EMPLOYMENT TRIBUNALS

Claimant: Mr M Armstrong

Respondent: The Secretary of State for Justice

JUDGMENT

The application of the claimant, dated 4 December 2025, for reconsideration of the Judgment made on 17 November 2025 and sent to the parties on 24 November 2025, is refused.

REASONS

There is no reasonable prospect of the original decision being varied or revoked, because:

1. The Judgment was issued after a lengthy hearing. A significant amount of documentation was considered. A large amount of evidence was heard and considered, including the evidence given by the claimant personally.

2. The application for reconsideration does not provide any information about events which have occurred since the hearing, or detail that evidence/documents have come to the claimant's attention since the hearing. The application appears to be based upon facts and arguments about which the claimant was aware at the time of the hearing. All the arguments are those which were pursued on his behalf at the hearing and were considered at the time that the Judgment was reached.

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 70). The Court of Appeal in **Ministry of Justice v Burton** [2016] EWCA Civ 714 has emphasised the importance of finality, which militates against the discretion being exercised too readily. In exercising the discretion, I must have regard not only to the interests of the party seeking the reconsideration, but also to the interests of the other parties to the litigation and to the public interest requirement that there should, so far as possible, be finality of litigation.

4. In **Ebury Partners UK v Davis** [2023] IRLR HHJ Shanks said:

> "*The employment tribunal can therefore 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 ET 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."

5. As is said in that Judgment, it may be appropriate to reconsider a decision where there has been some procedural mishap such that a party has been denied a fair and proper opportunity to present his case.

6. The application for reconsideration raises four issues and I will address each of those (briefly) in turn.

7. Hypothetical comparators were addressed and determined as part of the direct discrimination complaint. What was determined, for the allegations where that was required, was set out at paragraphs 137, 138, 139 and 140 of the Judgment and reasons. The fact that the reconsideration request includes what is said to be an apology that the claimant's representative was unable to articulate how a hypothetical comparator would have been treated, shows that what is being put forward is a second bite at the cherry, that is a second attempt to argue the case. What the reconsideration request goes on to explain, does not highlight anything which would or could have changed what the Tribunal determined, which was (for the relevant direct discrimination allegations), that a hypothetical comparator without PTSD would not have been treated differently.

8. The application to reconsider regarding the externals role, does not detail which of the allegations it is that it is being proposed should be reconsidered. What is said is also difficult to understand. The Tribunal found as a matter of fact based upon the evidence heard (and Miss Metcalfe's evidence in particular) that when the roles were allocated on 10 August 2023 there was no discussions about levels of sickness absence, medical conditions or disabilities, and that no account was taken of those things. The claimant's representative had a full opportunity to say what he wished to about the externals role during the hearing and it appears that what is said now is a request to have a second opportunity to make those arguments.

9. There is nothing whatsoever raised in the reconsideration application about process and witnesses that could possibly form the basis for a meritorious request to reconsider. It appears that reliance is placed upon the representative's active decision that cross-examining the witnesses about the matter he raises, had proved to be a pointless line of questioning. That cannot be the basis for a reconsideration application. In any event, the representative had the opportunity at the time of submissions in the hearing, to raise any issues or arguments that he wished to about what conclusions should be drawn from the evidence.

10. Paragraphs 158 to 162 of the Judgment and reasons set out the Tribunal's decision on *Polkey* (issue 8.3). The parties were told that the Tribunal would determine that issue and the claimant's representative was able to make the arguments which he now puts forward at the hearing. It is clear that the representative has a different view to the Tribunal about what were the chances

that the claimant's health issues might have stopped him from returning to work, as he asserts that the chances were nil, and the Tribunal concluded that the appropriate reduction was 40%. However, as with the other grounds, it is not a valid basis for the Judgment to be reconsidered that the claimant's representative wants another chance to argue the issue. To the extent that any of the points raised in the reconsideration application are not about what was decided on that specific issue, but are about remedy issues more generally, the representative will be able to raise those issues at the remedy hearing listed.

11. Rule 70(2) of the rules of procedure empowers me to refuse the application based on preliminary consideration if there is no reasonable prospect of the original decision being varied or revoked.

12. Preliminary consideration under rule 70(1) must be conducted in accordance with the overriding objective which appears in rule 3, namely to deal with cases fairly and justly. This includes, so far as practicable, saving expense. Achieving finality in litigation is part of a fair and just adjudication.

13. I do not find that it is necessary in the interests of justice to reconsider the Judgment, based upon the application made by the claimant. There is no reasonable prospect of the original decision being varied or revoked, based upon the reasons given. The application for reconsideration is refused.

Employment Judge Phil Allen

22 December 2025

JUDGMENT SENT TO THE PARTIES ON
22 January 2026

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FOR THE TRIBUNAL OFFICE