 in which the claimant seeks to remind the Tribunal of the claimant's genuine need for adjustments. The Tribunal was satisfied of the claimant's genuine need. It made its findings having been able to assess both the claimant and the respondent witnesses.

21. Similarly, for paragraphs 24-25 and 26-30, it is apparent that the claimant disagrees with the findings of the Tribunal. However, these findings relate to allegations that were investigated at the Tribunal hearing and both sides had a reasonable opportunity to make their case and to emphasise what they considered to be the persuasive parts of their case. It is not sufficient now to invite the Tribunal to review that evidence again and re-open their findings of fact. This would not be in accordance with the overriding objective and in particular the principle of finality of litigation.

22. The claimant contends at paragraph 31 of her application that her request is based on errors in reasoning and application of legal principles. The Tribunal is not satisfied that there are any material errors in reasoning or that if there are that they would have a material bearing on the outcome. The Tribunal is not satisfied that there is any error in its application of legal principles.

23. This application has been dealt with on the papers and without a hearing. Both parties had requested that the application is dealt with on the basis of written submissions and without a hearing. The Tribunal was satisfied that both parties had had a reasonable opportunity to provide their written representations. The Tribunal considered those representations and also had regard to the content of the application. This is a matter that can proportionately be dealt with on paper. The Tribunal therefore accepted the parties' representations and proceeded to deal with the application on paper. The Tribunal concluded that a hearing was not necessary in the interests of justice, in accordance with rule 70 (4)

24. The claimant's application for reconsideration is refused.

EMPLOYMENT JUDGE BEEVER
SIGNED BY EMPLOYMENT JUDGE ON

2 July 2025
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SENT TO THE PARTIES ON

03 July 2025 By Mr J McCormick

FOR THE TRIBUNAL

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