EMPLOYMENT TRIBUNALS

Claimant: Mrs S Duncan

Respondent: London Borough of Ealing

DECISION ON APPLICATION FOR RECONSIDERATION OF COSTS JUDGMENT

1. The decision of the Tribunal is that the Claimant's application dated 24th August 2025 for reconsideration of the Reconsideration Judgment made at the hearing on the 16th July 2025 and sent to the parties on the 11th August 2025, is refused because it is not necessary in the interests of justice to reconsider the decision.

REASONS

Background

1. The Claimant pursued a claim against the Respondent for Unfair Dismissal, Race Discrimination and Victimisation in August 2022. There had been a previous claim based on the same or similar facts that was heard between 6th to 14th June 2022 by EJ Joffe. Those claims were not successful.

2. The hearing for the Claimant's Unfair Dismissal, Race Discrimination and Victimisation claims was heard at London Central Employment Tribunal on the 15th to 23rd April 2024.

3. The Claimant's claims were all unsuccessful. Written reasons were provided on the 7th August 2024. The Respondent made an application for costs based on the second claim only. This application was made on the 13th September 2024 and a hearing was held to determine if costs should be awarded, and if so at what amount, on the 16th July 2025.

4. I ordered the Claimant to pay the Respondent's costs in the sum of £20,000. I provided full written reasons for my decision on the 11th August 2025.

5. The Claimant made an application for reconsideration on the 24th August 2025. The parties were asked if they considered that a hearing was necessary to deal with the reconsideration of if they believed it could be dealt with on the papers. Neither party stated they wished for a hearing to take place.

6. The Respondent provided written submissions on the 20th October 2025.

7. I considered that I have sufficient information in order to make a decision without the need for a hearing.

The Claimant's application

8. The reasons given by the Claimant for her application can be summarised as follows;

    a. A paragraphs 23-24 of the judgment, an error has been made regarding submissions made by the Claimant about a Rule 3(10) appeal hearing
    b. The Claimant cannot be said to have carried out unreasonable conduct as she pursued the claims as a litigant in person.
    c. EJ Tinnion did not find a previous application for costs by the Claimant to be unreasonable and it is not correct for me to take into account he findings of another judge.
    d. The Claimant was not given an opportunity to make submissions as to the amount of costs that were awarded.

The law

9. Schedule 1 of The Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 contains the Employment Tribunal Rules of Procedure 2013 ("the Rules").

10. Under Rule 70 of the Rules, the Employment Tribunal may, either of its own initiative or on the application of a party, reconsider any judgment where it is necessary in the interests of justice to do so.

11. On reconsideration, the decision may be confirmed, varied or revoked.

12. Rule 71 provides that an application for reconsideration under Rule 70 must be made in writing (and copied to all other parties) within 14 days of the date on which the decision (or, if later, the written reasons) were sent to the parties.

13. The process by which the Tribunal considers an application for reconsideration is set out in Rule 72. Rule 72(1) provides that where an Employment Judge considers that there is no reasonable prospect of the original decision being varied or revoked, the application shall be refused, and the Tribunal shall inform the parties of the refusal.

14. Guidance for Tribunals on how to approach applications for reconsideration was given by Simler P in the case of ***Liddington v 2Gether NHS Foundation Trust UKEAT/0002/16/DA***. Paragraphs 34 and 35 provide as follows:

"34. […] a request for reconsideration is not an opportunity for a party to seek to re- litigate matters that have already been litigated, or to reargue matters in a different way or adopting points previously omitted. There is an underlying public policy principle in all judicial proceedings that there should be finality in litigation, and reconsideration applications are a limited exception to that rule. They are not a means by which to have a second bite at the cherry, nor are they intended to provide parties with the opportunity of a rehearing at which the same evidence and the same arguments can be rehearsed but with a different emphasis or additional evidence that was previously available being tendered. Tribunals have a wide discretion whether or not to order reconsideration.

Where […] 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."

Decision

15. I will deal with each of the Claimant's grounds in turn.

Paragraphs 23-24 of the Judgment were incorrect

16. The Claimant alleges that I made an error in paragraph 23 and 24 of the costs judgment. For the sake of completeness, I set out those paragraphs below

> *23. The Claimant said that in relation to the previous hearing, although that had been unsuccessful and the appeal had not been allowed, the President of the Employment Tribunal said at the rule(3)(10) hearing that the decision in the first claim was a bad decision and not one he would have made.*
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> *24. I questioned the truthfulness of this as we had heard no direct witness evidence about this comment, and I felt it was highly unlikely that the President would make such a comment about*

another judge's decision. He may have said he disagreed with it but even this appeared unlikely given this is not one of the grounds on which an appeal can be granted. I could not accept that he would make such a comment that crossed the line of judicial independence.

17. The paragraphs referred to a submission made by the Claimant about her appeal against EJ Joffe's decision. My notes record that this was the statement at the Claimant's representative, Ms Millin, made. She stated that President of the Employment Tribunal at a rule 3(10) hearing described EJ Joffe's decision as a "*bad decision".*

18. I note that this is also the Respondent's recollection of what was said by Ms Millin.

19. I do not agree that this ground means that it is in the interests of justice for the costs judgment to be reconsidered.

