



EMPLOYMENT TRIBUNALS

Claimant:
Mr P Mundy-Castle

v

Respondent:
Overton Grange School

On the papers at: London (South) Employment Tribunal

On: 10 October 2025

JUDGMENT ON APPLICATION FOR RECONSIDERATION

1. In exercise of powers contained in Rule 68 of the Employment Tribunals Procedure Rules 2024 (“**Rules**”), the claimant’s application of 1 October 2025 for reconsideration of the judgment sent on 23 September 2025 is refused because there is no reasonable prospect of the original decision being varied or revoked.
2. This document is notice to the parties as is required by Rule 70(2).

REASONS

1. The claimant applies for reconsideration of the decision to dismiss his race discrimination complaints against the respondent. In dealing with the application, I have consulted with each of the Panel members who made the unanimous judgment subject to this application, and each has confirmed that they consider the application should be dismissed for the reasons set out below.

Principles of Reconsideration

2. When approaching any application, and during the course of proceedings, the tribunal must give effect to the overriding objective found at Rule 3. This says:

“3 - The overriding objective of these Rules is to enable Employment Tribunals to deal with cases fairly and justly. Dealing with a case fairly and justly includes, so far as practicable—

- (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.*

3. The power to confirm, vary or revoke a judgment is found at Rule 68. That provides that a judgment can be reconsidered *“if it is in the interests of justice to do so”*. Rule 69 requires that an application for reconsideration is made within 14 days of the written record being sent to the parties. This application for reconsideration is made in time.
4. Rule 70(2) provides:
“If the Tribunal considers that there is no reasonable prospect of the original decision being varied or revoked (including, unless there are special reasons, where substantially the same application has already been made and refused), the application shall be refused and the Tribunal shall inform the parties of the refusal.”
5. Where an Employment Judge refuses an application following the application of Rule 70(2), then it is not necessary to hear the application at a hearing.
6. The interests of justice in this case should be measured as a balance between both parties; both the applicant and the respondent to a reconsideration application have interests which much be regarded against the interests of justice (Outasight VB Limited v Brown [2014] UKEAT/0253/14).
7. In Brown, Her Honour Judge Eady QC (as was) said that the general public also have an interest in such cases because there should be an expectation of the finality of litigation. This was an expectation outlined by Mr Justice Phillips in Flint v Eastern Electricity Board [1975] ICR936, who said *“it is very much in the interests of the general public that proceedings of this kind should be as final as possible”*. He also said it was unjust to give the loser in litigation a *“second bite of the cherry”* where, having lost and learnt of the reasons for losing, a litigant seeks to re-argue points and bring additional evidence or information which would overcome the reasons given for the loss.

Background to the reconsideration application

8. The case was heard by the Tribunal in a five day final hearing window. The claimant presented two applications at the start of the hearing. The first was an application to not strike out two allegations which were made subject to a deposit order. That was refused. The second was an application to add a claim of indirect race discrimination

at the final hearing. That was refused. The reconsideration application includes a request to vary these decisions.

9. The claim itself failed because we found as a fact that the decision makers who did not shortlist the claimant did not know that he was Black African. It follows that they could not have treated him less favourably for this reason. The application does not seek to vary that finding, although makes comments about how broader evidence was handled which leads to a submission that the Tribunal misunderstood the factual context.

The reconsideration application

10. The claimant applies for reconsideration under the following heads. Some of these heads the claimant uses in the application as headings, and others I have adopted as a way to break down the application and respond to it. I explain the reason why each ground yields no reasonable prospect of the judgment being varied or revoked under each heading:-

Misstatement about opportunity to query deposit order

11. The deposit order in question was made by another Employment Judge at a previous hearing. The claimant had not sought to have that decision reconsidered or the subject of an appeal. By the time the issue of non-payment of deposit arose in the final hearing, he was out of time to take either route.
12. One of the reasons for refusing the application was that the claimant could not rely on not understanding the order when he had attended the hearing made, and had not taken the opportunity to query the order being made. The claimant now says that he had no such opportunity to query the terms of the order at a hearing where he had presented medical evidence about his mental health. He did not present that evidence to us when he made this application, and has not done so in this reconsideration application.
13. The claimant attended a hearing at which a deposit order was made. A deposit order is not made until the case and allegations have been explored, with reference to the legal test. When a deposit order is made or being considered, the implications are explained. The claimant's application ignores that he participated in the hearing. He must have had the opportunity to speak at the hearing, and that was his opportunity to ask questions – as he did admirably well in the final hearing.
14. To the extent this application is an attack on the making of the deposit order itself, then this is not the way to go about that. He should have appealed the deposit order after it was made if that was his intention.
15. The claimant also raised this point before us in the hearing, and we considered it in our refusal. This ground is also then an impermissible attempt to have a second bite of the cherry and should be refused for that reason.
16. Even if this ground had some merit, and it does not, then it would not be sufficient for us to have overturned an order made by another judge, as to do so would fall foul of the principles in Serco v Wells UKEAT/330/RN. We are not an appeal Tribunal

and could only vary the order in a material change of circumstances if it is in the interests of justice to do so. These are not such circumstances.

