EMPLOYMENT TRIBUNALS

Considered at: **London South** **On: 12 November 2025**

By: **Employment Judge Ramsden, Ms J Cook, Ms G Mitchell**

In the matter of Miss M McGhee v The members of the Executive Committee at the relevant time of the unincorporated association known as 'Samphire'

Consideration of judgment reached on: 5 October 2025

JUDGMENT ON RECONSIDERATION

1. The Claimant's application for reconsideration of the judgment dismissing her claim given in this matter on **5 October 2025** is refused under Rule 70(2) of the Employment Tribunal Procedure Rules 2024 (the **ET Rules**). The Claimant has no reasonable prospect of the judgment being varied or revoked.

BACKGROUND

2. The Claimant's Claim Form was filed on 11 October 2022. The Claimant claims that:

   a) She was automatically unfairly dismissed for the reason, or principal reason, that she made protected disclosures, contrary to section 103A of the Employment Rights Act 1996 (the **1996 Act**);

   b) She was subjected to 17 acts of detriment done on the ground that she had made protected disclosures, contrary to section 47B of the 1996 Act;

   c) She was wrongfully dismissed (i.e., owed notice pay);

   d) She suffered unauthorised deductions from her wages, in breach of section 13 of the 1996 Act, in respect of:

      (i) Unpaid compensation for the Respondent's Time Off In Lieu (**TOIL**) arrangements; and

(ii) The salary paid to her for work performed in the period 1 April 2022 to the termination of her employment on 12 July 2022, because her salary was set by reference to NJC salary scales that were increased in relation to this period after her employment ended; and

e) She is owed compensation for accrued but untaken holiday pursuant to the Working Time Regulations 1998 (the **WT Regulations**).

3. The Respondent resists these complaints.

APPLICATION

4. On 7 November 2025 the Claimant applied, under Rule 69 of the ET Rules, for reconsideration of our decision on 5 October 2025 to dismiss each of her complaints.

5. The Claimant's reasons for applying for reconsideration of that decision are that:

a) *New evidence has come to light* that the Claimant says shows that the external HR consultancy engaged by the Respondent to manage the removal of the Claimant was owned by the niece of Joy Poppe (also known as Joy Stephens) and her husband, Duane Stephens, two members of the Executive Committee of the Respondent.

The Claimant considers this significant in the context of the following facts known by the Tribunal at the time it reached its judgment:

(i) When Dr Krubally sent a letter to the Claimant inviting her to a disciplinary meeting, the letter was found by the Tribunal to have been written in confusing terms. The terms of the letter were said by the Claimant to have amounted to the Respondent misleading her as to the meeting's purpose because she had made protected disclosures (labelled "Allegation 15" by the Tribunal). When the Tribunal concluded Dr Krubally had not acted on the grounds of the Claimant having made protected disclosures, the Tribunal noted that Dr Krubally was relying on the expertise of the HR consultant and believed it was appropriate to send it in those terms based on advice (paragraph 229);

(ii) The Tribunal observed that, when assessing whether the Claimant's complaint of automatic unfair dismissal is made out, it was not looking at the fairness of the dismissal process as it would to answer an allegation of ordinary unfair dismissal, but "*the absence of a fair dismissal process could point to dismissal being a pre-determined outcome, which may be relevant in assessing the cogency of the arguments presented by the parties*" (paragraph 213). The Claimant says that this was particularly relevant in her

case "*as investigations into [her] grievances or the gross misconduct allegations were not completed*";

(iii) The Trustees had an additional meeting, shortly before the Claimant was summarily dismissed on 12 July 2022, when the decision to dismiss the Claimant was reached, but there was no evidence disclosed of that meeting;

(iv) The Respondent failed to disclose both the paperwork related to the Board Meeting of 23 May 2022 and the instructions to and contract with the HR consultancy, which is highly unusual given the seriousness of that meeting;

(v) Even if the Respondent did not have copies of the paperwork with the HR consultancy, that paperwork could have been obtained by the Respondent from the HR consultancy; and

