EMPLOYMENT TRIBUNALS

Claimant: Mr P Setlik

Respondent: Biopure Technology Ltd

Heard at: Bristol (in public, by CVP) **On**: 15.05.2025

Before: Employment David Hughes

Appearances
For the Claimant: In person, assisted by Paul Harrison
Polish interpreter: Anna Thorpe
For the Respondent: Stefan Brochwicz-Lewinski, counsel

JUDGMENT ON APPLICATION FOR RECONSIDERATION

The judgment of the tribunal is that the Claimant's application for reconsideration is refused because there is no reasonable prospect of the decision being varied or revoked.

Reasons

History

1. The Claimant presented his claim form on 06.08.2024. At a Case Management Hearing on 20.11.2024, Employment Judge Ferguson noted that, in the claim form, the Claimant had ticked only the box for "another type of claim", and had written:

   "*Gaslighting Persecution, homophobia, bullying, and intimidation, Emotional Blackmail, Ostracism*"

2. Employment Judge Ferguson further recorded that, since presenting his claim, the Claimant had submitted 38 "applications" via the portal. However, at Case Management Hearing, the Judge was able to identify the Claimant's claim as being for unfair dismissal and direct sexual orientation discrimination.

Employment Judge Ferguson gave directions to take the case through to a final hearing, which is listed to start on 06.10.2025, and to last for 6 days.

3. On 18.02.2025, the Respondent applied for the Claimant's claim to be struck out or, in the alternative, for a deposit order. On 10.03.2025, the parties were notified that Employment Judge Gray had directed that there be a one day preliminary hearing, by video, to consider the Respondent's application for a strike out or deposit order, and to consider "the matters raised by the Claimant".

Preliminary hearing

4. The preliminary hearing came before me on 15.05.2025 – I observe here that my order wrongly has the date of the hearing as "15.11.2025". I reserved my decision.

5. At 22:48hrs on 15.05.2025 – in other words, after the hearing, but before I gave my decision – the Claimant sent a lengthy email to the Tribunal. And on 17.05.2025, he sent another email, which was unfortunately not drawn to my attention, in which he asked me to recuse myself, amongst other things.

6. On 28.05.2025[1], I gave my decision following the preliminary hearing. I made a deposit order, in respect of his allegations that, in commencing disciplinary proceedings against the Claimant and in dismissing him, the Respondent had directly discriminated against him. The deposit I ordered on each allegation was £50. The deposit has, I understand, been paid.

7. I dismissed the Claimant's post-hearing application that I recuse myself, and ordered the Respondent to disclose notes of HR meetings with the Claimant, or about him, at any time during the course of his employment.

Reconsideration application

8. On 06.06.2025, the Claimant emailed the Tribunal. His email is lengthy, extending over 8 pages. In it, he asks for an independent review of the hearing

[1] This was subject to a correction, to correct a typo. Unfortunately, I did not identify the typo in the date of the hearing.

recording (I understand this to mean, of the preliminary hearing), that I recuse myself, the reversal of the deposit order and sanctions for what he describes as "*the respondent's repeated procedural breaches*".

9. On 16.06.2025, the Claimant again emailed the Tribunal. This email – which is 10 pages in length – asks for "*Reconsideration and Waiver of the Deposit Order – Based on Procedural Inequity, Health Impairment , and Injustice"*.

10. The matter was put before Employment Judge Midgley, who directed as follows:

1. The Claimant's challenges to the level and principle of the deposit Order will be treated as an application for reconsideration in accordance with rule 69 and will be referred to Judge Hughes for his urgent attention and determination. The Deposit Order is stayed pending determination of that application, which will be treated as a priority. The Respondent must provide any comments on the application to the Tribunal and the Claimant within 7 days.

2. The Claimant's application for Employment Judge Hughes to recuse himself is un-necessary; where a judge has made a deposit order, they would not in ordinary circumstances be allocated the case at the Final Hearing stage. A different judge would therefore be making the final determination of whether the Claimant's claims succeed or fail.

3. The Claimant's application that his claim should proceed to a full hearing and that he should be awarded compensation are again unnecessary. Employment Judge Ferguson listed the case for a final hearing in October 2025. That is the hearing at which a tribunal will determine whether the Claimant's claims are well-founded and succeed, and if so, will consider what level of compensation the Respondent should be ordered to pay. However, the Claimant's claims of sexual orientation discrimination will (whilst the Deposit order remains in force) only proceed to the final hearing if the claimant has paid the deposit required within the specified period. Consequently, if the claimant's application for reconsideration is dismissed, he would need to pay the deposit within any newly specified period, in order to pursue those claims to the final hearing.

