



EMPLOYMENT TRIBUNAL

Claimant: Joshua Fache

Respondent: L'Oreal (UK) Limited

JUDGMENT ON APPLICATION FOR RECONSIDERATION

The judgment of the Tribunal is that the Claimant's application dated 23 January 2026 and supplemented on 3 February 2026 for reconsideration of the Reserved Judgment with Reserved Written Reasons sent to the parties on 9 January 2026 is refused because there is no reasonable prospect of the decision being varied or revoked.

Approved by Employment Judge Cox

Dated: 3 March 2026

Sent to the parties on

For the Tribunal

REASONS

Reserved Judgment with Reserved Written Reasons dismissing each of the claimant's claims was delivered orally on 9 January 2026. The claimant submitted an application under Rule 71 of the Employment Tribunal Proceedings Rules 2024 (The Rules") on 23 January 2026 amplified by additional submissions by email dated 3 February 2026.

The Law

Rule 68 provides that the Tribunal may, either on its own initiative or on the application of a party, reconsider any judgment where it is necessary in the interests of justice to do so. A judgment under reconsideration may be confirmed, varied or revoked.

Rule 69 requires an application for reconsideration to be submitted within 14 days of the date on which written record of the judgment or written reasons (if these were sent separately) is sent to the parties.

The process by which the Tribunal considers an application for reconsideration is set out in Rule 70. Rule 70(1) provides that the Tribunal must consider any application made under rule 69 (application for reconsideration) and (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. If the application has not been refused under paragraph (2), paragraph 3 requires that 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. Paragraph 4 provides that if the application has not been refused under paragraph (2), the judgment must be reconsidered at a hearing unless the Tribunal considers, having regard to any written representations provided under paragraph (3), that a hearing is not necessary in the interests of justice, and if the Tribunal determines the application without a hearing the parties must be given a reasonable opportunity to make further written representations in respect of the application (paragraph 5).

A judgment will only be reconsidered where it is 'necessary in the interests of justice to do so'. A tribunal dealing with the question of reconsideration must seek to give effect to the overriding objective to deal with cases 'fairly and justly' (Rule 3). This includes: ensuring that the parties are on an equal footing; dealing with cases in ways which are proportionate to the complexity and importance of the issues; avoiding unnecessary formality and seeking flexibility in the proceedings; avoiding delay, so far as compatible with proper consideration of the issues; and saving expense. The tribunal should also be guided by the common law principles of natural justice and fairness.

Guidance for Tribunals on how to approach applications for reconsideration was given by Simler P in the case of Liddington v 2Gether NHS Foundation Trust UKEAT/0002/16/DA:

"34. [...] a request for reconsideration is not an opportunity for a party to seek to relitigate matters that have already been litigated, or to reargue matters in a different way or adopting points previously omitted. There is an underlying public policy principle in all judicial proceedings that there should be finality in litigation, and reconsideration applications are a limited exception to that rule. They are not a means by which to have a second bite at the cherry, nor are they intended to provide parties with the opportunity of a rehearing at which the same evidence and the same arguments can be rehearsed but with different emphasis or additional evidence that was previously available being tendered. Tribunals have a wide discretion whether or not to order reconsideration. Where [...] a matter has been fully ventilated and properly argued, and in the absence of any identifiable administrative error or event occurring after the hearing that requires a reconsideration in the interests of justice, any asserted error of law is to be corrected on appeal and not through the back door by way of a reconsideration application."

The Application

The application including supplementary submissions were received within time (Rule 69(a)).

The application was copied to the respondent. The respondent has not so far as I am aware commented on the application.

Analysis

The claimant brought complaints of :

Direct sex discrimination (s 13);

Direct disability discrimination (s13);

Discrimination arising from disability (s 15);

Failure to make reasonable adjustments (s20-21);

Harassment related to disability (s26);

All of the complaints were dismissed for the reasons set out in the Tribunal's
Reserved Written Reasons.