17. This ground is dismissed.

Misunderstanding of the claimant's financial position when he did not pay the deposits

18. The reconsideration application states that we misunderstood his financial situation when we dismissed his application to not strike out the deposit allegations partly on the basis that he could have paid the deposits to continue them. The reconsideration application is flawed in this respect because affordability was assessed by the previous Judge when the deposit amounts was set. If the claimant could not afford the deposits set, then he should have applied to the previous Judge for those amounts to be changed, or appealed the order on that basis. He did neither, and it was not open to us to go behind the order.

19. The claimant also raised this point before us in the hearing, and we considered it in our refusal. This ground is also then an impermissible attempt to have a second bite of the cherry and should be refused for that reason.

20. This ground is also dismissed.

Delay in judicial response

21. The claimant did query the deposit order made in writing when he received it. There were multiple allegations made subject to the deposit. He wished to continue with only two of them, and wrote to the Tribunal to ask if he could be a proportional amount to continue with those two allegations. He did not receive a response before the deadline to pay a deposit was made. He did not apply for the deposit order to be varied, or for the payment due to be stayed pending the outcome of his query.

22. The Tribunal had not, by the time of the hearing, done its usual automatic process of striking out allegations subject to a deposit where the deposit has not been paid.

23. The claimant says in the reconsideration application that the delay in providing a response meant the issue was not resolved prior to the hearing, depriving him of the chance to have the issues heard. This was not something raised before us in the hearing, and arises from our reasoning in refusing the application.

24. We do not consider this ground has reasonable prospects of leading to our judgment being varied or revoked. The deposit order was made in a hearing. The written order, which the claimant says prompted his query, explains the order made and the implications of not paying the deposit. It was clearly an important matter, and the claimant has a responsibility in litigation to seek to understand the Rules and how they apply to the management of his case. He is to be an active participant, following widely understood principles and the overriding objective, and it is not sufficient in our view to rely on waiting for an answer from the Tribunal as a reason to avoid a sanction being applied. The claimant had other means to find the answer and did not take them.

25. This ground is dismissed.

Incorrect assumption about legal advice

26. The claimant relies on our understanding that he had taken legal advice prior to the hearing (when he says he did not) as a reason for the judgment to be revoked. This is in response to the comments we made about expecting the claimant to seek or rely on advice about the deposit order rather than ask the Tribunal and simply wait for an answer.
27. The claimant says he only took legal advice during the hearing. Our clear recollection was that the claimant referenced taking advice prior to the start of the hearing. It is apparent to us that he took legal advice on the first day, and it seems wholly unlikely he was able to access that advice without having made contact with legal support before the first day.
28. In any case, this issue does not absolve the claimant from the general responsibility in respect of his case outlined at paragraph 24 above. This ground is consequently dismissed.

Refusal to amend to add indirect race claim based on perceived delay

29. The second day 1 application was refused for several reasons, each of which would have been determinative on their own. The claimant does not address the first reason for the refusal, which is that he could not articulate any group disadvantage in respect of the provision, criterion or practice he was trying to introduce to support this claim. The amendment he sought to articulate in the hearing was hopelessly vague and was not a claim the respondent could have responded to in the form it was proposed. Where there is no group disadvantage explained, such a claim would have (in our view) no reasonable prospect of success. Both of these reasons would have led to the amended claim being rejected.
30. As discussed in a hearing, the only way around those issues would be to adjourn the hearing to allow the claimant to put together an application which did not have those deficiencies. Even if there was a properly understandable new claim available, the ensuing delay for the respondent to respond and for evidence to be gathered would be significant and, weighing the balance of injustice and hardship overall, we concluded that any such application would be refused because of the delay it would introduce.
31. The claimant says that concerns about timetabling is not a reason to limit a claim which can be fairly heard. This misses the point. Quite apart from the fact that timetabling concerns can limit the ambit of a claim, where the hearing is already beginning and the delay would be significant, there was no indirect race discrimination claim which could be fairly heard. The claimant's misunderstanding about the nature of an indirect discrimination claim persists with the reconsideration application.
32. This ground is dismissed.

