



EMPLOYMENT TRIBUNALS

Claimant: Mr D Niculae

Respondent: Bylor Services Limited

JUDGMENT

The Claimant's applications dated 3 and 15 April 2026 for reconsideration of the judgment sent to the parties on 1 April 2026 are refused.

REASONS

Background

1. This is my preliminary consideration of the Claimant's application for reconsideration of the judgment striking out his claims for unreasonable conduct on the basis of the threatening and abusive emails he sent to the Respondent's witnesses in March 2025. The strike-out hearing took place on 4 March 2026. At the conclusion of the hearing, I gave my judgment and reasons orally and the Claimant requested written reasons. Two days later, on 6 March, he emailed the employment tribunal applying for reconsideration of my decision to strike out his claim.
2. The judgment and written reasons were sent to the parties on 1 April 2026. On 2 April, I asked the clerk to send directions to the Claimant as follows: *'The Claimant's application for reconsideration of the strike-out decision was submitted on 6 March 2026, before the written judgment and full written reasons had been provided, and is therefore premature. The written reasons constitute the definitive expression of the tribunal's judgment, superseding the oral reasons given at the hearing. Any fresh reconsideration application must be made within 14 days of 1 April 2026, the date on which the written reasons were sent to the parties.'*
3. My directions were not actioned until 15 April 2026. In the meantime, on 3 April, the Claimant emailed the tribunal acknowledging receipt of the written reasons and requesting that his reconsideration application of 6 March be placed before

a judge. He emailed again on 15 April renewing his reconsideration application in response to my directions.

The law

4. An application for reconsideration is an exception to the general principle that (subject to appeal on a point of law) a decision of an employment tribunal is final. The test is whether it is necessary in the interests of justice to reconsider the judgment – rule 68 of the Employment Tribunal Procedure Rules 2024. Rule 70(2) empowers a judge to refuse the application based on a preliminary consideration if there is no reasonable prospect of the original decision being varied or revoked.
5. Reconsideration of a judgment may be necessary in the interests of justice if there is new evidence that was not available to the tribunal at the time it made its judgment. In **Ladd v Marshall** [1954] 3 All ER 745, CA, the Court of Appeal held that it is necessary to show: (i) that the evidence could not have been obtained with reasonable diligence for use at the original hearing; (ii) that the evidence is relevant and would probably have had an important influence on the hearing; and (iii) that the evidence is apparently credible.
6. A tribunal dealing with an application for reconsideration must seek to give effect to the overriding objective of dealing with cases fairly and justly – rule 3. This includes dealing with cases in ways which are proportionate to the complexity and importance of the issues and avoiding delay.

Decision and reasons

7. There are ten grounds on which the Claimant seeks reconsideration. I shall address each of them in turn.

Ground 1: the tribunal failed to read the Claimant's documents

8. The Claimant submits that I did not read all the relevant documents before deciding to strike out his claim. He says that this is a fundamental procedural irregularity. This assertion must be placed in context. Two days before the hearing, and at 2.05 am on the morning of the hearing itself, the Claimant emailed several hundred pages of late evidence and written submissions to the tribunal. The lateness of these documents represented a failure to comply with the case management orders issued by Employment Judge Midgley, who had directed that an agreed bundle for the strike-out hearing should be sent to the tribunal by 6 October 2025. The Claimant offered no adequate explanation for his default.
9. In view of the Claimant's disability and his status as a litigant in person, I nevertheless decided to take his late written submissions into account in so far as I was able to digest their contents on the day of the hearing. I did so because I was mindful of the possibility that the Claimant's ADHD had affected his ability to comply with the directions and would prevent him from making detailed oral submissions. I invited counsel for the Respondent to review the written submissions and address their contents orally, and the Claimant was given the

opportunity to respond. I also invited the Claimant to refer me to any relevant documents in his late supplementary bundle. These matters are recorded at paragraphs 6–7 of my written reasons. I adjourned between 1.30 pm and 3 pm to prepare my oral judgment and I reviewed the Claimant's late evidence and written submissions before finalising my decision.