4. The Claimant may be accompanied by an individual to support him at the final hearing. The individual cannot however prompt the Claimant during cross examination.

5. The Tribunal has booked a Polish interpreter for both the Dispute Resolution Appointment and the Final Hearing.

6. Any other application, such as the claimant's assertion that the respondent's solicitors should be referred to the Solicitors Regulation Authority and/or subject to further or additional sanctions from the Tribunal, must be raised at the outset or conclusion of the final hearing, as the Judge who is allocated the final hearing directs.

11. The above direction was made on 17.07.2025. The time given to the Respondent in which to respond to the Claimant's representations having expired, and no representations from the Respondent having been received, I now consider the position.

12. Consistently with Employment Judge Midgley's direction, I treat the Claimant's emails of 06.06.2025 and 16.06.2025 as an application to reconsider the deposit order that I made.

Law

Employment Tribunal Procedure Rules[2]

13. The Rules provide for reconsideration of judgments. Rule 68 deals with the principles of reconsideration, and provides as follows:

68.— 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 under 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.

14. Rule 69 deals with the time period for requesting reconsideration, as follows:

69. Application for reconsideration
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.

[2] Employment Tribunal Procedure Rules 2024/1155

15. Rule 70 deals with the process for reconsideration, and reads as follows:

> ***70.— 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 (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.*

16. The above process is mandatory – see T W White & Sons Ltd -v- White[3]. I must consider whether there is any reasonable prospect of the judgment being varied or revoked, and if there is not, I must dismiss the application for reconsideration. Only once I have considered that (and in the event that I find that there is a reasonable prospect of the order being varied or revoked), can I move on to the steps provided for by Rule 70(3)-(5).

17. In considering this application, I am mindful of Newcastle upon Tyne City Council -v- Marsden[4], in which the EAT (considering earlier rules) referred to the importance of finality in litigation: it is in the interests of justice that a successful party should be entitled to regard a Tribunal's decision on a substantive issue as final (subject, of course, to appeal). I read that latter

[3] UKEAT/0022/21/VP @ para 49
[4] UKEAT/393/09 [2010] I.C.R. 743

observation as being subject to the Tribunal's decision being one that it has reached after a fair hearing.

18. I am mindful that it might be said that Employment Judge Midgley's direction that the Respondent have 7 days in which to comment on the Claimant's application may be in some tension with the process set out in the Rules, and the order which is, on the authority of White, mandatory, insofar as the Rules require a consideration of an application for reconsideration before seeking the views of the Respondent. Employment Judge Midgley has not determined whether there is any reasonable prospect of the deposit order being varied or revoked. I consider that I am therefore required to consider this question.

19. There are two other questions that must be considered. Firstly, whether or not the application was made in time. It is not clear to me when the Deposit Order was sent to the parties. But it cannot have been before 28.05.2025. The Claimant's email of 06.06.2025 was therefore plainly within the time limit provided for by Rule 69. It is not clear whether the email of 16.06.2025 was within that time limit, but it seems to me that the latter email is an amplification of the email of 06.06.2025, and I can properly consider the application (insofar as it is spread over both emails) as having been made in time.

20. There is also the question of whether a Deposit Order can be reconsidered. Rule 68 refers to "*any judgment*", not "*any judgment or order*".

21. Rule 2 defines "*judgment*" as follows:

> *…a decision made at any stage of the proceedings (other than a decision under rule 14 (reconsideration of rejection of claim) or 20 (reconsideration of rejection of response)), which finally determines—*
> *(a) a claim, or part of a claim, as regards liability, remedy or costs (including preparation time and wasted costs);*
> *(b) any issue which is capable of finally disposing of any claim, or part of a claim, even if it does not necessarily do so (for example, an issue whether a claim should be struck out or a jurisdictional issue);*
> *(c) the imposition of a financial penalty under section 12A of the Employment Tribunals Act*

22. A deposit order does not fall within this definition. However, in H -v- Ismail[5], Employment Judge Southam indicated a willingness to reconsider a deposit order.

