EMPLOYMENT TRIBUNALS

Claimant: **Caroline Clements**

Respondent: **Ovo Energy Limited**

JUDGMENT ON APPLICATION FOR RECONSIDERATION

The judgment of the tribunal is that the Claimant's application for reconsideration dated 20 June 2025 is refused because there is no reasonable prospect of the decision being varied or revoked.

Interest on the judgment debt will not run from 24 June 2025.

REASONS

1. The claimant has applied for a reconsideration of the reserved judgment on remedy dated 23 May 2025 which was sent to the parties on 09 June 2025 ("the Judgment"). The grounds are set out in her email dated 20 June 2025 which was received at the tribunal office on the same date.

2. I must firstly apologise to the parties for the delay in this application being dealt with. On receipt it was initially misdirected to another Employment Judge and was not referred to me until 28 November 2025. I do not sit full time as an Employment Judge and commitments over the Christmas and New Year period meant that I was unable to deal with the matter until January 2026.

3. The Respondent's solicitor also emailed the Tribunal on 18 June 2025 raising that it was attempting to pay the monies that the Respondent had been ordered to pay the Claimant in the remedy judgment but that the Claimant was intentionally withholding her bank details and so it was unable to make payment. The Respondent's solicitor's email stated that in light of this the Respondent understood that no interest on the unpaid

judgment debt would accrue if it remained unpaid after 14 days. The Claimant subsequently confirmed that she was withholding her bank account details until the reconsideration application had been dealt with, stating that she felt uncomfortable confirming her bank details prior to a response from the Employment Tribunal. Again, this email was only referred to me on 28 November 2025.

4. Rules 68 – 70 of the Employment Tribunal Procedure Rules 2024 make provision for reconsideration of a tribunal judgment on application by a party. Under Rule 69 an application for reconsideration under Rule 68 must be made within 14 days of the date on which the decision (or, if later, the written reasons) were sent to the parties. The application was therefore received within the relevant time limit.

5. The grounds relied upon by the claimant are these:

   (1) ***"(Paragraph 36 notes), 'The Claimant's evidence and the evidence from Michelle Lennox submitted by the Claimant in relation to remedy were in our view entirely consistent with that conclusion, namely that there was only a 50% chance that the Claimant would be able to remain in employment with the Respondent even with medical support and reasonable adjustments. The Tribunal was of the view that it was not practicable to order re-engagement where there was only a 50% chance of the Claimant being able to remain in any post to which she was appointed."***

   "Point for reconsideration – *I am unable to see where in both mine and Michelle Lennox's evidence, that it indicates and/or notes that there would have only been a 50% chance of success in my return to work? Therefore, I would like to request this point be reconsidered please.*

   (2) **"(Paragraph (3) & 47) notes, 'The period of loss from 13 September 2023 until 14 April 2025 is 82.4 weeks. The loss for that period is £47,674.99 but this has to be reduced by 75% to reflect that the Claimant would only have been working for 18.5 hours per week and also the 50% chance that her employment would have been terminated. As such loss of salary for this period is £11,918.75 Loss of pension contributions amounts to £1430.25. Total loss for this period therefore amounts to £13,348.99.**

   "Point for reconsideration – *It is incorrectly assumed throughout that following my phased return to work, my hours would not have increased to more than 18.5 hours per week. This was never*

evidenced, nor proven that the maximum number of hours I would have been able to have worked per week, were 18.5 hours. Therefore I would like this point to be reconsidered please.

"Dr Natalie Nobar had reported in her Occupational Health Report that for my phased return to work, she suggested the target for maximum working hours to achieve over a 4 week period was no more than 50% of my contractual hours and to gradually increase again, if feasible, Dr Natalie Nobar never stated that I was unable to work more than 18.5 hours per week. [Please see page 277 of the bundle [full document between pages 276 – 278 of the bundle.]].
"In my first phase return to work plan, Michelle Lennox noted she was building up to no more than 18.5 hours over my phased return to work period, in line with Dr Natalie Nobar's Occupational Health Report. Michelle Lennox never stated that I was unable to work more than 18.5 hours per week. [Please see page 293 of the bundle [full document between pages 292 – 295 of the bundle]].

