EMPLOYMENT TRIBUNALS

Claimant: Mr K Sivarajah
Respondent: The Co-Operative Group Ltd

JUDGMENT

Upon the application for reconsideration of the judgment sent to the parties on 23 January 2025, and upon the judgment having being reconsidered under rule 70(5), the judgment is confirmed.

REASONS

1. This case was referred back to me on 30 September 2025. I apologise for the delay since then in dealing with the matter.

2. The judgment under reconsideration was sent to the parties following a hearing on 6 January. The judgment confirmed in writing that I had orally dismissed the claim under rule 47 as the claimant had failed to attend the hearing. The written judgment includes my reasons for the decision and so I do not repeat them here, but in short I explained that I had dismissed the case as the claimant had not attended, having taken into account a history which included a failure to properly set out the claim in the claim form, a previous failure to attend for which the claimant had been given the benefit of the doubt and, at best, partial compliance with previous Tribunal orders. I also noted as a post-script that the claimant had attended the Tribunal shortly before 11:40 a.m., i.e. about 1 ½ hours late, after I had already dismissed the claim. I explained in writing the Tribunal's power to reconsider a judgment upon application from a party and further explained: "the onus would be on that party to show a good reason for the failure to attend".

3. The context of that decision, i.e. the history of the claim, is as follows. The claim as originally set out on the ET1 (claim form) was poorly pleaded and raised, amongst other complaints, unfair dismissal, age discrimination, race discrimination, disability discrimination and sex discrimination. A preliminary hearing was set for 19 April 2024, before me, at which the claimant, who is a litigant in person, would have had the opportunity to explain the basis of his claim. He did not attend the hearing and when my clerk spoke to him on the telephone he said he had not been aware of the hearing date. In the

circumstances I was prepared to accept the possibility that the notice of hearing had been lost in the post. I set a date for another preliminary hearing and made detailed written orders about information that the claimant should provide about his claim before that second hearing, which took place on 26 June 2024 before my colleague Employment Judge ("EJ") S Matthews. The claimant attended that hearing. EJ Matthews noted that the claimant's response to my orders did not fully explain or particularise the claims, but despite that EJ Matthews was able to establish that the claimant wished to withdraw a number of his complaints and was able also to prepare a draft list of issues relating to the remaining complaints of disability discrimination, failure to make reasonable adjustments and whistleblowing. EJ Matthews made orders – in the claimant's presence – requiring him to provide further information and evidence relating to his disability complaints by 24 July and 21 August 2024. She also set down the third preliminary hearing, to deal with, amongst other things, finalising the list of issues and the respondent's applications for strike out and deposit orders. On 17 September 2024, in response to the respondent's complaint that he had failed to comply with the orders to provide further information and evidence, the claimant wrote: "I am in receipt of the court order recently and I was on holiday" and requested further time to comply. I assume for the purposes of this application that the claimant did eventually comply, but as will now be clear, by the time the case came before me for its third preliminary hearing, there had been some non-compliance on the claimant's part.

4. The application for reconsideration comes about as follows. On 13 January 2025 the claimant sent an email to the Tribunal asking the Tribunal to reinstate his claim as he would be "deprived of justice" and because his "documents were available to the [Tribunal and the respondent] for consideration". This email was sent by the claimant before receipt of my judgment and reasons, but the claimant contacted the Tribunal again following receipt, by an email of 2 February 2025. I treated that email as an application for reconsideration. The claimant attached what he said was a letter from the Tribunal showing a hearing date but not a specific time. It will suffice for me to set out the following from the reasons I provided for refusing then to reconsider the judgment, which were sent to the claimant on 14 May 2025:

> The application gives no explanation why, if the claimant did not know what time the hearing was, he decided to attend at 11:30. This is in the context of the claimant already having one been given the benefit of the doubt for his failure to attend on a previous occasion. The claimant has also previously failed to comply with the Tribunal's orders as he said he was on holiday.
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> No good reason has been raised, let alone shown, for the Claimant's failure to attend.

5. I should say that the Tribunal letter (of 3 December 2024) which the claimant had attached simply acknowledged the respondent's application for strike out and said that the 6 January hearing would remain listed. There was therefore no reason for it to include a time, but I do also note that EJ Matthews' Case Management Order from the previous hearing, when the January 2025 hearing date was set, also do not carry a time.

6. On 17 May 2025 the claimant wrote back to the Tribunal, explaining that in January he had left his wallet at home and had realised on his way to Euston station. (Trains to Watford leave from Euston.) He said he had tried to contact the Tribunal but in vain, which resulted in him attending at 11:30.

