EMPLOYMENT TRIBUNALS

Claimant: Ms S Thaker

Respondent: Prologik Limited

JUDGMENT

1. The application for reconsideration is refused.

2. The application for strike out of the response is refused, but with permission to renew before the full panel if appropriate.

3. Any arguments that the opponent has failed to comply with the disclosure orders for the equal pay parts of the claim can be presented to the panel at the final hearing. However, no new orders about disclosure are required, as the existing orders are already sufficiently clear.

REASONS

1. Rules 68-70 of the Tribunal Rules provides as follows:

68. Principles
(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..

69. Application for reconsideration
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..

70.— Process for reconsideration
(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.
(4) 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.
(5) 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.

2. The Tribunal has discretion to reconsider a judgment if it considers it in the interests of justice to do so. Rule 70(2) requires the judge to dismiss an application if the judge decides that there is no reasonable prospect of the original decision being varied or revoked. Otherwise, the application is dealt with under the remainder of Rule 70.

3. When deciding what is "necessary in the interests of justice", it is important to have regard to the overriding objective to deal with cases fairly and justly, which 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.

4. In deciding whether or not to reconsider the judgment, the tribunal has a broad discretion, which must be exercised judicially, having regard not only to the interests of the party seeking the 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.

5. The reconsideration rules and procedure are not intended to provide an opportunity for a party to seek to re-litigate matters that have already been litigated, or to reargue matters in a different way. They are not intended to provide parties with the opportunity of a rehearing at which the same evidence and the same arguments can be rehearsed (with or without different emphasis). Nor do they provide an opportunity to seek to present new evidence that could have been presented prior to judgment.

6. Under the current version of the rules, there is a single ground for reconsideration — namely, *"*where it is necessary in the interests of justice*".* In Outasight VB Ltd v Brown 2015 ICR D11, the EAT explained that the 2013 revision to the rules had not been intended to make it more easy or more difficult to succeed in a reconsideration application. Earlier versions of the

rules had included specific examples of potential grounds for reconsideration; the omission of those specific examples did not mean that those things were no longer possible routes to reconsideration; an application relying on any of those arguments can still be made in reliance on the "interests of justice" ground.

7. Previous appellate decisions (even under earlier versions of the Rules) can provide helpful guidance to a judge, but they are not intended as a checklist. The individual circumstances of the particular application have to be considered on their own merits.

8. It is not necessary for the applicant to go as far as demonstrating that there were exceptional circumstances justifying reconsideration. There does, however, have to be a good enough justification to overcome the fact that, when issued, judgments are intended to be final (subject to appeal) and that there is therefore a significant difference between asking for a particular matter to be taken into account before judgment (even very late in the day) and after judgment.

9. As was stated in Ebury Partners Uk Limited v Mr M Acton Davis: [2023] EAT 40

> The employment tribunal can therefore only reconsider a decision if it is necessary to do so "in the interests of justice." A central aspect of the interests of justice is that there should be finality in litigation. It is therefore unusual for a litigant to be allowed a "second bite of the cherry" and the jurisdiction to reconsider should be exercised with caution.

10. In Ladd v Marshall [1954] 1WLR 1489, a test was specified for the civil courts for assessing an application made to submit new evidence in support of a challenge to a judgment previously issued. Specifically, the party seeking to adduce the fresh evidence must show:

    (1) that the evidence could not have been obtained with reasonable diligence for use at the original hearing,

    (2) that it is relevant and would probably have had an important influence on the hearing, and

    (3) that it is apparently credible.

11. This test is incorporated into EAT's Practice Direction and has also been stated to be a useful guide to employment judges who are deciding a reconsideration application. The test does not supplant the wording of the rule (as quoted above) but does set out a helpful approach as to how the interests of justice can be assessed, and how the public interest in finality of judgment can be given due weight, when this particular argument is deployed.

The potential application

12. On 22 February 2026, the Claimant submitted an application for reconsideration of the judgment sent to parties on 12 June 2024 (so about 20 months earlier). This was outside the 14 day time limit.

13. It was referred to me on around 26 March 2026 (though not necessarily with all the large number of pages in the attachments printed) and I asked for all recent emails to be forwarded to me electronically.

14. As far as I am aware, I have copies of all the emails and attachments sent by either side up to 30 March 2026.

15. I have taken account of all the emails and attachments from the Claimant's side.

16. From the Respondent's side, I have taken account of what they say about disclosure issues and alleged breaches of orders, in so far as it relates to any application for further disclosure orders, or strike out, or unless order. However, I have not taken account of any comments they have made about reconsideration. In the first instance, I assess whether there are no reasonable prospects of success, and I do so without taking the other side's opinions or arguments into account (unless, of course, the other side was supporting the application). If I decide that there are no reasonable prospects of success, then that is the end of the application. If (but only if) the application gets past that threshold, the Respondent would have a chance to comment before a decision on the application is made.

17. One of the Claimant's attachments contains the application, and a different one lists some findings of fact made by Employment Tribunal.