"To support this, Michelle Lennox's second phased return to work plan confirms she believed I was able to achieve more than 18.5 hours per week, as she had set the last 2 weeks of the plan at 24 hours per week, including breaks, [[please se page 585 of the remedy bundle [full document between pages 582 – 585 of the remedy bundle]].

(3) ***"Paragraph 49) notes, 'We should add that the Claimant, in her Schedule of Loss, sought future loss lasting for the rest of her career, that is, 28 years. We did not consider that there was evidence to support an award reflecting loss of earnings for the rest of the Claimant's working life.'***

"Points for reconsideration – *to confirm, I did seek and continue to seek future losses lasting for the rest of my career. I did not seek future losses for my full wage, I simply sought the difference between receiving minimum wage from October 2026 to October 2054, in comparison to my previous hourly rate for the same period of time, as detailed within my schedule of loss. As proven throughout my case, I was unfairly dismissed and discriminated against due to my disabilities. This is therefore preventing me from continuing to work in my previous role that provided such pay.*

"As noted throughout my case, Michelle Lennox confirmed within her correspondence that working from home, on part time hours, in an industry that I am familiar with, would be best for me. However, the likelihood of acquiring such a role, whilst matching my previous pay, is slim to none. Therefore, I believe the Respondent should be

held accountable for this and be made to pay accordingly, as they have been determined to stop me from continuing to fulfil my previous role, again due to unfairly dismissing me and discriminating against me due to my disabilities. Therefore, I would like to request this point be reconsidered please.

(4) ***"(Paragraph 51) notes, 'We deduct from this the sums received by the Claimant by way of mitigation. These are a termination payment from the Respondent of £10,009.37 in respect of PILON. This would have amounted to £7132.04 after tax. The Claimant also received ESA payments from August 2023 to 14 April 2025 amounting to £12128.21, ESA received for the period 15 April 2025 to 15 April 2026, at the rate of £138.20 per week, would be £7186.40.'***

"Point for reconsideration – *There is no guarantee that I will receive Employment and Support Allowance for the period 15 April 2025 to 15 April 2026 as presumed. Therefore, I would like to request this point be reconsidered please.*

(5) ***"(Paragraph 56) notes, 'The Claimant was also seeking an award for personal injury. There is no medical evidence supporting this ad no evidence from which we could infer that the Respondent's treatment had caused personal injury. There was no medical evidence supporting this and no medical evidence from which we could infer that the Respondent's treatment of the Claimant had caused personal injury or exacerbated the symptoms of Long Covid or Hyperthyroidism. Accordingly we don't consider that there is the basis for an award for personal injury."***

"Points for reconsideration – *Amongst other evidence, Michelle Lennox notes, 'We have referred you to talking therapies, as the difficulties you have faced trying to return and stay in work have had an impact on you and your condition, the prolonged process has had an impact on your mental health and subsequent Long Covid recovery and therefore, you will benefit from further psychological and practical support to manage your condition long term.' [please see page 583 of the remedy bundle [full document between pages 582 – 585 of the bundle]].*

"This confirming that the Respondent has had an detrimental impact on both my mental and physical health, further impacting my recovery and rehabilitation. Amongst other support, the Long Covid Service had had to offer further support, referring me to Talking Therapies. This is due to the difficulties caused by the Respondent

and the Employment Tribunal process in which I have been forced to enter into, due to the Respondent unfairly dismissing me and discriminating against me due to my disabilities. Therefore, I would like the award for personal injury to be reconsidered please, as the detrimental impact,, further exacerbating my symptoms, caused by the Respondent has been evidenced throughout my case."

