



EMPLOYMENT TRIBUNALS

Claimant: Waldemar Malak

Respondent: Currys Group Limited

RECORD OF A PUBLIC PRELIMINARY HEARING

Heard at: Nottingham by video

On: 28 November 2025

Before: Employment Judge Millns

Representation

Claimant: In person

Respondent: Mr Simon Tibbets, counsel

RESERVED JUDGMENT

By consent:

1. The respondent's name is amended to Currys Group Limited.

The judgment of the Tribunal is that:

2. The respondent's application to revoke the judgment dated 3 April 2025 is refused. The judgment of that date stands, except that the name of the respondent in that judgment is amended to Currys Group Limited.

REASONS

1. Following a period of ACAS early conciliation from 8 October 2024 to 14 October 2024, the claimant issued his claim on 21 October 2024. The claimant was employed by the respondent as a laptop repair engineer/ laptop technician from 15 January 2007 until 18 July 2024 when he was dismissed for gross misconduct. The claimant brought claims of unfair dismissal and disability discrimination. In his ET1 at box 8.2 the claimant set out that he suffered a 'mental health disability' and at box 12.1 set out that he suffers from stress and anxiety and has been on medication from as early as 2017.
2. On 6 November 2024, the Employment Tribunal acknowledged the claim by letter to the claimant. On the same date the Employment Tribunal also sent two pieces of correspondence to the respondent at its registered address at 1 Portal Way, London, W3 6RS. The first was a Notice of Claim which enclosed a copy of the claim form and set out the standard Rule 17(2) requirement for a response to be completed and submitted within 28 days – here, by 4 December 2024. The Notice of Claim also gave notice of a three-day final hearing on 2 November 2026, 3 November 2026, and 4 November 2026 at 10:00am at the Nottingham Justice Centre. The second piece of correspondence was a Notice of Preliminary Hearing for Case Management by telephone on 13 February 2025 at 14:00pm. As is usual, this notice attached a blank standard case management agenda document. No response was received from the respondent.
3. On 22 January 2025 the Tribunal wrote to the parties as follows:

'To the Claimant and the Respondent,

The respondent has failed to enter a response to the claim. In accordance with Employment Tribunal Rule 22, Employment Judge Adkinson has decided to issue a judgment.

The judgment deals with liability only and there will be a hearing to decide the compensation or other remedy payable to the claimant. The telephone hearing on 13 February 2025 will be used to discuss directions for the hearing. The respondent will only be entitled to take part in this hearing to the extent permitted by the employment judge who hears the case.

*Yours faithfully
Helen Catlow
For the tribunal office'*

No response was received from the respondent.

4. On 3 February 2025 the Tribunal wrote to the respondent noting that a ET3 response was not filed and explaining a default judgment may now be issued. No response was received to this letter by the respondent.

5. On 13 February 2025 Employment Judge Victoria Butler heard the case management telephone hearing and made directions for the final hearing to decide remedy on 3 April 2025 at the Nottingham Hearing Centre at 10AM for three hours. The respondent did not attend the case management hearing. A Record of Preliminary Hearing was sent to both the claimant and respondent on 17 February 2025. No response was received from the respondent.
6. On 3 April 2025 Employment Judge Clark (sitting alone) heard the claimant's remedy hearing in person at Nottingham Justice Centre when the claimant represented himself. The respondent did not attend, and no application was received to participate. At that hearing judgment was entered for the claimant in the sum of £35,057.34 comprising a payment for a basic and compensatory award, injury to feelings and financial loss including interest and grossing up. The judgment was sent to the parties on 25 April 2025.
7. On 2 May 2025 the Tribunal received an email from Doyle Clayton solicitors on behalf of the respondent with correspondence marked 'urgent' making an application to set aside the judgment of 3 April 2025. The application noted that Doyle Clayton solicitors had been instructed the previous day i.e. on 1 May 2025. The application also stated as follows:

'The respondent has been contacted yesterday by a journalist regarding a judgment in the above matter made at a remedy hearing at Nottingham Employment Tribunal on 3 April 2025 (the judgment). We note that the judgment has been published on the Tribunal database (link to data base provided). The respondent did not participate in the proceedings for the reasons outlined below. The respondent therefore:

- *Has not (as far as it is aware) received a copy of the claim;*
- *Was unaware of the details of the claim; and*
- *Due to an error by the temporary third-party agency operating in its post room, was unaware a remedy hearing had been listed in the matter and/or that a default judgment was entered.*

The letter went on to provide a narrative about the background to an alleged post handling issue at the respondent as well as an application to set the judgment aside and for an extension of time to file a defence.