10. In the circumstances, I do not consider there to be any reasonable prospect of the Claimant establishing that there was a procedural irregularity. On the contrary, I went to significant lengths to ensure that he had a fair hearing and was not disadvantaged by his disability.
11. More specifically, the Claimant submits that I have failed to take into account relevant medical evidence. He relies, in particular, on two psychiatric reports dated 22 August 2022 and 16 September 2022 relating to his ADHD diagnosis and medication, and two letters dated 1 and 2 May 2025 from Bridgwater Community Health Service. These four documents are filings #16 and #18 referred to in paragraph 3 of the reconsideration application. The Claimant says there was further unread medical evidence in the documents he filed at 2.05 am on the day of the hearing. I am not sure which document(s) he is referring to, but I assume this is a reference to the contents of his late replacement supplementary bundle.
12. I have reviewed filings #16 and #18. The psychiatric report dated 22 August 2022 was included in the Claimant's replacement supplementary bundle and I took it into account in reaching my decision; in paragraph 31 of my written reasons, I duly record that the Claimant has an ADHD diagnosis. The first of the letters from Bridgwater Community Health Service, dated 1 May 2025, refers to the Claimant being prescribed medication for an emotional adjustment disorder with trauma-related symptoms. It was included in the Claimant's late supplementary bundle but I do not have a note indicating that he referred me to it at the hearing. The other two documents were sent to the tribunal in April/May 2025 but so far as I can ascertain they do not appear in any of the tribunal bundles. It was incumbent on the Claimant to file all his medical evidence on time or, failing that, to include it in his late bundle and draw it to my attention. I also note that the GP fit notes included in the Claimant's late bundle do not relate to the period when the abusive messages were sent (6–9 March 2025) and cannot therefore shed any light on his state of mind at that time.
13. In any event, I expressly approached my decision on the basis of an assumption – which was favourable to the Claimant – that his ADHD and possible PTSD may have affected his conduct in March 2025. I also stated that, even if there had been medical evidence directly linking the Claimant's ADHD with the messages he sent or indicating that he was suffering an acute mental health episode in March 2025, as he alleged in his written submissions, that would not have detracted from the content of the messages, which reasonably caused the Respondent's witnesses to fear for their physical safety such that a fair trial was no longer possible. The critical factor that led me to strike out the claims was the impact of the threats on the witnesses. This is set out in paragraphs 31–32 of my written reasons.

14. In these circumstances, I consider there to be no reasonable prospect of showing that I have failed to take into account relevant medical evidence, nor of establishing that the additional evidence to which the Claimant refers would have persuaded me to reach a different conclusion.

Ground 2: the tribunal failed to deal with the Claimant's cross-application to strike out the response

15. Ground 2 is misconceived. Given my decision to strike out the claims, it was not strictly necessary for me to determine the Claimant's cross-application to strike out the response, but I address this matter nonetheless at paragraph 33 of my written reasons.

Ground 3: the tribunal failed correctly to apply the 'fair trial' and proportionality tests

16. In his reconsideration application, the Claimant asserts that a fair trial remains possible and that strike-out is disproportionate, giving six reasons referred to as (a)–(f). He also says that I have incorrectly applied the legal test for strike-out.
17. Point (a) asserts that there was no need for irreversible action (i.e. strike-out) by the tribunal in March 2026, given that the final hearing was not listed to take place for another four months. This does not detract from my conclusion that the Claimant's threatening emails rendered a fair trial impossible. In so far as the Claimant suggests that the decision on strike-out should have been postponed until the final hearing, it is the normal practice of the employment tribunal to list a preliminary hearing to determine a strike-out application, and it is usually in the interests of justice that a hearing listed for that purpose should result in a final determination of the point. I consider that to have been the case here.
18. Point (b) states that the case turns to a large extent on audio recordings and documentary evidence, which is not degraded by the passage of time in the way that witness recollection might be. (Pausing there, I do not accept that premise. I consider that witness evidence would have been crucial had the case proceeded to a final hearing.) However, the key point is that there was no suggestion from the Respondent or the tribunal that the claim should be struck out because the passage of time meant that it was no longer possible to have a fair hearing. The strike-out application was based on witness intimidation.
19. Point (e) asserts that the tribunal had granted the Respondent's earlier application to vary EJ Midgley's case management orders, whereas it treated the Claimant's lateness in filing documents as evidence of unreasonable conduct. However, the case was not struck out on the basis of the Claimant's late compliance with case management orders. On the contrary, I made significant efforts to ensure that the Claimant was able to present his case despite the lateness of his evidence and written submissions.
20. With regard to points (c), (d) and (f), these matters are dealt with in paragraphs 28 and 29 of my written reasons. I consider this to be an attempt to reopen matters that were fully addressed at the strike-out hearing.

