EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 8000592/2025

Held in Glasgow on 2 December 2025

Employment Judge D Hoey

Mrs G McDonald Allan — **Claimant**
In person

Student Loans Company Limited — **Respondent**
Represented by:
Mr S McEntee - Solicitor

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The claimant's application dated 17 September 2025 for reconsideration of the judgment dated 16 September 2025 is refused, it not being necessary in the interests of justice to reconsider the decision.

REASONS

1. In a judgment dated 16 September 2025 I considered the evidence that had been led during a 4 day Hearing, made findings of fact and applied the law to complaints of unlawful discrimination. The complaints were ill founded.

2. The claimant sought reconsideration in a 6 page communication dated 17 September 2025. I did not consider that there were no reasonable prospects of varying the decision and accordingly fixed a Hearing. Reference to paragraphs below are to those in the judgment.

The law

3. An application for reconsideration is an exception to the general principle that (subject to appeal on a point of law) a decision of an Employment Tribunal is final. The test is whether it is necessary in the interests of justice to reconsider the judgment (rule 68). What is in the interests of justice is a matter for the Tribunal on the facts.

4. It has been held that the reconsideration procedure is not there to act as a quasi-appeal on a point of law where one party or the other considers that the tribunal has erred. Thus in **Trimble v Supertravel Ltd** [1982] IRLR 451, Browne-Wilkinson P stated that 'If the matter has been ventilated and properly argued [at the original hearing] then errors of law of that kind fall to be corrected by this appeal tribunal'. The Employment Appeal Tribunal in that case emphasised that the reconsideration procedure is there so that where there has been an oversight or 'some procedural occurrence' such that a party can be said not to have had a fair opportunity to present their argument on a point of substance, they can bring the matter back before the tribunal for adjudication.

5. The interests of justice must be considered not only from the point of view of the party seeking the reconsideration, but also from the point of view of the party resisting it. An important consideration is the weighty interest of the other party and the public interest that there should, as far as possible, be finality of litigation. As the Court of Appeal described it in **Phipps v Priory Education Services** [2023] EWCA Civ 652 at paragraph 36: 'An application for reconsideration must include a weighing of the injustice to the Applicant if reconsideration is refused against the injustice to the Respondent if it is granted, also giving weight to the public interest in the finality of litigation'.

6. The focus should be on where the interests of justice lie and whether the party in question has had a fair opportunity to be heard in the first instance, rather than whether the facts of what happened can be neatly categorised as a 'procedural mishap' or 'procedural shortcoming'. Those terms were used in Trimble to describe the sort of error that might be corrected on a review, and may account for some examples where it is in the interests of justice for a reconsideration to be granted, but Underhill J in **Newcastle Upon Tyne City Council v Marsden** UKEAT/0393/09 at paragraph 16 warned against them being used as a straitjacket.

7. In **Ebury Partners UK Ltd v Davis** [2023] EAT 40 the Employment Appeal Tribunal held that a reconsideration hearing is not an opportunity for a Tribunal to generally review its original decision and amend that decision if it has changed its mind. Ultimately the test is whether reconsideration is necessary in the interests of justice.

8. When considering reconsideration regard must also be had to the overriding objective in Rule 3 to ensure matters are fair and just.

9. The case law on reconsideration where new evidence is provided has developed largely from the test laid in **Ladd v Marshall** [1954] 3 All ER 745, for determining the admissibility of fresh evidence in the Court of Appeal (therefore a matter of English law and practice), and the substance of

the **Ladd v Marshall** test has been held to be applicable to what had been a review procedure in Employment Tribunals in **Wileman v Minilec Engineering Ltd** [1988] IRLR 144.

10. Following the implementation of the 2013 Rules, the Employment Appeal Tribunal held that the **Ladd v Marshall** test (in conjunction with the overriding objective) continues to apply where it is sought to persuade a tribunal, in the interests of justice, to reconsider its judgment on the basis of new evidence (**Outasight VB Ltd v Brown** UKEAT/0253/14).

11. The **Ladd v Marshall** test has three parts. It must be shown: (a) that the evidence could not have been obtained with reasonable diligence for use at the original hearing; (b) that it is relevant and would probably have had an important influence on the hearing; and (c) that it is apparently credible.

12. The principle in Scotland is *res noviter veniens ad notitiam,* usually referred to as *the res noviter rule.* There is one authority on the former provisions as to review being in **Stevenson v Golden Wonder Ltd** [1977] IRLR 474 in which the Employment Appeal Tribunal stated that those provisions were not intended to provide parties with the opportunity for "further evidence [to be] adduced which was available before".