Grounds for Reconsideration

The claimant himself summarised his grounds for reconsideration as follows:

(a) The judgment contains internal contradictions where findings of fact support the Claimant's case but conclusions contradict those findings;

(b) Critical evidence from the Respondent's own witnesses was not properly addressed;

(c) Pre-employment medical records were inappropriately used to attack the Claimant's character rather than defend the discrimination claims;

(d) Significant procedural unfairness affected the Claimant's ability to present his case; and

(e) The Tribunal's own directions led to witness evidence being excluded.

His application itself identifies 7 grounds.

Ground 1: Internal Contradictions relating to whether the claimant had established the 'long-term' condition

The claimant refers to extracts from the Reserved Reasons in Para 210 of the judgment: "panic attacks/blackouts/amnesia... had a substantial adverse impact... plainly more than trivial" and paragraph 226 ""he would therefore be likely to experience substantial adverse effects from stressful situations in the future".

The Tribunal's conclusion was stated in paragraph 227. It concluded that the claimant had not discharged the burden of proving the long-term condition. The claimant contends the conclusion is contradictory.

The claimant refers to Schedule 1, paragraph 2(2) of the Equality Act 2010 which provides that if effects are 'likely to recur' they are treated as continuing and to Boyle v SCA Packaging Ltd [2009] ICR 1056 for the proposition that 'likely' means 'could well happen.' This authority was referenced in the Reserved Reasons at paragraph 156.

This ground discloses no reasonable basis for varying or revoking the judgment. The reasons are:

The claimant bore the burden of proving that he experienced the relevant mental health disabilities (which were considered holistically for the reasons set out in paragraph 194).

The tribunal conducted a detailed balancing exercise on the basis of the confused and incomplete evidence before it concerning the mental health disabilities alleged.

The tribunal's conclusion and the reasons for it were explained in paragraphs 226-7.

The Tribunal accepted that claimant would be likely to experience substantial adverse effects from stressful situations in the future, but concluded that the claimant had not discharged the burden of proving that he would experience those effects otherwise than in situations of exceptional stress and the assessment of likelihood of recurrence could not fairly be assessed by assuming that exceptional circumstances would again occur.

The conclusion was not internally contradictory.

Ground 2: Constructive Knowledge, Ignoring a critical admission:

The claimant refers to a comment in the witness evidence of Angela Kehoe at paragraph 136:

"I was aware of his medical conditions at that time from what he had told me and his conflict with Ms Al-Zubidi but I did not consider that either of those things justified breaching policy."

He asserts this is evidence of actual knowledge by Ms Kehoe. He contends that the tribunal's conclusion at paragraphs 233 and 109 (referring to evidence from Ms

Balsom) acknowledged actual knowledge but at paragraph 234 concluded that the respondent did not have constructive knowledge which was a contradictory finding.

This ground discloses no reasonable basis for varying or revoking the judgment. The reasons are:

The Tribunal summarised its factual findings at paragraph 230. In short, the tribunal found that i) the claimant admitted that he had not told Ms Balsom that he had mental health conditions ii) he mentioned anxiety and bowel problems to Ms Kehoe on 1 December 2022 but did not give any details to her or tell her that, or how, they were affecting him (so that she would not have actual knowledge that the anxiety condition could be a disability) – see paragraph 23, iii) he gave some more details to her in an interview on 23 January 2023.

On the basis of those findings which are supported by the evidence before the tribunal and which the Reserved Reasons identify, the tribunal concluded in paragraph 233 that the respondent did have actual knowledge of an anxiety impairment, but not before 21 January 2023, it did not have actual knowledge of effects amounting to a disability (Paragraph 231) and that it had no actual knowledge of any other mental health conditions (paragraph 231). The tribunal considered separately (and expressly without prejudice to its conclusion that the claimant had not proven that his mental health conditions were disabilities) whether the respondent might nevertheless have had knowledge of facts concerning the effects of the anxiety on the claimant such that the respondent might be fixed with constructive knowledge that it amounted to a disability. For the reasons set out in paragraph 234 the tribunal concluded that that was not the case.

The findings about Ms Kehoe's knowledge of his conditions are not contradictory to the statement made in Ms Kehoe's witness statement. They are consistent with it. In her statement she says that she was aware of the claimant's medical condition at that time (this is a reference to the time of her decision to terminate his probation in January 2023) and she refers to 'what he had told me'. The Tribunal's reasons take full account of what the claimant had told Ms Kehoe both in January 2023 and before that date.