(vi) It is unclear whether the other Trustees were aware of the personal relationship between Mrs Stephens and Mr Poppe and the owner of the HR consultancy;

b) *The Parties only appreciated the identity of the legal person who employed the Claimant in the course of the Final Hearing upon enquiry from the Tribunal*, when the Respondent's legal advisers conducted some further investigation. This:

(i) Meant that the people who instructed Counsel, liaised with ACAS and negotiated with the Claimant about possible settlement were different from the people who were legally liable for the Claimant's complaints; and

(ii) Supports the Claimant's contention that her raising of governance concerns by the Respondent were in the public interest;

c) *The Tribunal's decision to prefer the account of Mrs Lawrence over the conflicting account of the Claimant* in relation to two of the disciplinary allegations against the Claimant was:

(i) Wrong; and

(ii) Based on an investigation conducted by the HR consultant which was flawed because of the personal connection between Mrs Stephens and Mr Poppe and the HR consultancy;

d) *The Tribunal failed to take account of the fact that the HR consultancy was already advising the Respondent at the time of the 23 May 2022 Trustee meeting* when the decision to remove the Claimant was taken;

e) *The Respondent could have terminated the Claimant's employment at the end of her probationary period, but instead chose to extend it and investigate and then determine allegations of gross misconduct, which*

amounted to a further detriment on the ground of the Claimant having made protected disclosures; and

f) *The Tribunal made two errors*:

(i) In paragraph 71, where the Tribunal recorded its understanding that Rev. Burrell took the notes of the relevant meeting, whereas in fact those notes were produced by Mrs Stephens; and

(ii) In a paragraph not specified by the Claimant, in which she says that the Tribunal made an error about previous Orders about adjustments for the Claimant.

6. The views of the Respondent on the Claimant's application have not been sought as the Tribunal has concluded that the Claimant has no reasonable prospect of causing the judgment to be varied or revoked by reason of that application.

LAW

7. The Rules on reconsideration are set out in Rules 68 to 71 of the ET Rules.

8. Rule 68 describes the principled approach that should be taken to such applications by tribunals:

"***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 on 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."

9. The requirement that tribunals should only reconsider decisions if it is "*necessary in the interests of justice to do so*" has been considered by a number of cases. One recent example is the decision of the EAT in *Ebury Partners UK Ltd v Acton Davies* [2023] IRLR 486, where Shanks J held:

"*The employment tribunal can only reconsider a decision if it is necessary to do so 'in the interests of justice'... A central aspect of the interests of justice is that there should be finality in litigation. It is therefore unusual for a litigant to be allowed a 'second bite of the cherry' and the jurisdiction to reconsider should be exercised with caution. In general, while it may be appropriate to reconsider a decision where there has been some procedural mishap such that a party had been denied a fair and proper opportunity to present his case, 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 cases on the relevant issue. This is particularly the case where the error alleged is one of law which is more appropriately corrected by the EAT".

10. Similarly Simler P observed in *Liddington v 2Gether NHS Foundation Trust* EAT/0002/16 that:

"*Where, as here, 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.*"

11. Rule 69 sets out the conditions on which a party may make an application for reconsideration:

"***Application***

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."

12. Rule 70 deals with the process the tribunal must follow regarding an application made under Rule 69:

"***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… 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…".

REASONS

13. The arguments made by the Claimant in the Final Hearing of this matter were fully ventilated and explored, and the Tribunal reached its decision in that context.

It is not "*necessary in the interests of justice*" to reopen that decision by reason of the contents of the Claimant's application (*Ebury*, *Liddington*).