7. Although the claimant's first email of 2 February did not explicitly say that the explanation for his failure to attend on time was that he did not know what time the hearing was, it certainly implied it, given that no other reason for the failure was given. The 17 May email set out a completely different reason. Nevertheless, in applying rule 70(2) I did not consider that there was *no* reasonable prospect of the judgment being varied or revoked. A letter was therefore sent to the parties on 1 August 2025 informing them that I had conducted an initial consideration of the application and that they should provide their views on whether the application should be determined without a hearing by 22 August. By the same date the respondent was also to set out its views on reconsideration. The letter said: "The Employment Judge's provisional view is that the application to reconsider the judgment should be granted because there are arguable grounds that the claimant had a reason for attending late on 6 January 2025." To be clear, that provisional view was about whether there were arguable grounds *to do a reconsideration* and was not intended to express a view about what the *result* of a reconsideration was likely to be.

8. On 19 August 2025 the respondent objected to the application for reconsideration, setting out in some detail the history I have referred to above and suggesting that, the application for reconsideration having already been refused, a further application was an abuse of process and/or contrary to the overriding objective particularly as it undermined the finality of litigation. The respondent said it had not had sight of the claimant's new application for reconsideration (and did not ask for a copy), but suggested it should be rejected.

9. The claimant sent a further application in writing on 21 August, which I notice was also sent to the respondent's representative. It contained no new information relevant to my decision on reconsideration, save that I note that it does say that the 17 May email gave reasons for attending late "apart from the court letter not providing for a hearing time", i.e. the claimant is saying that his reasons for not attending on time were that the Tribunal's letter had not carried a time *and* that he had forgotten his wallet etc. (The two reasons provided by the claimant are in my judgment contradictory – either the claimant knew what time to arrive but was late because he forget his wallet, or he did not know what time to arrive.) The claimant also asserted that he had actively pursued his claim, having provided the documents he should have, and complained of failures by the respondent to acknowledge his correspondence.

10. The respondent replied to say that it continued to oppose the application. Another email was sent by the claimant on 2 September which did not in my judgment raise any points which are relevant to my decision on reconsideration – it consisted mostly of complaints about the respondent's conduct. The claimant sent chaser emails on 2 and 9 September and the application was referred to me on 30 September.

11. The relevant principles for me to apply are set out in rule 68:

    (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.

12. Having considered rule 70, which I do not set out here, I am satisfied in this case that (i) neither party requested a hearing and (ii) that both parties have had, and have taken, the opportunity to make written representations about the application.

13. The principal question for me is whether the judgment should be confirmed, varied or revoked. In so deciding, I apply the overarching interests of justice. I take the interests of justice to include the following considerations: (i) as a matter of public policy there should be finality in litigation (ii) the reconsideration process does not exist to give the parties a second chance to raise arguments or evidence that could have been raised at the time of the original decision (iii) a Tribunal judgment should only be reconsidered if there is good reason to do so, but, (iv) there is no requirement that exceptional circumstances must exist before a judgement is reconsidered. The overriding objective, rule 3, is also relevant here:

    (1) The overriding objective of these Rules is to enable the Tribunal to deal with cases fairly and justly.

    (2) 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.

    (3) The Tribunal must seek to give effect to the overriding objective when it—

        (a) exercises any power under these Rules, or

[…]

14. Rule 47 says

> If a party fails to attend or to be represented at a hearing, the Tribunal may dismiss the claim or proceed with the hearing in the absence of that party. Before doing so, it must consider any information which is available to it, after any enquiries that may be practicable, about the reasons for the party's absence.

15. I accept that, in isolation, my decision to dismiss a case made when (as it turned out) the claimant had merely attended a hearing 90 minutes late might be considered somewhat harsh. But the decision was not taken in isolation. It was taken in the context of: (i) a claim that was poorly pleaded at the outset (ii) one previous failure to attend for which the claimant was given the benefit of the doubt (iii) the claimant having previously chosen not to comply with EJ Matthews' orders because he was on holiday. The claimant's complaints about the respondent's conduct do not change any of that. Although I do not accept the respondent's submission that the application is an abuse of process, it is highly relevant in my judgment that when the claimant first took the opportunity to seek a reconsideration, he provided a poor excuse which I did not, and still do not, consider to be good grounds for a reconsideration. He has since provided a second poor excuse, which is inconsistent with the first. In those circumstances, and taking account of the history of the claim, it is not in the interests of justice to allow the claimant yet another chance to pursue his claim. I confirm the original judgment.

Approved by:

Employment Judge Dick

4 November 2025

JUDGMENT SENT TO THE PARTIES ON

4 November 2025

FOR THE TRIBUNAL OFFICE

Notes

All judgments (apart from judgments under Rule 51) and any written reasons for the judgments are published, in full, online at *https://www.gov.uk/employment-*

tribunal-decisions shortly after a copy has been sent to the claimants and respondents.