13. MacPhail on Sheriff Court Practice states the follows: "The court may also receive a minute of res noviter and allow additional evidence to be heard in very exceptional circumstances: see **Coul v Ayr**, 1909 S.C. 422; **Mitchell v Sellar** 1915 S.C. 360 at 361. In the latter case the Lord President said: "This is one of a class of cases in which the Court has certainly a very wide discretion—at the same time, a discretion which is only exercised under very exceptional circumstances."

14. The res noviter principle was referred to more recently in **Ramsden v Santon Highlands Ltd** [2015] CSOH 65, a decision of Lord Kinclaven who said: "Res noviter must refer to some fact which was not known and which could not, with reasonable care and diligence, have been known before. The pursuer requires to aver circumstances showing that he was excusably ignorant of how matters stood. He must give particulars of its discovery and of the circumstances which bear upon the possibility of his having acquired earlier knowledge of it."

15. The Employment Appeal Tribunal in **Outasight** acknowledged that there might be cases where the interests of justice would permit fresh evidence to be adduced notwithstanding that the principles were not strictly met. What is not permitted under the Rules, the Employment Appeal Tribunal held, is the adoption of an altogether broader approach whereby fresh evidence

may be admitted regardless of the constraints to be found in the established test.

The application

16. The reconsideration application was broken into 2 elements. The first was an assertion that a new document had become available which the claimant said she did not have access to prior to the hearing which the claimant said could have changed the outcome. Secondly the claimant argued I had made errors (in law and otherwise).

New evidence point

17. The first issue I had to consider was whether to allow the claimant to rely upon the "new evidence", an Equality Impact Assessment undertaken in relation to the organisational change process.

18. I considered that it was not in accordance with the overriding objective to admit that additional evidence. The case had conclude and a judgment had been issued. If I were to allow reliance upon the new document, the respondent would require to be able to cross examine on the basis of it and the case would require to be reopened which is contrary to the principle of finality in litigation.

19. In this case no explanation has been given as to why the claimant did not raise her requests for the document sooner. While the claimant notes the document arose as a result of a "revised" subject access request, the document was clearly available and could have been sought at an earlier point in time. With reasonable diligence, the document could have been sought.

20. Notwithstanding the foregoing I considered the terms of the document now relied upon to determine whether or not it would have had an important influence on the hearing and whether it was apparently credible.

21. The document is an Equality Impact Assessment carried out under the Equality Act 2010. The document notes that although there is no technical legal duty to carry out such assessments, the Government requires such an assessment as a public body. The assessment is in relation to "organisational design – change and data directorate". The document runs to 8 pages and notes that in September 20204 the respondent commenced a reorganisation to provide taxpayers with best value for money. The background was set out at length noting the numbers impacted and proposed approach.

22. Following the claimant's interview and complaint, the document was updated on 31 October 2024 setting out the outcome of the consultation noting the numbers at risk and approach. It was noted that "1 colleague is still in consultation – This colleague has a neurodiverse condition" which was

referred to later in the document under the heading “eliminating harassment” where it was noted “… from a disability perspective 1 colleague has disclosed they are neurodivergent and 2 colleagues have not submitted any details.”

23. The document sets out at great length the process being followed collectively and individually noting how the respondent sought to achieve fairness and equality of opportunity. The document makes no direct reference to the claimant nor of her line manager or director. The respondent’s agent indicated that Mr Dar had not seen the document.

24. The claimant argued the document “shows contemporaneous proof of actual knowledge of disability. The claimant was that colleague”. I do not think that is a fair characterisation of this document. It shows that the respondent knew of a colleague who had disclosed they were neurodivergent. The Tribunal has no information as to whether there are others who had disclosed this or whether the reference is in fact to the claimant. It may well be. I am prepared for the purposes of reconsideration to assume it referred (indirectly) to the claimant, without naming her.

25. However, the fact the document discloses someone (the claimant) had disclosed neurodivergence does not mean the respondent knew the claimant had a disability with the relevant impact in terms of the duty to make reasonable adjustments. That is a key distinction.

26. My judgment dealt with disability at paragraphs 13 to 17. It was noted that the impairment the claimant had can impact and influence people in different ways. Consequences of the impairment vary greatly. At recruitment the claimant had said she did not have a disability and as such did not require any adjustments to the interview process.

27. Around June 2024 it is noted at paragraph 15 the claimant met a member of the HR team and advised she had dyslexia and dyspraxia which was recorded on the respondent’s system under “Equalities Monitoring”. No other details were recorded. I found that the claimant had never raised her impairments with her line manager nor suggested any impairment had a material impact upon her ability to do her role or carry out the tasks required of her (including interviews). There was no evidence during the claimant’s employment of her impairment having any such impact.