23. Ismail is a decision of the Employment Tribunal, and as such is not binding on me. It seems to me to be open to doubt that a deposit order can be reconsidered. However, at the stage of considering whether there is any reasonable prospect of the order I made being varied or revoked, I will do so on the basis that it is, in principle, one that can be reconsidered. In the event that I were to determine that the were a reasonable prospect of my order being varied or revoked, the question of whether a deposit order can be reconsidered would need to be the subject of argument.

24. I now turn to the question I am required by Rule 70(2) to consider: is there any reasonable prospect of the judgment being varied or revoked? Rule 70(2) is framed in terms of there being "no reasonable prospect of the judgment being varied or revoked", but it seems to me that, to ask the question of whether there is any such reasonable prospect will provide the answer to the question I am required to address.

25. As noted above, the Claimant has set out his complaints over 2 lengthy emails.

Email of 06.06.2025

26. The Claimant's complaints in this email are as follows:

> *I. VIOLATIONS OF FAIR TRIAL PRINCIPLES AND EQUAL TREATMENT*
> *1. Deposit Imposed Under Pressure from Respondent's Counsel*
> *A £100 deposit was imposed immediately after the respondent's legal representative suggested it. This occurred despite:*
> *my long-term clinical depression,*
> *my Personal Independence Payment (PIP) award,*
> *continuous MED3 sick notes,*
> *and my lack of legal representation.*
> *The Tribunal failed to apply "reasonable adjustments" as required under the Equality Act 2010 (Sections 20–21) and*
> *showed no consideration for my vulnerable status.*

[5] 3304712/2011

2. No Sanctions Against Biopure for Procedural Non-Compliance
Despite multiple breaches of disclosure duties and delayed submissions, no penalties were imposed on Biopure, contrary to
Rules 38 and 76 of the Employment Tribunal Rules of Procedure 2013.
3. Inadequate Interpretation by an Unqualified Interpreter
The interpreter lacked judicial certification and failed to accurately translate key legal statements. The Judge accepted this
without question, despite the obvious risk of miscommunication.
II. ADDITIONAL PROCEDURAL INEQUALITY
4. Premature Assessment of My Claim's Merits
My discrimination claim was dismissed as having "little reasonable prospect of success" before any evidence was heard,
violating the principle of impartiality and creating the appearance of predetermination.
5. Lack of Evidence Was Caused by Document Concealment
I was blamed for not providing enough evidence, yet Biopure withheld key HR documents and internal correspondence,
leaving me procedurally paralysed.
6. Pattern of Harassment Ignored
The Tribunal ignored a sustained pattern of mistreatment including undue pressure, forced shift changes, isolation, and
false allegations. I identified a comparator, but this was not acknowledged.
III. FURTHER VIOLATIONS OF THE RIGHTS OF A DISABLED PERSON
1. No Reasonable Adjustments Made
The Tribunal failed to implement or even explore reasonable adjustments such as:
– shorter sessions,
– support with paperwork,
– flexibility in submissions,
– appointment of a disability liaison officer.
This contradicts the Presidential Guidance on Vulnerable Parties (April 2020) and breaches the Equality Act 2010.
2. No Vulnerability Assessment Before Imposing Financial Orders
The deposit was imposed without any assessment of how it would impact a disabled, mentally unwell claimant who is
unrepresented and on sick leave.
3. No Support with Disability Disclosure
I was never offered an ET1A or informed of my right to request adjustments. This is a duty the Tribunal has toward self-
represented disabled parties.
4. Deterioration of My Health
This treatment worsened my condition. I am under medical care, still on long-term sick leave, and respectfully ask the
Tribunal to treat this complaint as urgent.
IV. REQUEST FOR RECUSAL OF JUDGE DAVID HUGHES
I formally request the immediate recusal of Judge Hughes under Article 6 of the ECHR and Rule 8
of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013, for the
following reasons:

Premature negative judgment on my case before hearing evidence
Lack of response to my documented mental health condition
Bias and unequal scrutiny between parties
Dismissive and demeaning language, describing my claims as "poorly argued"
Acceptance of unqualified interpretation
Failure to consider power imbalance in favour of Biopure's legal team
V. POTENTIAL DISCRIMINATION BASED ON NATIONALITY AND LANGUAGE
1. Interpreter Incompetence
My statements were mistranslated or omitted by an interpreter untrained in legal terminology.
2. No Language Accommodations
The Tribunal took no steps to ensure I understood proceedings, violating Article 6 ECHR and equality of arms.
3. Reasonable Perception of Bias Against Foreign Claimants
I believe I was treated less fairly as a Polish national, unrepresented and vulnerable, facing a UK-based company with legal counsel.
4. Preferential Treatment of Represented Party
Biopure's misconduct was tolerated, while I was penalised. This deepens the procedural inequality and may amount to indirect discrimination under Section 19 of the Equality Act 2010.

