



EMPLOYMENT TRIBUNALS

Claimant: Ms M Kulikowska

Respondent: Omni Support Group Ltd

JUDGMENT

The Respondent's application of 14 November 2024 for reconsideration of the judgment sent to the parties on 22 September 2025 and written reasons sent to the parties on 31 October 2025 is refused.

REASONS

There is no reasonable prospect of the original decision being varied or revoked, for the following reasons.

1. The Respondent applies on the basis that reconsideration is necessary in the interests of justice, because new evidence had come to light since the hearing.
2. The principle of finality in litigation is important. A losing party generally cannot produce new evidence after a decision has been given by the Tribunal and ask for that decision to be changed. There are limited circumstances where it would be in the interests of justice to allow this, following the principles set out in ***Ladd v Marshall*** [1954] 1 WLR 1489:
 - a. First, it must be shown that the evidence could not have been obtained with reasonable diligence for use at the hearing.
 - b. Secondly, the evidence must be such that it would "probably" have an important influence on the result of the case.
 - c. Thirdly, the evidence must be apparently credible.
3. The Respondent says that the Claimant's case was unclear until witness statements were exchanged (6 working days before the hearing), or on some points until the hearing itself.

4. The Respondent seeks to put forward four items of new evidence. I have considered each in turn, applying the test in **Ladd v Marshall** and the overriding objective.

5. **A witness statement from Nicky Jayne relating to the allegation of harassment.** The Respondent says this confirms she did not witness the incident of harassment as alleged by the Claimant. I do not consider that there is any reasonable prospect of this leading to the original decision being varied or revoked for the following reasons.

- a. The Respondent says that only “Nicky Antonio” was named in the Claimant’s statement, and only corrected on the morning of the hearing. However, the Respondent was fully aware of which “Nicky” was being referred to. A supportive statement from her was provided by Mr Jarvis during the grievance investigation and relied on at the hearing (bundle page 452), and she was also named during the grievance appeal investigation as a witness (bundle page 205). The Claimant worked in a very small team and the Respondent could not reasonably have been in doubt as to who was referred to, even if the wrong surname was used. The Respondent could with reasonable diligence have obtained this evidence and called Nicky Jayne as a witness at the hearing.
- b. The Respondent also says that Ms Jayne was not interviewed as part of the grievance process, and so the grievance appeal report should not have said there were meeting notes with her. The Tribunal therefore made an unjustified assertion that the transcripts were not disclosed by the Respondent. Again, the Respondent could with reasonable diligence have obtained this evidence for use at the hearing, as this was a report compiled on their behalf. In addition, it is not probable that it would have had an important influence on the result of the case. The failure to disclose this interview was referred to in paragraph 67 of the written reasons as relevant to the Respondent’s credibility. However, it was only one of a number of credibility issues listed in that paragraph, and the removal of this one item would not influence the result of the case.

6. **A witness statement from Danielle Brock relating to the allegation of harassment.** I do not consider that there is any reasonable prospect of this leading to the original decision being varied or revoked for the following reasons. The Respondent says it was not clear the Claimant was asserting Ms Brock was a witness to the incident in January 2024 until she gave evidence. In paragraph 25 of the written reasons, I address uncertainty about whether Ms Brock was named to the grievance investigator by the Claimant and find on the balance of probability that she was, which indicates that the Respondent could with reasonable diligence have obtained this evidence. The Respondent would have been aware that Ms Brock might have been present due to the small size of the team, and the discussion was about her replacement. I do not agree with the Respondent’s suggestion that this was the Claimant’s fact to assert – the Respondent was aware of the allegation and could have called witnesses at the hearing. In any event, it is not probable that this evidence would have had an important influence on the result of the case. She makes a brief statement that she did not witness a racist comment. This does not prove that the comment did not happen. Ms Brock’s

written statement makes it clear that she does not wish to be involved further in the proceedings, which indicates she would not attend a hearing to be cross-examined. This means she could not be asked further about this statement, and her evidence could be given only limited weight.

7. Witness statement from Ms Brock relating to being given a reference by the Respondent. I do not consider that there is any reasonable prospect of this leading to the original decision being varied or revoked for the following reasons.

- a. The Respondent says this relates to evidence submitted from the Claimant on the final day of the hearing - a message from Ms Brock to the Claimant stating that she obtained a reference from Mr Jarvis. I agree that this specific item of evidence was presented very late. However, it is not probable that this evidence would have had an important influence on the result of the case. I did find that Mr Jarvis provided a reference for Ms Brock (paragraph 42 of the written reasons), but this is actually corroborated by Ms Brock's statement which says she was told a verbal reference had been given.
- b. The Respondent is now seeking to argue that there was a consistent policy of not providing written references for staff. This was not the Respondent's case at the hearing. In paragraphs 38 to 41 of the written reasons I discuss the variety of reasons given by the Respondent for not providing a written reference for the Claimant, none of which is a blanket policy of not giving written references. Although the response to the claim says the Respondent is not under an obligation to give references, it goes on to give reasoning for this in the Claimant's case. I also note that Mr Jarvis had previously provided a written reference for the Claimant (bundle page 305). The Respondent cannot seek to present new evidence from either Ms Brock or Ms Jayne to support a case that was not relied on at the hearing.

8. Witness statement from Adrian Anderson relating to the Claimant's suitability to deal with the child that was the subject of the relevant EHCP. I do not consider that there is any reasonable prospect of this leading to the original decision being varied or revoked for the following reasons. The Respondent says this will show that the Claimant did not have a reasonable belief that the health and safety of an individual was likely to be endangered. I do not yet have a copy of this statement. However, I do not need to see it in order to find that the Respondent could with reasonable diligence have obtained this evidence. Mr Anderson provided a written statement for the hearing relating to the allegation of harassment. The Respondent was aware of that the Claimant's whistleblowing case was based on lack of training and concerns about safety when working with a particular young person (which was part of her grievance and appeal), and has given no explanation for why this evidence could not have been included in Mr Anderson's statement for the hearing.

9. Examples of EHCP reports relating to children with similar dangers to Child X that the Claimant worked with. I do not consider that there is any reasonable prospect of this leading to the original decision being varied or revoked for the following reasons. As with the statement from Mr Anderson, this is put

forward to show a lack of reasonable belief. This could have been obtained with reasonable diligence for the hearing, and the Respondent has given no explanation for why this was not done.

10. I therefore find that none of the items of new evidence meet the test in **Ladd v Marshall**. I have also considered the overriding objective, and this does not alter my decision. The test in **Ladd v Marshall** remains the primary consideration, and the Respondent has given no reasons why any of the elements of the overriding objective would lead to a different result.

11. This leads me to the overall decision that there is no reasonable prospect of the original decision being varied or revoked. The Respondent is unhappy with the Tribunal's decision and is now seeking to present new evidence that could have been obtained for the original hearing. This would clearly not be in accordance with the interests of justice, as it would effectively be giving the Respondent a second chance to defend a case that has already been decided. It would also not be in accordance with the public interest in finality of litigation. These is not good grounds for reconsideration of the decision.

Employment Judge Oliver

Date 20 November 2025

JUDGMENT SENT TO THE PARTIES ON
24th November 2025

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Simon Fraser
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FOR THE TRIBUNAL OFFICE