6. The review application concluded with the Claimant stating that she was able to provide further evidence from Michelle Lennox, Clinical Lead Occupational Therapist for the Long Covid Vocational Rehabilitation Service, as well as other medical practitioners named in her email.

The law on reconsideration

7. Rules 68 – 70 of the Employment Tribunal Procedure Rules 2024 provide as follows:

"Principles
68. – (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 under 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.

Application for reconsideration
69. 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.

Process for reconsideration
70. – (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 (including, unless there are special reasons, where substantially the same application has already been made and refused), 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…"

8. As such the Tribunal has a discretion to reconsider a judgment if it considers it is in the interests of justice to do so (Rule 68).

9. Under Rule 70(2) the judge must dismiss an application if they consider that there is no reasonable prospect of the original decision being varied and revoked. It is mandatory for the judge to determine whether there are reasonable prospects of the judgment being varied and revoked before seeking the other party's response and the parties' views on whether the matter can be decided without a hearing, expressing a provisional view and deciding how the reconsideration application should be dealt with. This should where practicable be the judge who made the original decision or chaired the tribunal who made it, as the case may be. See **T.W White & Sons Ltd v White UKEAT/0022/21** and the **Presidential Guidance – Panel Composition (2024)** at 16.1.

10. In **Outasight VB Limited v Brown UKEAT/0253/14** the Employment Appeal Tribunal (EAT) (HHJ Eady QC) provides guidance on reconsideration "in the interests of justice". The EAT confirmed (at para 33) that it was long-established principle that the interests of justice allowed a broad discretion, albeit one that had to be exercised judicially, which means having regard not only to the interests of the party seeking the reconsideration but also the interests of the other party to the litigation and the public interest requirement that there should be, as far as possible, finality in litigation.

11. The EAT in **Trimble v Supertravel Ltd [1982] ICR 440** decided that if a matter has been ventilated and argued before the tribunal then any error of law in the judgment falls to be corrected on appeal and not by review.

12. The interests of justice test means that the party seeking reconsideration must show that it is necessary for the tribunal to revisit the conclusions in the judgment. This might be a new piece of evidence or an error in the way the original hearing was conducted which meant that a party did not have an opportunity to argue their case or part of it, or a clear mistake as to the law. It is not an opportunity to reargue either an evidential or a legal issue. An unsuccessful litigant is not entitled to have a judgment reconsidered in order to simply reargue their case, or argue matters in a different way: **Liddington v 2Gether NHS Foundation Trust UKEAT/0002/16** at paras 34 – 35.

Assessment of the Application (Rule 70(2))

13. In relation to Ground (1), the Tribunal's unanimous conclusion, having heard the parties' evidence and submissions, was that there was only a 50% chance that the Claimant would return to work for the Respondent at the conclusion of her phased return. This was reached by the Tribunal in its judgment on liability, where it had been agreed and understood by the Tribunal and the parties that the Tribunal would determine liability but also the likelihood of the Claimant's employment continuing after the effective date of termination, in accordance with the principles set out in the cases of **Polkey v AE Dayton Services [1988] AC 344** and **Abbey National v Chagger [2010] ICR 397**. There was no appeal or application for reconsideration in relation to the liability judgment and so the parties and the Tribunal approached the remedy hearing on this basis.

14. There is no reasonable prospect of the remedy judgment being varied or revoked on this ground.

15. This also applies in relation to Ground 2. The Tribunal's unanimous conclusion, having heard the parties' evidence and submissions, was that the Claimant's weekly working hours would not rise above 18.5 hours per week at the conclusion of her phased return if it was successfully completed. This was reached by the Tribunal in its judgment on liability, where it had been agreed and understood by the Tribunal and the parties that the Tribunal would determine liability but also the likelihood of the Claimant's employment continuing after the effective date of termination, or the possibility of their pre-dismissal earnings being reduced for some other reason, in accordance with the principles set out in the cases of **Polkey v AE Dayton Services [1988] AC 344** and **Abbey National v Chagger [2010] ICR 397**. There was no appeal or application for reconsideration in relation to the liability judgment and so the parties and the Tribunal approached the remedy hearing on this basis.