28. I was satisfied from the evidence that the claimant’s line manager had not known of the claimant’s impairment at the relevant time. Critically, and even if I was wrong on that point, the respondent (including the claimant’s line manager) did not know of any disadvantage to which the claimant was put during her employment as a consequence of her impairment. I found that it had not been raised by the claimant.

29. I considered that although the claimant had disclosed she had dyslexia and dyspraxia there was no evidence that supported the claimant's assertion the respondent knew the impact her impairment had upon her.

30. The document now relied upon by the claimant provides no information in this regard. The document appears to have been completed following her interview in respect of which the claimant said the respondent failed to make reasonable adjustments. There is nothing in the document that could support the assertion prior to the interview the respondent knew of the impact the claimant's impairment had such as to engage the duty to make reasonable adjustments at the interview.

31. While the claimant eventually conceded that to be so, she argued the document shows the respondent knew of her disability. She argued the respondent had a duty to train its staff and ensure full compliance with the Equality Act. She suggested those giving evidence on behalf of the respondent may not have been entirely accurate in denying knowledge of the claimant's impairment or its impact.

32. I set out at paragraph 53 why I considered Mr Dar to be credible and clear in his evidence that I accepted. He had close interactions with the claimant. He was well placed to identify any impairment that impacted the claimant in an appreciable way (given the claimant had not raising anything about her impairment or any difficulty she perceived she may encounter in the process). He was clear that the way in which the claimant conducted the interview was entirely consistent with how she had dealt with other stressful situations in carrying out her role. There was no basis to believe the claimant's impairment created any disadvantage nor that the respondent knew our ought reasonably to know about the disadvantage.

33. As I note at paragraph 55 there was no evidence to link the claimant's performance at the interview with the claimant's impairment given the different ways dyslexia and dyspraxia affect people. There was no reading required at the interview. The topics had been issued in advance and candidates were given as much time as they needed to answer the questions (or raise any issue). Candidates were also able to bring and rely upon their own notes and if any candidate had raised an issue (or required adjustments) their request would have been considered. The claimant did not raise any issue during the process – which was confirmed by each of the panel members (see paragraph 57 and 58).

34. The information now produced by the claimant supports what was already before the Tribunal. The respondent as an organisation knew the claimant had an impairment since it had been recorded on their system. The issue was whether the respondent knew of the impact of the claimant's impairment.

There was no such knowledge and it was not reasonably ascertainable. The sole fact of disclosing the impairment does not *per se* lead the respondent to knowledge of the impact. The nature of the claimant's impairment is such that it is not possible to presume the impairment will have any or any particular impact. There was no duty upon the respondent in this case to have gone further to check if any adjustment were needed given the context. The document provides no information to support the claimant's assertion the respondent knew how the claimant's impairment impacted upon the claimant, particularly in light of the evidence of Mr Dar and his interactions with the claimant and detailed experience of how the claimant had dealt with stressful situations before and how that aligned with how she conducted the interview.

35. The claimant also argues the document shows that "equality risks were recognised and adjustments were to be actively identified and implemented". That is the law. That did not, however, mean the respondent knew of the impact of the claimant's impairment for the reasons given above and the facts in this case. It is important to note the evidence Mr Dar gave and his experience both in terms of previous meetings with the claimant (when she had declined the offer of adjustments) and when the claimant had dealt with stressful situations similar to the interview. That evidence clearly supports the respondent's position that there was no reasonable basis upon which to find the respondent knew or ought reasonably to have known about the impact the claimant's impairment had upon her.

36. The claimant notes the "organisational obligation" to engage occupational health regarding adjustments and that this did not occur for the claimant. Again it was open to the claimant if she felt there was a need to do so, to raise this issue. Mr Dar had experience of working closely with the claimant. He had seen her deal with interview type situations and stress before. There was no reason for him to involve occupational health absent any issue being raised by the claimant.

37. The claimant accepted that she did not know whether or not Mr Dar knew of this document or had seen it. The respondent's agent stated that he did not know of it. The claimant argues that it can be inferred that he knew of it or that the failure can be attributed to the respondent. None of this, however, assists the claimant in showing that it is in the interests of justice to vary the decision that was reached in terms of knowledge of the claimant's impairments effects. The fact the respondent (and even Mr Dar) knew of the disability does not mean there is any knowledge of the impact of the impairment. The evidence Mr Dar gave on that was clear and consistent and I accepted his evidence.