27. It is not correct to say that the deposit order was made immediately after the Respondent's counsel suggested it. I reserved my decision, and considered representations that the Claimant sent in after the hearing. I considered all the arguments put before me. I made a deposit order in respect of two allegations only.

28. The Claimant's medical condition is something to consider, if the discretion to make a deposit order falls to be considered. My principal reason for deciding to exercise my discretion to make a deposit order was the implausibility of the Claimant's accounts as to the tweets in question in this case, and the tensions between his different accounts. I am not persuaded that the Claimant's assertions about his condition give me any reason to think that there is any reasonable prospect of my order being varied or revoked.

29. I asked the Claimant about his financial position. In the written reasons accompanying the deposit order, I referred to his evidence about that. The deposit order I made was in a total sum lower than one he told me he could pay, and I understand it has been paid.

30. The Claimant's lack of legal representation was something of which I was mindful. Counsel for the Respondent was mindful of his duty to assist me with points that might assist the Claimant.

31. Insofar as reasonable adjustments are concerned, the Claimant has not identified anything that would cause me to think there is any reasonable prospect of my decision being varied or revoked.

32. The Claimant's criticism of alleged procedural non-compliance on the part of the Respondent does not assist me with whether the deposit order should be reconsidered.

33. The Claimant's complaints about the alleged shortcomings of the interpreter were raised by his friend Mr Harrison at the hearing. The Claimant has not identified any new consideration about this. His assertion that "*The Tribunal took no steps to ensure that* (he) *understood the proceedings…*" is simply untrue. The Claimant has identified nothing to make me think that there is any reason to believe my conclusion at the hearing – that the interpreter did her job professionally and that I could have confidence in her interpreting – wrong, or that there is any reasonable prospect of my order being varied or revoked.

34. There was no bias against the Claimant, whether because he is Polish, or for any other reason. And there was no preferential treatment of the Respondent. Indeed, the Respondent sought that the Claimant's case be struck-out. It ended up with a modest deposit order, on two allegations, and with an order that it give further disclosure to the Claimant.

35. The Claimant's complaint that there was a premature assessment of the merits of his claim, is misconceived. On an application for a strike-out or a deposit, I am required to consider whether his claim has no, or little, reasonable prospect of success. He cannot reasonably complain about an Employment Judge doing the very thing I was required to do. My decision does not in any way impact upon the ability – indeed, duty – of the Tribunal at the final hearing, to reach its own conclusions on hearing the evidence and the parties' arguments.

36. The Claimant's assertion that he was "*blamed for not providing enough evidence"* is difficult to understand. I was mindful of the need to take the Claimant's case at its highest. However, on the tweets that the case concerns, the Claimant has indicated 4 different cases, in some tension with one another. The Claimant was not blamed for not providing enough evidence.

37. If the Claimant's complaint goes to the amount of the deposit order, he has not produced anything that would cause me to believe that there is any reasonable prospect of my order being varied or revoked.

38. The Claimant's points about alleged patterns of harassment being ignored, does not seem to me to go to the issues on which I made a deposit order.

Email of 16.06.2025

39. The Claimant's complaints in this email are as follows:

> *1. Improperly Pressured Deposit Order – Breach of Equality Protections*
> *The Deposit Order issued against me was not procedurally justified and should be set aside or suspended. I am a recognised disabled person in receipt of Personal Independence Payment (PIP) and under continuous MED3 medical certification for severe clinical depression. The Respondent's legal representatives pressured the Tribunal into imposing a deposit, despite clear evidence of my vulnerability and inability to litigate on equal terms.*
>
> *This was done without proper assessment of the Equality Act 2010, and in direct contradiction to:*
> *Rule 39 of the ET Rules,*
> *The Presidential Guidance on Case Management,*
> *The Equal Treatment Bench Book,*
> *The Public Sector Equality Duty (section 149, Equality Act 2010),*
> *And Article 6 of the European Convention on Human Rights.*
> *The Respondent's lawyers misled the Tribunal by failing to draw attention to my medical status*
> *and by framing the deposit as a fair measure—despite my clear documentation, vulnerability,*
> *and lack of legal representation. In doing so, they exploited a power imbalance and acted in bad*
> *faith.*
>
> *2. Persistent Breach of Disclosure Obligations – Rule 31*
> *I respectfully request that the Tribunal issue a Disclosure Order under Rule 31.*