Ground 3: justification - found alternatives not considered

The claimant references a partial extract from paragraph 318 of the Reserved Reasons: "an arrangement could reasonably have been put in place... Ms Kehoe did not appear to have considered whether such reasonable adjustment should have

been put in place before deciding to terminate". This paragraph appears in the part of the judgment where the tribunal was considering the claim (under s 20 of the Equality Act 2010) for failure to make reasonable adjustments in relation to the (admitted) PCP of requiring employees to report their absences by telephone.

He relies on Homer v Chief Constable [2012] UKSC 15 for the proposition that a tribunal is required to consider 'any lesser measure' ' He argues that having found that lesser measures existed and were NOT considered, the Tribunal could not properly find dismissal proportionate.

The claimant did not address the Tribunal on the Homer decision (an indirect discrimination case which contains guidance on the approach to the justification defence) during the hearing, but the judgment reflects the principles set out in that case at paragraph 270 in the context of the claim for discrimination because of something arising from disability (under s 15 of the Equality Act 2010) and the question whether the respondent could succeed in establishing a justification defence (ie that unfavourable treatment to which the claimant was subjected was a proportionate means of achieving a legitimate aim).

The Tribunal's conclusion on the section 15 claim is set out in paragraphs 286 and 287. The Tribunal concluded that, notwithstanding its view that the respondent might have, and appeared not to have, considered whether alternative means of reporting absences might have been practicable, applying an objective test in all of the circumstances, dismissal was nevertheless justified.

This ground discloses no reasonable basis for varying or revoking the judgment. The reasons are:

The defence of justification is only relevant at all if the claimant had succeeded in establishing on the evidence that his claimed mental health conditions amounted to disabilities and that the respondent had knowledge of those disabilities at the relevant times. The Tribunal found that he had not succeeded on those issues. Its views on the justification defence in relation both to the section 15 and section 20 claims were expressed without prejudice to its conclusions on disability and knowledge.

In the context of the section 15 claim the tribunal accepted (paragraph 284) that the requirement to report absence by phone was a legitimate aim. It recognized in paragraph 286.2 that "different but equally effective means of personally reporting absences might have been considered and might have been practicable as a temporary measure (eg reporting to someone else, reporting via a colleague initially or by a later time)". The Tribunal expressly applied its mind to the availability and

practicability of lesser measures in considering the question of whether dismissal for non-compliance was a proportionate response.

The mere fact that available or practicable lesser alternative might have been available is not determinative of the question. The Tribunal applied an objective test to the question and considered all of the circumstances in reaching its conclusion that the respondent had established a justification defence which are summarised in paragraphs 286 and 287.

The claimant has not identified any error of law. Any such error would in any event be a matter for appeal not reconsideration.

Paragraph 318 to which the claimant refers appears in the part of the Reserved Reasons which concern a PCP of reporting absences by phone and the claimant's asserted reasonable adjustment to that PCP that alternative communication methods should have been used. The tribunal's conclusions on the reasonableness and practicality of his proposed alternative means are set out in paragraphs 317 and 318. The Tribunal was not persuaded that these were practical adjustments.

Ground 4: procedural unfairness - witness evidence excluded

The claimant argues that he was penalised and that an unbalanced evidential picture was before the tribunal because he relied upon a direction given in a Case Management Order that there was 'no need for him to call his doctor or any witness that does not relate to the List of Issues'. This was a reference to a case management conference covering a number of issues which was before EJ Robinson on 23 May 2025. The relevant paragraph 17 stated. *"I explained to the Claimant that there was no need for him to call his doctor or any witness that does not relate to the List of Issues. The Claimant himself would be the best witness in relation to disability status. However, the Claimant did refer to one customer who the Claimant said had witnessed the discriminatory treatment so the Claimant may wish to consider calling them..."*