38. Even if the document now relied upon had been produced in evidence I am satisfied it would not have altered the decision reached. The document is not inconsistent with what Mr Dar said. Mr Dar did not know of the impact of the

claimant's impairment. Even if he knew of the impairment there was no reasonable basis to put him on notice that the duty to make reasonable adjustments had been engaged from his wide experience in working with the claimant. It is not therefore in the interests of justice to reconsider the decision in light of the new material relied upon by the claimant.

Errors

39. The second half of the claimant's reconsideration application was in relation to **"errors on the face of the record".** The respondent's position in relation to these were that reconsideration is not the place to reconsider legal errors since that is the purpose of an appeal (see **Ebury** above). I took the time to go through each of the points having considered the claimant's arguments and what I found (and why I found it).

40. The first ground was **"misapplication of the knowledge test".** The claimant asserts that I conflated knowledge of disability with knowledge of adjustments. I do not accept that is a fair summary of the position adopted. The issue in relation to knowledge is found at paragraphs 101 and 102. In order for the duty to make reasonable adjustments to be engaged, the respondent must know both of the claimant's disability and of the disadvantage to which the claimant says she was likely to be put. From the evidence in this case there was no knowledge of the disadvantage. It was also not reasonable for the respondent to have known of the disadvantage in light of the impairment in this case. In many cases, knowledge of the impairment alone will necessarily lead to knowledge of the disadvantage but that is not the position in this case. It is not correct to say "knowledge of disability was collapsed into knowledge of adjustments". The respondent knew the claimant had an impairment but did not know and could not reasonable have known about the disadvantage. The duty to make reasonable adjustments was not therefore engaged. That is the legal position in light of the facts in this case.

41. Next the claimant argued that it was **wrong to "dismiss as immaterial" the fact the respondent omitted the "standard reasonable adjustment wording"** in interview correspondence. It is not correct to say this was dismissed. It was taken into account. There were 2 safeguards in place notwithstanding the omission. Firstly the claimant was able, if she so desired, to raise the issue herself. The claimant is articulate and competent and clearly able to ask for any adjustment she thought was needed. She only raised it once she had been told she had not been successful. Secondly, and critically, Mr Dar had worked with the claimant and knew how the claimant had dealt with similarly stressful situations before. There was no basis at all to suggest to him the claimant required support. In reaching the decision I did, I took account of the respondent's failure to include the standard text as to adjustments in correspondence (which was undoubtedly a failure, which was

admitted) but it had to be viewed in context. The claimant knew she could ask or raise any issue prior to the interview. The inclusion of the standard text in the letter did not of itself mean the claimant would have done so. The respondent's failure to include the wording in the letter was properly taken into account. That is not a basis to revisit the decision reached.

42. The claimant next relied upon **"inconsistent findings (irrationality)"** noting I found the respondent knew of her disability and that the adjustment checking process had not been followed and that had the issue been raised, adjustments would have been made. The claimant says it is then inconsistent to find the respondent did not reasonably know of the disadvantage.

43. I do not accept those findings are inconsistent and irrational. On the facts the respondent knew the claimant had an impairment. It was recorded on the respondent's system. The impairments in this case were dyslexia and dyspraxia. Given the unique impact the impairment can have, it was not reasonable for the respondent to assume that because the claimant had the impairment, it must be the case that there was any disadvantage (far less that it was substantial, in the sense of more than minor or trivial). It was possible the impairments led to minor or trivial disadvantages or none. It was equally possible the disadvantage may be significant.

44. There was a failure to explicitly ask the claimant in correspondence if any adjustments were needed. However, the claimant had previously been asked this and critically had worked closely with Mr Dar. She had previously declined any the same offer she now says would have made a material difference. From the context there was no basis to find that the respondent ought reasonably to have known that the impairment known to them had led to any disadvantage. The claimant did not raise any issue during the process nor suggest that any adjustments were required. Had the claimant done so or had the respondent known (or reasonably known) that adjustments were needed, it is clear that they would have been considered. The fact the offer was not explicitly made was taken into account but did not change the position.

45. In short it was not reasonably known to the respondent that the claimant's impairment had impacted her in any way such as to require any adjustments. That is not irrational nor inconsistent. It was the position that existed at the time from the evidence before the Tribunal.

46. Next the claimant argued there had been a **"misstatement of evidence on adjustments".** The claimant argues that I was wrong to find that because the claimant had previously said "no" to adjustments when asked, that was a "blanket refusal". The claimant correctly notes the obligation to make adjustments is a continuing duty.