8. The correspondence was considered by Employment Judge Clark who made directions for the claimant to write the Tribunal setting out any objections to the respondent's application and ordered that the respondent provide its response no later than 08 July 2025. Directions were also made for a hearing to determine the respondent's application.
9. On 15 June 2025 the claimant wrote to the Tribunal formally objecting to the application made by the respondent to set aside the judgment.
10. On 4 July 2025 the respondent filed its Response. Within its Response the Grounds of Resistance set out that the correct name for the respondent is 'Currys

Group Limited' not 'Currys Plc'. In summary the Response does not admit that the claimant is a disabled person at the material times by reason of its condition of anxiety and depression and puts the claimant to proof. Further the respondent denies that it unfairly dismissed the claimant or discriminated against him by reason of any alleged disability. The respondent asserts that the claimant was dismissed for gross misconduct for alleged use of unauthorised software on company provided pen drives – breaching information security acceptable use policy and alleged retention of customer data on a SD card, breaching QP875 exit route for data storage devices and data protection policy. The respondent sets out that the decision to dismiss was against a background of the claimant receiving a final written warning dated 22 June 2023 for breach of the respondent's social media policy.

11. On 30 July 2025 the parties received a notice of this preliminary hearing by video, listed for two hours. A Polish interpreter was booked for the claimant; Ms Beata Monk appeared at the hearing. In the event Ms Monk was not needed because the claimant confirmed that he was able to understand what was being said and make representations on his own behalf without her assistance. Miss Monk remained present throughout the hearing and the claimant was encouraged to make the Tribunal aware if he wished any part of the proceedings to be translated; he did not.
12. The respondent produced an agreed bundle for the hearing, as well as a witness statement from Mr Mauricio Coral in support of the application. In addition, the respondent had prepared a case management agenda and draft list of issues to be used if judgment was set aside.
13. The Tribunal heard evidence from Mr Mauricio Coral, and he was cross examined by the claimant and asked some questions by the Tribunal. The Tribunal then heard submissions on behalf of the respondent from counsel Mr Tibbets, who also provided a skeleton argument, and finally heard submissions from the claimant. There was insufficient time to deliberate and provide an oral judgment during the hearing and it was explained to the parties that the decision would be sent out in writing. This is that decision.

Relevant legal principles

14. The Employment Tribunal Procedure Rules 2024 provides, so far as relevant as follows:

Reconsideration of judgments

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.

15. The test the Tribunal must apply is whether it is necessary in the interests of justice to reconsider the original decision. The Tribunal should take into consideration all relevant circumstances in order to decide whether the balance of justice lies in granting or refusing the application. At the heart of this consideration is the prejudice to the respondent who is seeking the reconsideration as well as the prejudice to the claimant in whose favour judgment has been issued. When exercising its power under rule 68 the Tribunal must also seek to give effect to the overriding objective.
16. Mr Tibbetts for the respondent invited the Tribunal to consider the Employment Appeal Tribunal's decision in **Kwik Save Stores Ltd v Swan and Others [1997] ICR 49**. This case laid down the factors the Tribunal should consider when hearing an application for an extension of time to present a response under Rule 21. In summary those factors are:
- (i) the nature of the explanation for non-compliance with the time limit- the more serious delay, the more important it is for an application to provide a satisfactory explanation which is full and honest;
 - (ii) taking into account all relevant factors and weighing and balancing them against the other; and
 - (iii) reaching a conclusion which is objectively justified on the grounds of reason and justice.

Considering those relevant factors the Tribunal should ask

- (a) what prejudice will the applicant suffer if the extension is refused?
- (b) what prejudice will the other party suffer if the extension is granted?.

17. Mr Tibbetts also directed the Tribunal to the Court of Appeal case of **Costellow v Somerset County Council 1993 WI 965585**, in support of the assertion that if a defence is shown to have some merit in it, justice will often favour the granting of an extension of time. Otherwise, the respondent may be held liable for wrong which he has not committed.
18. Whilst the Tribunal notes that these cases relate to the exercise of discretion under rule 21 rather than an application revoke a judgment under rule 68, they are nevertheless of assistance in reminding the Tribunal of what may be considered as part of all the relevant circumstances when exercising a discretion of this nature, including but not limited to the reason and explanation for non-compliance, the extent of the delay, and respective prejudice. However, the Tribunal must go back to the words of the rule, which allows for revocation of a judgment where it is necessary *in the interests of justice*. The Tribunal also notes that if the respondent succeeds in having the judgment revoked, then the Tribunal will need to go on to consider whether to allow its further application under Rule 21 to extend time for presentation of its response – and of course those reported cases are central to the exercise of the Rule 21 discretion.