The Respondent has repeatedly failed to disclose core documents, including but not limited to:

- *Internal communications relating to my grievance and dismissal,*
- *Evidence and metadata surrounding the alleged social media activity used against me,*
- *Records of internal investigation procedures,*
- *All correspondence between Biopure managers related to my case.*

Without access to these materials, I am unable to present a proper defence. Their ongoing failure to comply with disclosure obligations is a clear breach of Rule 31 and undermines the integrity
of this entire proceeding.

3. Application for Wasted Costs Order – Rule 80
The conduct of Lewis Silkin LLP has been improper, unreasonable, and negligent. I therefore request that the Tribunal consider issuing a Wasted Costs Order under Rule 80, on the following grounds:

- *They deliberately delayed disclosure,*
- *They have submitted arguments that disregard my disability,*
- *They have used procedural pressure to obtain the Deposit Order,*
- *Their overall behaviour has caused mental harm, delay, and unnecessary costs.*

Under Rule 80, such conduct justifies a costs sanction where it has led to unnecessary litigation effort and prejudice to the other party—in this case, a self-represented, disabled claimant.

4. SRA Code of Conduct Breaches
The actions of Lewis Silkin LLP appear to be in breach of the SRA Code of Conduct for Solicitors (2019), including:

- *Failing to act with integrity and fairness,*
- *Taking unfair advantage of an unrepresented and mentally ill party,*
- *Obstructing the disclosure process,*
- *Misleading the Tribunal by omission or manipulation.*

I respectfully ask the Tribunal to formally refer this matter to the Solicitors Regulation Authority (SRA) and, in the wider context, to the Legal Ombudsman, to ensure appropriate regulatory review.

5. Biopure's Refusal to Engage with ACAS – Pattern of Bad Faith

It is relevant to note that prior to Tribunal proceedings, Biopure Technology Ltd refused to cooperate with ACAS in any meaningful way.

I submitted a reasonable settlement proposal during the ACAS early conciliation process. The Respondent ignored all contact and made no effort to negotiate, in clear breach of the spirit and purpose of early resolution encouraged under ACAS guidelines.

Such behaviour demonstrates:

- *A lack of willingness to resolve the matter in good faith,*
- *A strategic decision to prolong litigation unnecessarily,*
- *And a consistent pattern of procedural and ethical misconduct that the Tribunal should not ignore.*

In line with Rule 76 of the ET Rules, this may justify the imposition of costs on the Respondent directly for unreasonable conduct in pre- and post-litigation.

6. Mental Health Protection – NHS and NICE Guidance

Under NICE Clinical Guideline CG90, individuals with severe depression should be protected from stress-exacerbating procedures. As a Tribunal subject to the Public Sector Equality Duty, you are obliged to ensure that participation in litigation does not further deteriorate a person's mental health. I believe that the actions of the Respondent's legal team have aggravated my health condition, and the Tribunal has a duty to respond proportionally.

7. Summary of Requests
I formally ask the Tribunal to:
1. Revoke or suspend the Deposit Order on the grounds of indirect discrimination and procedural coercion,
2. Issue a Disclosure Order under Rule 31,
3. Issue or schedule a Wasted Costs Order hearing under Rule 80,
4. Refer the conduct of Lewis Silkin LLP to the SRA and Legal Ombudsman,
5. Consider costs sanctions against Biopure Technology Ltd for unreasonable conduct and bad faith in failing to cooperate with ACAS.

40. Of the above, it seems to me that point 1 is largely a repetition of points made in the Claimant's email of 06.06.2025. Rule 39 goes to unless orders, not deposit orders. I do not see any conflict between the order I made, and any of the provisions cited by the Claimant. He identifies none.

41. Point 2, 3, 4 and 5 do not seem to me to go to the question of whether the Deposit Order should be varied or revoked.

42. Point 6 seems to me to repeat the substance of a complaint made in the email of 06.06.2025.

Employment Judge David Hughes

Date: 29 July 2025

ORDER SENT TO THE PARTIES ON

18 August 2025

Jade Lobb

FOR THE TRIBUNAL OFFICE