47. I did not find that there had been a blanket refusal by the claimant. I noted (at paragraph 63) the claimant had previously said she did not require any adjustments for the discussion. That was part of the context. She had similarly said upon recruitment she did not have a disability. She had also told HR she had dyslexia and dyspraxia which was noted on the system. She had also raised no issues as to requiring any adjustments at the interview. I required to look at the entire factual matrix. The duty to make adjustments is based on the context which I properly took into account. I took the facts into account.

48. The claimant then agues there was **"procedural unfairness and inadequate reasons".** The claimant argues that I failed to give any reasons for accepting the respondent's evidence and applied little or no weight to the claimant's evidence linking her disability to interview difficulties.

49. While it is not entirely clear what the claimant argues in this regard, in order for the duty to make reasonable adjustments to be engaged, it is necessary for the respondent to know about the disadvantage the impairment gave rise to. On the facts, this was not known by the respondent. The claimant had advised HR of the impairment in June, namely dyslexia and dyspraxia, but at no stage did the claimant raise or mention the impact of her impairment in relation to her role and work issues. I was fortified in this view by the fact that even when the claimant was told about the interview and the process to be followed, the claimant still said nothing about any adjustments she thought she would need. She did not need to be asked if she felt there was something needed. Had the claimant required any adjustments to remove any disadvantage that arose it was more likely than not the claimant would have raised them (notwithstanding the fact it is the duty of the respondent to make any adjustments required by law).

50. I found the evidence of those on the panel convincing and I accepted their evidence where it contradicted that of the claimant. I considered that the claimant was more likely than not to have viewed matters with the benefit of hindsight and considered that she had raised issues. I found on the balance of probabilities that each of the panel members had been correct in noting the claimant had not raised any issues as to her impairment having any impact upon her conduct at the interview and that in fact there had been no impact. I preferred the evidence of the respondent's witnesses who were clear, consistent and measured, in contrast to the claimant's position which was more likely than not to have been affected by events that occurred subsequently. I found Mr Dar's evidence that the claimant's performance at the interview was consistent with how she had dealt with other stressful situations (similar to interviews) credible.

51. Next the claimant argued I had misapplied the **burden of proof.** It is not clear to which complaint this relates. In relation to direct discrimination I considered

the *prima facia* case relied upon by the claimant and the 2 stage process required by law. See paragraph 141. That appears to be the only issue in which burden of proof is relevant. I make it clear that I was satisfied the respondent had shown the protected characteristic was in no sense whatsoever a reason for the treatment. But I also make it clear that the claimant had not shown a *prima facie* case in any event (such that technically it would have been necessary to consider whether the respondent had disapplied the burden of proof). In relation to each of the discrimination complaints, I carefully considered the evidence in light of the legal principes. There was no basis up uphold any of the complaints and I remain of that view.

52. The penultimate challenge is that I **failed to take into account the failure to comply with the public sector equality duty.** The claimant does not explain why such a failure is relevant in terms of her complaints. In any event I considered the evidence led in relation to each of the complaints. There were failures in process which I noted (see for example paragraph 54). The failure to comply with a public sector equality duty does not by itself assist in determining the complaint. I required to assess matters in relation to the claimant's complaints. I took into account the evidence and reached a decision based upon the law. I am satisfied there is no reasonable basis upon which that decision should be varied from the material before me, notwithstanding any failure in terms of the public sector equality duty.

53. The final ground was that the claimant argued the **occupational health report which was commissioned after interview "highlights a missed opportunity"** and that the respondent should have been active in its approach. That submission fails to acknowledge the context and facts in this particular case. From the evidence there was simply no basis to place the respondent on notice adjustments may be needed (such as to engage occupational health or otherwise). The claimant raised no issue during the process at all and Mr Dar who was chairing the panel had a clear understanding of the claimant and how she worked and any issues she had. Information that is obtained after the interview in this case does not assist in deterring whether the respondent knew of the disadvantage. There was no basis to know of the disadvantage nor to seek further information at that stage.

Taking a step back

54. I took a step back in relation to the facts and decision in light of the legal principles. I carefully considered the authorities relied upon by the parties. I must take account of the facts as I had found in light of the evidence led. I also considered each of the complaints made in light of the evidence. Having taken time to reflect on those facts and having considered each of the points made by the claimant both individually and cumulatively, I have concluded that it is not in the interests of justice to vary the decision. The claimant has

not raised any points that would have resulted in me reaching a different view from that set out in my judgment for the reasons given.

55. The reconsideration application is therefore refused.

Date sent to parties 08 December 2025