



EMPLOYMENT TRIBUNALS

Claimant: Miss. A Gray

Respondent: X-Pharm Ltd t/a Touchwood Pharmacy

JUDGMENT

The Claimant's application dated **13 January 2026** for reconsideration of the judgment sent to the parties on **6 January 2026** is refused.

REASONS

1. There is no reasonable prospect of the original decision being varied or revoked for the reasons set out below.
2. Comments have been made in relation to the numbered grounds as far as considered necessary.
3. As a general note, in view of the assertion that there has been a failure in relation to evidence, the parties should note that the Written Reasons contains over 12 pages of findings of fact, and findings of fact were made as far as necessary to determine the issues as set out in the list of issues.
4. "Ground 1 Direct race discrimination: misapplication of the burden of proof and evaluating of primary facts."
5. It is noted that the Written Reasons contains a summary of the relevant legal principles. In the conclusions section, the burden of proof is addressed in relation to each allegation of less favourable treatment as set out in the list of issues. It is note that paragraph 13.2 of the application for reconsideration does not fully represent the issues set out under issue number 9 (page 3 of the Written Reasons).
6. The Tribunal does not agree that there has been a misapplication of law, however, in case the Tribunal were wrong in relation to its conclusions on the shifting burden of proof it set out its conclusion on the basis that the burden had shifted in any event, please note paragraphs 205, 221 and 232

of the Written Reasons.

7. Paragraph 184 sets out the differences between Ms. Vassel and the Claimant on which it concluded she was not a valid comparator and paragraphs 187 to 189 deal with inferences.
8. “Ground 2 Indirect race discrimination: misidentification and mishandling of the PCP and particular disadvantage”.
9. The parties are reminded that a discussion about the issues took place at the start of the hearing, and in particular clarification questions were asked about elements of the indirect discrimination complaint and the Claimant’s representative confirmed the issues as set out in the Written Reasons recorded the allegations the Claimant was seeking to pursue.
10. In closing submissions, the Claimant’s representative appeared to attempt to refer to a different PCP to that pleaded, and was reminded that the Tribunal was considered the PCP as set out. No application to amend the PCP was made at any time.
11. The Tribunal considered the PCP as framed, and it does not agree that there has been any misidentification or mishandling by the Tribunal, which considered the PCP as pursued by the Claimant and was professionally represented.
12. The Tribunal did not go on to consider the later stages of the test required for demonstration indirect discrimination (namely those at 16, 17 and 18 at page 4 of the Written Reasons) because it was not necessary to do, the Claimant failed at the first hurdle as a PCP was not established.
13. “Ground 3 Whistleblowing detriment: public interest, legal obligation and causation”.
14. The Tribunal has set out its analysis and the reasons in relation to whether or not the Claimant made a protected disclosure at paragraphs 249 to 275.
15. The allegation of whistleblowing detriment did not continue as it was determined that a protected disclosure did not happen.
16. “Ground 4 Automatic unfair dismissal (s 103A): failure to consider Jhuti/Kong manipulation and the real reason”
17. The parties are directed to paragraphs 249 to 275 of the Written Reasons. The Tribunal determined that the Claimant had not made the protected disclosure relied upon. The parties are reminded that the only pleaded protected disclosure was that *on 24 January 2024 the Claimant told Mr. Gurdev in the course of a phone call that Mr. McCarthy had bullied Zoe, accused her of being a liar, made a comment about her weight and reduced her to tears.*
18. An automatically unfair dismissal complaint cannot succeed if there is no protected disclosure, as explained at paragraph 280 and therefore the Tribunal did not enter into any detailed analysis. The application for reconsideration does not appear to recognise that the Claimant’s case failed

at the first hurdle as it was deemed there was no protected disclosure.

19. “Ground 5 Section 12 ERA 199: characterisation of the 24 January meeting”

20. The parties are reminded that despite the Tribunal reminding the parties to address each allegation in any written and oral submissions the Claimant’s representative did not comment at all on the section 12 complaint in his written submissions and made only a very brief comment in oral submissions on a prompt from the Tribunal.

21. The Tribunal’s reasons are explained at paragraph 528 and were based on all the evidence, including the responses from the Claimant in cross examination. The findings of fact summarise the events of the day. The parties are directed to the observation at paragraph 530 also. It is not appropriate to try and raise late and additional submissions by way of a reconsideration request.

22. “Ground 6 – ACAS Code, the Respondent’s own procedures, and the extend of procedural fairness.”

23. The parties are reminded that the Written Reasons sets out conclusions in relation to each issue.

24. The Claimant’s oral and written submissions reference the uplift provisions in section 207A of TULRCA 1992 only.

25. As the Claimant was not successful in any of her complaints there was no consideration of any ACAS uplift as part of compensation, and there was no ordinary unfair dismissal complaint.

26. “Ground 7 Privilege, external HR advice, and the “sword and shield” issue”

27. This matter was addressed during the course of the hearing. The Claimant raised concerns about the extent to which any advice given to the Respondent was privileged and whether any further documents should be disclosed. Enquiries were made and the Respondent’s representative set out their view that the email chain between the Respondent’s HR Advisor and Mr. Dhaliwal was subject to litigation privilege, but that he did not consider anything Mr. Dhaliwal had waived privilege but to the extent that anything went beyond fact they had obtained advice he suggested the Tribunal could disregard.

28. The Claimant’s representative said the Respondent could not rely on litigation privilege but also say they didn’t follow policies and rely on privileged advice. He said the Tribunal is entitled to draw inferences and what mattered for the findings was that the Respondent did not follow its policies.

29. The Claimant’s representative was asked what action he was seeking and he said a note should be made and he would address in closing submissions. On a further review of the written submissions and note of the oral submissions the Claimant’s representative did not raise the matter in

either written or oral submissions.

30. Paragraph 84 of the Written Reasons sets out that HR advice had been received. No consideration about the nature or basis of the advice was given. The paragraph does set out Mr, Dhaliwal's belief.

31. The reconsideration application appears to raise concern about the use of privileged advice and the assessment of reasonableness. The parties are reminded that the Claimant did not have standing to bring a claim of ordinary unfair dismissal. The Tribunal has not made any assessment of reasonableness of any process on the issues as it not part of the statutory test.

Date: 22 January 2026

Approved by

Employment Judge Cawthray