Paragraph 11 of the Reserved Reasons sets out the position at the hearing so far as it related to the additional witness statements which were adduced by the claimant and included in the material before the tribunal. That paragraph records: *"The claimant provided witness statements from Robyn Bramzell-Villas [1/9/2024] (who provided some background on the claimant's personal history and health), Ms Queenie Rushton of the Southwark renters support programme at Kineara Ltd (who provided in effect a character reference for the claimant and gave information about a telephone contact she had with Ms Kehoe [25/9/2024]) and an unsigned witness statement from Dr Monika Kalesinkaite, the claimant's GP since July 2022. Although*

we agreed to arrangements at the last minute to allow Ms Rushton to give evidence remotely on day 3, in the event her timetable meant she was not able to do so. Neither of the other two witnesses attended and none was available to be cross-examined. We did not therefore place any weight on these statements.

This ground discloses no reasonable basis for varying or revoking the judgment. The reasons are:

Although no context was provided for EJ Robinson's comments in paragraph 17 of the CMO, EJ Robinson explained to the claimant that witness evidence relating to issues which were not in the list of issues would be unnecessary. Such evidence would on the face of it be unnecessary because it would be irrelevant to the issues to be decided.

The presentation of the claimant's case is ultimately a matter for him, doing the best he can. The comments of EJ Robinson were not a direction. In any event the claimant did adduce witness statements from his GP and two others and the Tribunal read them. To that extent the claimant does not appear to have relied on any direction or guidance from EJ Robinson not to adduce evidence which he thought should be before the tribunal.

The claimant had not made arrangements for any of the witnesses to attend the hearing to give oral evidence (as envisaged by Tribunal Rule 43(1) and (2)). The tribunal case file indicates that the claimant had been informed by the tribunal in an email of 24 September 2024 that witnesses would need to attend on day 1 of the hearing. The tribunal nevertheless gave the claimant the opportunity to contact his potential witnesses to see if they would be prepared to give oral evidence. Only one replied, and that person did not in the event give any oral evidence.

The weight to be given to witness evidence which is not given orally and is untested is a matter for case management discretion. It is fair for such evidence to be given little or no weight. The claimant has not identified why or in what respects the evidential picture was unbalanced. No such submission was made at the time. No basis has been disclosed to show why the case management discretion should now be revisited.

The evidence from the claimant's GP was, so far as relevant, already before the tribunal in the form of contemporaneous medical records. The evidence from the additional witnesses was of peripheral if any relevance to the issues to be decided.

Ground 5: inappropriate use of pre-employment medical records

The claimant argues that the Respondent was inappropriately permitted to use medical records from the period before the commencement of his employment to attack his character and credibility, rather than to defend against the discrimination claims. He asserts that this was inappropriate because:

- (a) The records pre-dated the employment and were irrelevant to whether discrimination occurred during employment;
- (b) They were used to attack the Claimant's character rather than address the substantive discrimination allegations;
- (c) This created significant prejudice against the Claimant - similar to using someone's youthful mistakes to define them years later;
- (d) It distracted from the real issues: why were adjustments withdrawn, why was no OH referral made, and why did Angela disregard the Claimant's disclosed conditions;
- (e) It created inequality of arms - the Claimant as a litigant in person faced a professional legal team using his historical medical records against him.

He also criticises the Respondent's alleged focus on his medical history rather than what he describes as "the core question: did discrimination occur during his employment at Kiehl's?".

This ground discloses no reasonable basis for varying or revoking the judgment. The reasons are:

The question of whether or not the various impairments the claimant relied upon were disabilities was an issue in the case. It was not improper for the respondent to take that point and to reference disclosed and potentially relevant medical records for that legitimate purpose in contested litigation. The respondent was entitled to question whether effects reported by the claimant during his employment were the consequence of drug addiction (which would be excluded from the definition of a disability) or were the result of impairments.

On the first day of the hearing the Tribunal considered an application by the claimant to restrict reliance on evidence of his medical records (which he had disclosed) that pre-dated his employment. The tribunal rejected the application for the reasons given with the Case Management Order because, at least from 23 May 2022, those records were potentially relevant to the legally relevant (and logically prior) question of whether the claimant had discharged the burden upon him of proving that he experienced disabilities. Other directions were given to manage the scope of

submissions and questioning concerning the claimant's lifestyle choices. These were adhered to during the hearing.