18. In summary, the Claimant says the following:
    18.1. Some documents are now in the Claimant's possession that were not in her possession previously
    18.2. Had they been in her possession previously, then they would have been used by her at the earlier final hearing (which was not for all the complaints, only for those which had not been stayed).
    18.3. Had they been used at that hearing, Employment Tribunal would have made different findings of fact (or, at the least, there is sufficient chance of different findings being made, that the judgment should be revoked, and new evidence heard, and a new fact finding exercise)
    18.4. The new findings of fact would have supported the complaints which the Claimant made
    18.5. The Employment Tribunal would have found in her favour on one or

more of her complaints (or, at the least, there is sufficient chance of different decisions being made, that the judgment should be revoked, and new evidence heard, new findings of fact made, and new decisions made based on those hypothetically different facts)

19. Using the numbering, in the Document called "Findings of Fact made by the Tribunal (of 22-30 April 2024) in its judgment and reasons affected by new evidence/disclosure"

19.1. In terms of whether Mr Karimjee was an employee, no finding of fact has been made. That will be decided by the panel at the next final hearing, which is to deal with the equal pay claims previously stayed. Any credibility arguments based on what witnesses previously said on the topic can be addressed then.

19.2. At paragraphs 246 to 265, we dealt with various components of pay, and addressed C's argument that there was sex discrimination. At paragraphs 266 to 269 we dealt with the whole package. For avoidance of doubt, paragraph 266.2 is based on our finding of fact and the submissions we heard. Even taking the Claimant's submissions at their highest, what is alleged to be new evidence does not affect those decisions.

19.3. This is really a repeat of the previous point. No matter how the company calculated its dividend payments, the Claimant said that she was not arguing that dishonest information given to HMRC.

19.4. It is unclear what specific finding of fact the Claimant is saying was wrong (and might have been different if the allegedly new evidence was available). In any event, nothing in this paragraph – even if found to be entirely correct by the Tribunal – would have made any difference to the outcome of any of the complaints.

19.5. The application refers to paragraph 58.5 of the reasons in particular. However, the reasons as a whole make clear what we decided about each class of share and why. There is no argument in this paragraph of the application that the Claimant could not have presented to the Tribunal. Indeed, the argument in this paragraph neither seems different to the actual arguments presented, nor significantly (ie in a way which matters) different to findings of fact which the Tribunal made.

19.6. A comparison of what is stated in this paragraph to what is stated in the document "APPLICATION FOR RECONSIDERATION/REVIEW OF JUDGMENT AND REASONS OF TRIBUNAL OF 22-30 APRIL 2024" does not specifically identify the specific "new" document that would have affected the earlier findings of fact. In particular, the Claimant does not seem to allege that there is a new document which sheds new light on Mr Vincent's attitude to women. This is simply a repeat of the argument that the Tribunal should have decided, based on the findings of fact, that the burden of proof had shifted. We addressed thoroughly all the evidence we had about the payments that each of the Claimant

and Mr Vincent and Mr Rodrigo received from the company, and the correspondence and decisions about whether the Claimant should be paid more (including about bonus, salary, and shares). There is no reasonable prospects of the allegedly new evidence causing us to decide that the burden of proof shifted. We already knew that – for example – the Claimant and Mr Rodrigo had discussed the Claimant's remuneration package and we made findings about Mr Vincent's comments about that.

19.7. This is not a new argument. The Claimant's case was – amongst other things – that dismissing her would not save money for the company. She also submitted that Mr Rodrigo's evidence was not credible. There is no reasonable prospects of the allegedly new evidence referred to by the Claimant causing us to make different decisions about the complaints about the dismissal.

19.8. In terms of material now being disclosed, that was not previously disclosed, and whether it is redacted, or not well-ordered, none of that in itself is a reason that Employment Tribunal should have struck out the response. The Claimant has not persuaded me that

19.8.1. there is any particular document that has now been disclosed for the equal pay part of the claim

19.8.2. which was not disclosed for the discrimination part of the claim such that its earlier non-disclosure means that Employment Tribunal's decision not to strike out the response should be revisited.

Strike out does not exist as a method for punishing a litigant for (for example) failing to comply with a disclosure order. Strike out (for breach of a disclosure order, for example) can be appropriate provided that is proportionate; the proportionality argument must take account of whether a fair trial (on the scheduled dates) is still possible, or not. Since the final hearing has already taken place, and since nothing has been identified in the new evidence to show that the findings of fact or decisions were wrong at the hearing in 2024, there are no reasonable prospects that the Tribunal would revoke the judgment, revoke the case management decision to not strike out the response, and replace that with a case management decision to strike out the response and to proceed under what is now Rule 22.

20. For present purposes, I will assume, without deciding, that the proposed new evidence meets the first part of the Ladd test. I assume, in the Claimant's favour, that (a) she did not have the evidence prior to the earlier final hearing and (b) had taken all reasonable steps to obtain it (including telling the Respondent which items she wanted, and why, and why the items allegedly fell with the orders for disclosure for that hearing).

21. The credibility of the evidence could only be finally decided if there was a hearing at which witnesses spoke about the documents and were cross-

examined. However, since the documents originate from the Respondent (according to the application), I will assume for present purposes that the third part of the test is met, and the evidence is apparently credible.

22. However, the second part is not met. My decision is that there is no reasonable prospect that the Tribunal would decide that any of its decisions would have been different if the Claimant (and therefore the Tribunal) had seen these documents before the earlier hearing, and if the contents were addressed in statements and/or cross-examination.

23. Thus the application fails on the merits and it is not necessary for me to decide, as a separate point, whether to extend time.

24. In terms of disclosure, and alleged breaches of orders, the parties are not in agreement about the relevant facts. It is not a suitable case for me to consider strike out on the papers. The hearing is imminent. If an application for strike out is going to be made, it can be made then. Similarly, any argument that any redactions to any document are inappropriate can be made then.

Approved by: **Employment Judge Quill**

Date: 10 April 2026

JUDGMENT SENT TO THE PARTIES ON
13 April 2026

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FOR THE TRIBUNAL OFFICE