20. Firstly, I believe I have accurately recorded what was said by Ms Millin. The comment made was so striking that I made specific note of it. This was the reason I felt it necessary to make reference to it in the judgment. The Claimant's allegation that I have made an error does not therefore seem to have any reasonable grounds.

21. Secondly, notwithstanding the accuracy of the comment, the point still stands that the Claimant provided no supporting evidence of the comments of EJ Clark and I therefore did not consider it would have any bearing on my decision on costs.

22. Even if the Claimant had provided evidence, I still do not consider it would have made any difference to my decision on costs. The costs application was about the second claim only. The Claimant's rule 3(10) hearing was about the decision in her first claim only. Although the Claimant made a submission that the comment by EJ Clark should persuade me that it was not unreasonable for her to have pursued the second claim, it did not actually have a bearing on the decision to award costs.

23. This ground therefore fails.

<u>The Claimant was a litigant in person and therefore her conduct cannot be said to be unreasonable.</u>

24. The Claimant made reference in her application to the fact that EJ Klimov carried out a preliminary hearing in the second claim and struck out some claims and made others subject to a deposit order.

25. The Claimant chose not to purse those claims subject to a deposit order.

26. The Claimant says that EJ Klimov set out in his judgement the "claims" that remained that had not been struck or subject to a deposit order. This

was not correct. EJ Klimov had only said that the were only 3 grounds for the Unfair Dismissal claim that were not struck out or subject to a deposit order.

27. EJ Klimov had stated that the grounds for his decision was that some of the grounds being pursued by the Claimant had already been dealt with by EJ Joffe in her hearing.

28. This was one of the grounds on which I decided that it was appropriate to award costs. The Claimant appeared to be abusing the tribunal process by attempting to re-litigate matters that had been dealt with by EJ Joffe.

29. The Claimant's reconsideration does not appear to challenge this but argue that it was not unreasonable for the Claimant to go beyond the unfair dismissal grounds that EJ Klimov had said were remaining.

30. Whilst I did not make the costs award specifically on that, I did say that it had been unreasonable for the Claimant to try and revisit decisions made by EJ Joffe in the final merits hearing I dealt with. The Claimant has not raised this in her reconsideration application.

31. Notwithstanding any of that, I find that it is not in the interests of justice to reconsider the costs award on this ground.

32. The Claimant has not set out that there has been an error or that new facts have come to light or set out any other ground upon which it would be necessary to reconsider the decision.

33. I consider that this issue was properly dealt with at the costs hearing and that the Claimant is trying to have a "second bite at the cherry".

<u>EJ Tinnion did not find the Claimant's costs application to be unreasonable.</u>

34. This refers to the fact that the Claimant had previously pursued a claim for costs against the Respondent which was unsuccessful

35. In my costs judgment I stated that that application had been unreasonable and that was one of the grounds for finding that a costs award should be made.

36. It is correct that EJ Tinnion did not describe the Claimant's costs application as unreasonable. However, that was not part of the issues he would have been looking at. When deciding whether to award costs for the Claimant, he would have only determined if the grounds she alleged were made out. He would not have carried out an assessment of the application in the first instance.

37. Conversely, in the Respondent's application they referred to the Claimant's costs application was unreasonable. I was therefore required to make an independent assessment of the reasonableness of the Claimant's application.

38. I consider therefore that my finding that the Claimant's application for costs was unreasonable is entirely sound and does not conflict with EJ Tinnion's findings.

39. It does therefore not appear to be in the interests of justice for the costs award made against the Claimant to be reconsidered on this basis.

<u>The Claimant was not given the opportunity to make submissions on the amount of costs.</u>

40. Prior to the hearing the Claimant notified the tribunal that she did not intend to put forward evidence of her means or make submissions on the same. She also did not put forward any counter schedule or respond to the Respondent's schedule of costs prior to the hearing.

41. At the hearing, the Respondent made it clear that although the value of their schedule was over £20,000, they were only pursuing costs up to the cap of £20,000.

42. I decided that it was not necessary or useful to carry out a forensic analysis of the Respondent's schedule of costs incurred because even if that chipped away at the overall total, if it did not bring the amount of costs being claimed for to less than £20,000, it would not have had any impact on the outcome.

43. I was, essentially, not making a costs award based on specific hours and money spent by the Respondent, but based on what it is reasonable to award, up to the limit of £20,000 being claimed.

44. The Claimant had prepared submissions and read them out before the decision on costs was made. In those submissions, the Claimant's representative made no comment on the schedule of costs or the amounts being claimed by the Respondent.

45. It was only after I had read out my decision did the Claimant's representative say that she should have been given the opportunity to make submissions on costs.

46. I do not find that it is necessary in the interests of justice to reconsider my original decision. I find that the Claimant had had ample opportunity to make submissions as to the level of costs being awarded and decided not to do so. Again, it seems as though the reconsideration application is an attempt by the Claimant to have a "second bite at the cherry".

47. As all the Claimant's grounds have not been successful, the application for a reconsideration is refused.

Employment Judge **Singh**

Case No: 2206563/2022

28th November 2025

JUDGMENT & REASONS SENT TO THE PARTIES ON

5 December 2025

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FOR THE TRIBUNAL OFFICE