



EMPLOYMENT TRIBUNALS

Claimant: Mr D Gardener

Respondent: Greenwich Leisure Limited

JUDGMENT

The respondent's application dated **10 March 2026** for reconsideration of the judgment sent to the parties on **19 January 2026** is refused.

Employment Judge Cookson has concluded that there is no reasonable prospect of the original decision being varied or revoked. She has reached that decision for the reasons set below.

REASONS

1. The respondent has sought reconsideration of a judgment partially upholding complaints of race discrimination which was determined on the basis that the claim was not contested by the respondent.
2. The respondent relies on ill-health issues which he says materially affected his ability to manage administrative and legal matters in the period following a preliminary hearing for case management purposes on 23 June 2025.
3. At the time of the case management hearing before Employment Judge Eeley no response to the claim had been submitted, the respondent having failed to comply with the Employment Tribunal Rules of Procedure 2024 in seeking an extension of time for filing a response. It is clear from her case management order that EJ Eeley explained the process for submitting a response late and listed the hearing anticipating that an application to submit a late response would be made. The importance of the respondent acting promptly is clear. She identified the complaints to be determined, set the claim down for final hearing, and made case management orders for both parties to comply with for that hearing.

4. However, no application to submit a late response was ever made. The respondent did not comply with case management orders and despite being aware of the hearing, did not attend the final hearing or offer the tribunal any explanation for non-attendance.
5. The final hearing went ahead, and a judgment was sent to the parties. A remedy hearing has been listed for 20 March 2026. In early February the respondent sought written reasons for the judgment and indicated an intention to appeal the decision, but had still not sought to defend the claim. The employment judge questioned whether a reconsideration application was to be made, anticipating that may impact on the remedy hearing. It appears to be that which has prompted the respondent to submit a reconsideration application and response to the claim with a request for extension of time which has been refused. That is dealt with under separate cover.
6. The application for reconsideration is supported by some screen shots of Mr O'Connor's NHS records showing him experiencing extremely high blood pressure and being treated for that and gout, but there is no further medical evidence and no evidence of any absence from work.

The law

7. Rule 70 of the Employment Tribunal Rules of Procedure 2024 sets out the procedure for reconsideration, on the grounds that the interests of justice are such that reconsideration is appropriate under Rule 68.
8. Under rule 68, a judgment will only be reconsidered where it is 'necessary in the interests of justice to do so'. This does not mean that in every case where a litigant is unsuccessful, he or she is automatically entitled to a reconsideration: virtually every unsuccessful litigant thinks that the interests of justice require the decided outcome to be reconsidered. Instead, 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:
 - a. ensuring that the parties are on an equal footing
 - b. dealing with cases in ways which are proportionate to the complexity and importance of the issues
 - c. avoiding unnecessary formality and seeking flexibility in the proceedings
 - d. avoiding delay, so far as compatible with proper consideration of the issues; and
 - e. saving expense.
9. In *Outasight VB Ltd v Brown* 2015 ICR D11, EAT, Her Honour Judge Eady QC accepted that the wording 'necessary in the interests of justice' in rule 70 (as it then was) allows employment tribunals a broad discretion to determine whether reconsideration of a judgment is appropriate in the circumstances. However, this discretion must be exercised judicially, which means having regard not only to the interests of the party seeking the review or reconsideration, but also to the interests of the other party to the litigation and to the public interest requirement that there should, so far as possible, be finality of litigation'.

Application to this case

10. Under an earlier iteration of the Tribunal Rules, the previous 2004 Rules, then rule 34(3)(c) provided a ground for review if the decision was made in the absence of a party. This is a matter that is now encompassed within the single 'interests of justice' ground. However, it is not generally in the interests of justice that parties in litigation should be given a second bite of the cherry simply because they have failed to attend a hearing, without good and genuine reason. That must be particularly the case where a large employer, presumably with significant resources available to it, has been aware of a hearing for any months and has not engaged with the legal process at all.
11. The employment judge has sympathy for the ill-health Mr O'Connor has experienced and does not seek to trivialize that, but the evidence provided in support of this application wholly fails to explain why the respondent did not take any steps to deal with this case in the meantime. Mr O'Connor has not provided any evidence that he was off work and, even if he was, it has not been explained why dealing with this litigation could not have been passed to colleagues or a law firm to deal with. The respondent is a large leisure service provider and is a charity. It must have governance arrangements in place. Clearly it has a dedicated HR team in which Mr O'Connor is a senior manager, that much is apparent from his details. This is not a case of a respondent which is a small business without the resources to manage litigation if someone is ill. It does not appear to be suggested that Mr O'Connor's ill health was such that he would have been able to give instructions for this matter to be dealt with whilst he was incapacitated. No explanation for his failure to give such instructions is offered. No explanation for failing to inform the Tribunal or the claimant of the reason for the respondent's failure to engage with the claim is provided.
12. It is in the interests of all parties that there is finality in litigation except in exceptional circumstances and those exceptional circumstances do not include that a party who has failed to respond appropriately to a case despite apparently having the resources to do so (in terms of the respondent itself). The impression created is that this respondent decided to wait and see what would happen with the claim and now seeks to participate and wants to be heard by the tribunal because they do not like the outcome.
13. It is not therefore in the interests of justice that the original decision be varied or revoked and there is no reasonable prospect of the application succeeding

Employment Judge Cookson

Date 17 March 2026

JUDGMENT SENT TO THE PARTIES ON
17 March 2026

FOR THE TRIBUNAL OFFICE