16. Furthermore the Claimant's witness statement stated that the reasonable adjustments that she would continue to require included part time hours.

17. There is no reasonable prospect of the remedy judgment being varied or revoked on this ground.

18. Ground (3) of the reconsideration application is based on the Tribunal's decision not to award career long loss of earnings. The Claimant's witness statement stated that she believed it would be difficult for her to find a job with the same or even a similar salary/hourly rate and referred to five pages of job advertisements which she said that showed that there were

minimal or no job opportunities available. The Claimant's evidence at the date of the remedy hearing was that she had not applied for any other roles since her dismissal.

19. As such the Tribunal concluded that there was insufficient evidence to show that it was likely that there was no possibility of the Claimant finding alternative employment at a rate equivalent to her pay rate at the Respondent for the rest of her working life. The fact that the Claimant was unfairly dismissed and subjected to a discriminatory dismissal does not mean that she will be unable to find an alternative role in the future.

20. As such, there is no reasonable prospect of the remedy judgment being varied or revoked on this ground.

21. Ground (4) refers to the Claimant's receipt of ESA. The application does not state that the Claimant has not received ESA from 15 April 2025 up to the date of the application. The Claimant's counsel in the remedy hearing on 14 April 2025 did not refer to there being a possibility of ESA not being paid after 15 April 2025. There was no reference to such a possibility in the Claimant's witness statement or the documentary evidence she submitted. No such documentary evidence has been submitted in support of this ground.

22. The Tribunal determined the appropriate deduction to the award to account for ESA payments on the basis of the evidence and submissions put forward by the Claimant at the remedy hearing.

23. There is no reasonable prospect of the remedy judgment being varied or revoked on this ground.

24. Ground (5) relates to the claim for an award for personal injury. The Claimant was seeking £25,000. There was no expert report addressing the personal injury claim. It is not a requirement for there to be such a report to support such a claim in ET proceedings (unlike civil proceedings) but the absence of such a report makes it difficult for a party to establish that they are entitled to such an award. There needs to be an identifiable physical or psychiatric injury, which can be separated from the feelings of hurt and distress which are compensated for by the award for injury to feelings, and there needs to be evidence of a causal link between the discriminatory conduct and the injury.

25. The Tribunal considered the statements from Michelle Lennox referred to in the reconsideration application when reaching the remedy judgment. The Tribunal noted that Michelle Lennox's qualifications were unclear and she did not appear to be a doctor. The statements relied on by the Claimant, taken at their highest, were not sufficient to show that any

discriminatory conduct of the Respondent had caused personal injury to the Claimant.

26. In relation to the possibility of further medical evidence being put before the Tribunal, the opportunity for parties to put forward medical evidence in support of their cases on remedy was at the remedy hearing. There is nothing in the reconsideration application to indicate why, if the medical practitioners referred to in the application were able to provide evidence relevant to remedy, this was not obtained before and presented at the remedy hearing.

27. There is no reasonable prospect of the remedy judgment being varied or revoked on this ground.

28. Accordingly, having considered the merits of the reconsideration application, I refuse it pursuant to Rule 70(2) because there is no reasonable prospect of the Judgment being varied or revoked.

Interest on the Judgment

29. The fact that the Claimant has been paid the monies due to her under the remedy judgment is irrelevant to the merits of any reconsideration application or any appeal in relation to that judgment. As such there is no sensible reason for the Claimant not to provide the Respondent with any information it requires in order to make payment to her. Interest will not run on the judgment debt. In the unlikely event that the Respondent fails to make payment forthwith on receipt of the Claimant's bank details the Claimant may by application seek to vary this order in relation to interest.

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Employment Judge D Gray-Jones
Dated 23 January 2026

JUDGMENT SENT TO THE PARTIES ON
30 January 2026

FOR THE TRIBUNAL OFFICE