19. The Tribunal begins by considering the interests of justice in focusing on the reason for the respondent's non-engagement with the claim until 2 May 2025. The Tribunal was assisted by the evidence of Mr Coral.
20. The respondent operates a post room at its Head Office, 1 Portal Way, London W3 6RS. Mr Coral, Facilities Manager for Vinci Facilities Limited, oversees the third-party post room service provided to the respondent and has done so for five years. The post room operates Monday to Friday and handles mail for various departments, including Legal, Estates, and HR. Each department has specific instructions for receiving and distributing post. Vinci is required to send all employment tribunal correspondence (e.g., ET1s) to the respondent's legal team, while HR-related post is sent via courier to Celaton, an outsourced provider that scans and forwards documents internally.
21. On Wednesday 13 November 2024, the post room operative, Mr Hormoz Vahabi, called in sick after being admitted to hospital. He had worked the previous two days that week. Mr Coral immediately covered the post room and continued full-time until 9 December 2024. From 9 to 20 December 2024, Mr Coral trained Mr Graham Parsons, who then managed the post room until Mr Vahabi returned in July 2025.
22. The only Tribunal correspondence located in the post room was the Record of Preliminary Hearing dated 13 February 2025, sent on 17 February and received on 18 February. Mr Coral explained that Mr Parsons mistakenly sent this letter to Celaton instead of the legal team. Celaton did not notify Vinci or the respondent of the error. Despite searching thousands of items of post, no other Tribunal correspondence was found.
23. The respondent suggests that sickness absence impacted processing of documents sent on 6 November 2024. However, the absence lasted only part of 13 November, and Mr Coral—a highly experienced manager—covered immediately. The Tribunal finds this explanation unsatisfactory as to the reason why the post of 6 November 2024 has not been located. Mr Coral managed the post room until 20 December 2024, after which Mr Parsons took over. The Tribunal accepts that Mr Parsons likely made an honest mistake in his handling of the Record of Preliminary Hearing, but Celaton's failure to alert anyone remains unexplained.
24. The respondent has not located two pieces of correspondence dated 6 November 2024, the letters of 22 January 2025 and 3 February 2025, or the judgment of 25 April 2025, and offers no reason why. All were correctly addressed. The respondent's explanation for its non-participation is therefore limited. As a large employer, it should and could easily have had robust systems to monitor and process post. While the Tribunal does not doubt the respondent's serious concern about the missing post and that it is carrying out an investigation, the explanation for missing items is largely absent. The Tribunal is alert to the fact that post does sometimes go astray with no explanation, but the volume of lost mail here is remarkable. In weighing the interests of justice, the Tribunal

notes this lack of satisfactory explanation and that the claimant, as a litigant in person, complied with all case management orders.

25. The Tribunal also considered whether the respondent's response has merit. It concluded that there is merit: there is a dispute about the fairness of dismissal and an arguable defence to discrimination claims. Ordinarily, where a defence has merit, justice favours granting an extension of time. However, there is no blanket rule, and ultimately the interests of justice must prevail.
26. The Tribunal further considered the claimant's vulnerability due to poor mental health. During the hearing, he became upset and required a break. He explained that he had recently suffered additional distress at the prospect of re-litigating his claim, resulting in a doubled medication dose. The claimant told the Tribunal he doubted he could run the case again if judgment were set aside. In his written objection, he stated: *"I followed all of the rules and timeframes diligently, despite extremely difficult personal circumstances, including my mental health."* The Tribunal notes that he is currently employed in alternative work.
27. Public interest in finality of litigation and that Tribunal resources have already been expended on this case were also considered. A new four-day hearing (which the Tribunal considered would be necessary to consider both liability and if appropriate, remedy) could not be accommodated until January 2027—two months after the original final hearing date. While not a long delay from what would have been the position if a response had been received on time, this would be the claimant's fourth hearing. At the last hearing, the Claimant attended for nearly three hours, gave evidence on remedy before receiving an oral judgment. The respondent's application was made almost a month later.
28. Turning to prejudice, the Tribunal recognises the very serious prejudice to the respondent in having judgment entered against it for unfair dismissal and disability discrimination, with an award of approximately £35,000, without having defended the case in what might be an unmeritorious claim. However, the Tribunal also recognises the very serious prejudice to the claimant if the application was granted. He has complied with all case management orders, prepared for and attended multiple hearings, and given evidence on remedy. He is a vulnerable litigant in person who has already endured considerable stress and deterioration in his mental health as a result of these proceedings. Bearing this in mind, requiring him to recommence a claim he thought was completed would impose an unreasonable and disproportionate burden which would not be sufficiently offset by the making of a preparation of time order in his favour (as suggested by the respondent). When weighed against the respondent's limited and largely unexplained failure to engage and having regard to the public interest in finality of litigation and the resources already expended, the interests of justice do not favour granting the application.

Approved by:

Employment Judge Millns

Dated: 16 December 2025

Sent to the parties on

...09 January 2026.....

For the Employment Tribunal

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Notes

Public access to employment tribunal decisions

Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.

Recording and Transcription

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<https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/>