The Tribunal's Reserved Reasons focussed on the evidence from pre-employment medical records so far as they were relevant to the contested issue of disability status. This was a relevant matter, not a distraction: see paragraphs 193-229.

Furthermore, the Tribunal found as a fact that there were no reasonable adjustments in place. It follows that they could not be withdrawn, on the issue of knowledge the tribunal made findings contrary to the claimant's contentions on the evidence as set out in the Reserved Reasons and referred to above.

Ground 6: hearing length - caused significant harm

The claimant contends that an earlier request by him for a 3 day hearing was refused but that acceding to that request would have allowed him to secure a legally-aided representative and that he was made unwell by the prospect of conducting a 5-day hearing unrepresented and that he was stressed and muddled during the hearing and his case presentation was impaired.

This ground discloses no reasonable basis for varying or revoking the judgment. The reasons are:

The time estimate of 5 days was on the face of it appropriate for the hearing. Time estimates must include time for deliberation. It is significant that the Tribunal at the hearing deferred the issue of remedy to a later date to limit the issues in dispute and to ensure that the hearing could be effectively concluded in the time on the question of liability. Furthermore, the claimant had sought to rely on additional witnesses, although in the event they did not present themselves to give evidence.

Employment Tribunals, although inherently stressful, are expected to be, and are routinely conducted by litigants in person, including those with very significant disabilities. The claimant did not complain that he was unable to conduct his case effectively before the tribunal by reason of any medical condition or disability. He did not seek any reasonable adjustment in advance of the hearing or at the time.

His present assertion that he was hampered in the presentation of his case is not supported by any contemporaneous medical evidence.

Ground 7: reliance on probationary status

The claimant refers to a sentence in Paragraph 286.3.2 of the judgment: "The claimant was a probationer on a limited duration contract." And contends that the

Tribunal fell into error because probationary employees have identical Equality Act 2010 protection to permanent employees. There is no 'probationary exception' to discrimination law. Relying on probation status to justify dismissal creates a lower standard of protection contrary to the Act.

This ground discloses no reasonable basis for varying or revoking the judgment. The reasons are:

This part of the reasoning is concerned with the justification defence in connection with the decision to dismiss.

The Tribunal's observation was that the claimant was on a limited duration contract as well as still being on probation. Both facts were true. The facts identified were in fact part of the factual matrix within which the relevant decision makers, whose view of what was reasonably necessary must be accorded a substantial degree of respect (see paragraph 286.1) made their decision, as well as part of the overall circumstances necessary to be taken into account for the purpose of applying the tribunal's objective test of justification.

The reasoning identifies a wide range of circumstances including that the claimant had not engaged with offered OH support, that the respondent believed that the claimant had covered up the reason for a previous absence and, most significantly, that there were reasonable grounds arising from the claimant's conduct for the decision makers' to suspect that the claimant was not being truthful with them about his inability to report his absences.

The inference that the tribunal applying the objective test would or might have reached a different conclusion about the justification for the claimant's dismissal if he had been on the same limited term contract but no longer still in his probation period is not sustained by the language of the reasoning read in context.

Even if that is wrong, the substance of the ground is that the Tribunal made an error of law. Any such error would be a matter for appeal not reconsideration.

The issue of justification arises only if the tribunal's prior finding is wrong that the claimant had not discharged the burden of proving the relevant impairments amounted to disabilities.

Conclusion

The Tribunal's detailed factual findings based on the submissions made and the evidence which was before it at the hearing and to which it was referred are set out

in the Reserved Reasons. It is a fundamental requirement of litigation there is certainty and finality.

For the reasons set out above none of the grounds relied upon by the claimant discloses any reasonable basis for varying or revoking the judgment and the claimant has not satisfied me that reconsideration necessary in the interests of justice.

Accordingly I am required by Rule 70(2) to refuse the application.

Approved by Employment Judge Cox

Dated: 3 March 2026

Sent to the parties on

6 March 2026

For the Tribunal Office

P Wing

P Wing