14. The bases asserted by the Claimant for reconsideration do not have any reasonable prospect of causing the judgment to be varied or revoked, for the following reasons:

a) *The Tribunal does not consider that any evidence about any personal relationship between Mrs Poppe and Mr Stephens on the one hand, and the HR consultancy engaged by the Respondent on the other, to have any significant bearing on the determination of the Claimant's complaints*, for the following reasons:

(i) The Tribunal did not accept the Claimant's contention that she was dismissed for having made protected disclosures. The Tribunal examined the motivations of the Trustees as a collective decision-making body when reaching this conclusion. Any personal relationship between the HR consultancy and two of the Trustees does not change the Tribunal's conclusion on why the Trustees acted as they did;

(ii) In relation to the protected disclosure detriment complaints, the Tribunal concluded that:

- The factual basis for some of the Claimant's allegations were not made out;
- Some of the alleged detriments pre-dated the disclosures the Tribunal found to be protected disclosures;
- Some of the matters said by the Claimant to be detriments were found by the Tribunal not to be so; and/or
- The relevant actor was not motivated in any way by the Claimant's protected disclosures;

(iii) The Claimant has pointed to the fact that Dr Krubally, in sending the Claimant the invitation to the disciplinary hearing in the terms that she did, acted on advice from the HR consultancy. Any personal relationship between the HR consultancy and Mrs Poppe and Mr Stephens does not alter the fact that the Claimant's protected disclosures had no bearing *on Dr Krubally's motivation* to send the letter in the terms she did – Dr Krubally was acting out of concern for the continued operation of the Respondent, which she felt was under threat because of the significant internal conflict and distress which she considered to be caused by the Claimant's conduct – and therefore it has no effect on the outcome of Allegation 15;

(iv) There was no complaint of ordinary unfair dismissal for the Tribunal to determine, and the Tribunal was conscious of the fact that a pre-determined dismissal process could call into question the arguments made by a respondent as to why it acted as it did, but on the facts here, the Tribunal was persuaded that the Respondent dismissed the Claimant because of its belief in her serious misconduct. Any connection between the HR consultancy and Mrs Poppe and Mr Stephens does not alter that conclusion, reached on consideration of the evidence;

(v) The Tribunal knew of the absence of minutes of the Trustee meeting at which the decision to dismiss the Claimant was reached, and of the absence of the instructions from the Respondent to the HR consultancy at the time of the Final Hearing;

(vi) This matter is of no relevance to the Tribunal's determination of the Claimant's complaints of unauthorised deductions from her wages; and

(vii) This matter also has no significant bearing on the Tribunal's conclusion on the wrongful dismissal complaint (in respect of which the Tribunal concluded that the Trustees were entitled to accept the Claimant's deliberate and willful misconduct fundamentally breached her contract of employment because of the evidence of the Claimant's conduct summarised at paragraph 234, which were matters that pre-dated the disciplinary investigation that was guided by the HR consultancy, and were matters shown by the Claimant's own evidence to the Tribunal of how she behaved).

b) The fact that the persons who were liable for the Claimant's complaints had not been identified ahead of the Final Hearing was known to the Tribunal when it reached its conclusions on the Claimant's complaints;

c) Some of the allegations of misconduct came down to one person's account against another's. The Tribunal examined the evidence of Mrs Lawrence and that of the Claimant, and preferred Mrs Lawrence's on those matters. The Tribunal does not consider that any personal connection between the HR consultancy and two of the Trustees alters our assessment of the credibility of those two accounts;

d) The Tribunal considered it significant that the Trustees had reached a provisional view to dismiss the Claimant on 23 May 2022. If the Trustees had advice from the HR consultancy at that time, that does not change the fact that the Tribunal did not find the Trustees' decision to dismiss the Claimant to be for the sole or principal reason that the Claimant had made protected disclosures;

e) There was no complaint brought by the Claimant that the Respondent should have terminated her employment at the end of her probationary period, and that its failure to do so was a detriment done on the ground that she had made protected disclosures; and

f) If the Tribunal made the errors the Claimant avers in paragraph 71 and in relation to previously-Ordered or not Ordered adjustments, those errors have no reasonable prospect of altering the Tribunal's conclusions on the Claimant's complaints.

DECISION

15. For the reasons set out above, the Claimant's application for reconsideration has no reasonable prospect of causing the judgment reached in this matter to be varied or revoked. The judgment reached on 5 October 2025 is confirmed.

Employment Judge Ramsden

Date 12 November 2025