Failure to address witness credibility issue

33. The claimant relies on respondent witness Mr Jones' refusal to acknowledge he sent an e-mail to Mr Doubell which Mr Doubell says Mr Jones did send to him. That was a conflict of fact relating to the respondent's actions after the claimant requested feedback following his failure to be shortlisted to interview. The claimant considers he proved that Mr Jones was lying in the hearing, which should have been reflected in how we assessed his overall credibility. The Tribunal made no finding over who authored the e-mail and the claimant says this means we failed to properly consider the credibility of the evidence.
34. We find facts which are relevant to the issues in the case. The claimant's complaints related to not getting shortlisted and not being offered the job. In reality, we could only consider whether or not the claimant was not shortlisted. He was never at the stage to be offered the job, and so that claim was always bound to fail, as is explained in the judgment. At best, the claimant might have achieved remedy for not being shortlisted. He was never going to be in a position, in these proceedings, to receive remedy for not being appointed to the job. The case stood or fell on the shortlisting decision itself.
35. This meant there were no live issues before us about anything to do with the feedback. At best, the evidence could be relevant to establishing background facts to support a conclusion there could have been race discrimination, if we had reached the stage of doing that in this case. We did not reach that stage due to the primary factual finding that none of the decision makers knew about the claimant's race. There was no need to go and look at those background facts once that was apparent to us.
36. That primary finding was found because (1) each of the four decision makers said they never knew the claimant's identity in the application process, (2) each of those four said Mr Jones (who admitted he did know) never told them, and (3) Mr Jones said he never told them, even after admitting that he had Googled the claimant.
37. Mr Jones made a candid admission in the hearing that he Googled the claimant prior to the shortlisting meeting. In our view, if he was being deceptive or unreliable, he would not have made this admission. He had no reason to unless he was determined, as he seemed to us to be, to tell the truth. We had no credibility concerns about any of the witnesses. All of them, claimant and respondent, seemed to us open and honest.
38. The claimant raised this point in closing submissions, and did not persuade us to treat Mr Jones' evidence with caution. We made no comments about any witness. This ground is therefore also an impermissible attempt to re-argue a point already made in argument.
39. Finally, even if we accepted the claimant's submission about Mr Jones and none of the above applies, then the application does not deal with the accepted evidence of the other decision makers that (1) they did not know the claimant's identity, and (2) they were not told. The claimant could not offer any evidence to counter those assertions, because he was not there and did not know himself what they knew when he started this claim.
40. The ground is dismissed.

The witness Ms Brown

41. The claimant was supported in evidence by a former teacher of the respondent, Ms Brown. That statement gave evidence which was not directly about the issues, but were about her experience of working at the respondent in the past. Those experiences were negative, and Ms Brown baldly asserts her belief that they were due to race discrimination.
42. The respondent did not wish to cross examine Ms Brown on her statement, and so she did not take the stand. Her evidence was taken at face value, and was untested. The claimant takes exception to our comments that her evidence was not tested and not explored, and that she did not state that the pay issue was because of race. On the last point, the claimant says our comments are wrong. We offer three comments by way of explanation:-
- 42.1. Ms Brown says only that she considers the difference to have been because of race. She does not know that to be the case, and the matter has never been tested. This is an important distinction.
- 42.2. The respondent did not wish to exercise its right to cross examine Ms Brown. The claimant rightly cites all of the case law outlining the right to cross examine a witness. Only the respondent has that right. It is not a right the claimant has in these proceedings, because evidence in chief is given in the witness statement, which in Ms Brown's case was brief and vague.
- 42.3. The Tribunal did not ask any questions of Ms Brown to explore her evidence because the evidence in chief was given in the witness statements. It might seek to clarify matters after cross examination, but it is not our role to enter the arena and question a witness about their statements. To do so without any cross examination would be unfair to one side or the other (depending on where the evidence given went). The claimant appears to be submitting a process should have happened which would slant the proceedings unfairly in his favour.
43. It seems to us that the claimant misunderstood the process when dealing with witness evidence. Ms Brown's witness evidence did not support his stance on the issues in the case as he seemed to think, and that is why the respondent did not wish to challenge it or ask any questions.
44. In any case, again, as is explained in the judgment, the respondent's treatment of staff in the past only becomes relevant where we find that the respondent witnesses knew the claimant's identity and therefore knew his race. Where we have not done so, Ms Brown's evidence will not inform the outcome. Her evidence does not undermine the unchallenged accounts of the decision makers, supported by Mr Jones.
45. The ground is dismissed.

Conclusion

46. Consequently, none of the grounds advanced have any reasonable prospect of causing us to vary or revoke our judgment. It follows that the application is dismissed

upon first consideration for having no reasonable prospect of succeeding. The respondent is not required to respond to the application.

Employment Judge Fredericks-Bowyer

10 October 2025