21. Finally, the Claimant asserts that I failed to engage with the cumulative weight of the factors on which he relies. The relevant factors are discussed in my written reasons and they all feed into my conclusion at paragraph 33.

Ground 4: the tribunal failed to take account of the Claimant's ADHD

22. The Claimant asserts that I failed to account for the impact of his ADHD in relation to the threatening emails he sent in March 2025. I deal with this point in paragraph 31 of my written reasons, where I say that I am prepared to accept that the Claimant's ADHD may have affected his conduct, despite the absence of direct medical evidence as to his state of mind at the time. In paragraph 32, I refer to the possible symptoms of ADHD listed in the appendix to the Equal Treatment Bench Book. I also indicate that I might have been prepared to view an intemperate outburst or foul language in light of the Claimant's ADHD and to treat it more leniently, but that I consider threats of physical violence to be a different matter.
23. The Claimant also asserts that the hearing was structured so as to give substantially greater time to the Respondent's counsel than to him. I consider this to have been inevitable in circumstances where the Claimant chose not to make detailed oral submissions, relying instead on written submissions. It was also necessary in the interests of a fair hearing: I needed to give the Respondent's counsel an opportunity to respond orally to the extensive written submissions filed by the Claimant on the day of the hearing. As I recall, the Claimant was given the right to reply. Furthermore, reasonable adjustments were discussed with him at the start of the hearing and were put in place – see paragraph 8 of my written reasons.

Ground 5: the tribunal portal was incomplete

24. The Claimant says that there was no record on the tribunal portal of various documents he had submitted, including the late evidence and submissions sent to the tribunal on 2 and 4 March 2026. Nevertheless, he acknowledges that all the late documents had been forwarded to me by the tribunal's administrative staff and are referred to in my written reasons. The alleged absence of documents from the portal is therefore of no consequence, in my view, and does not support the application for reconsideration.

Ground 6: the Respondent's witnesses did not attend the strike-out hearing

25. Employment Judge Midgley's case management orders provided that the Respondent's witnesses were not required to attend the strike-out hearing (paragraph 23) and recorded that both parties agreed to that course of action (paragraph 66). The strike-out hearing was conducted on that basis. Having considered the contents of the witness statements in light of the surrounding circumstances, I formed the view that the witnesses' fears for their physical safety were both genuine and reasonable (see paragraphs 26–28 of my written reasons).
26. The Claimant now objects to the procedure adopted by the tribunal. He says that the witnesses' failure to attend in person deprived him of the opportunity to

challenge their evidence in cross-examination. However, it is difficult to see what other course of action could reasonably have been taken. The strike-out application was based on the assertion that the Claimant's threats caused the Respondent's witnesses to fear for their physical safety if they gave evidence, such that a fair trial was no longer possible. To have required the witnesses to attend the preliminary hearing would have risked producing the very harm that the strike-out application sought to avoid, hence EJ Midgley's case management decision. Furthermore, the witnesses' continued engagement with work-related administrative matters concerning the Claimant does not shed any light on the reasonableness of their fears for their safety if they were to give evidence against him at a tribunal hearing. In these circumstances, I do not consider that the non-attendance of the witnesses at the strike-out hearing amounted to a procedural irregularity.

Ground 7: the tribunal failed to take into account the lack of action by the police

27. At paragraph 22 of my written reasons, I record that the Respondent reported the Claimant's abusive messages to the police, who spoke directly to one of the Claimant's colleagues. This is part of the undisputed factual background to the strike-out application. The Claimant says that I have accorded insufficient weight to the fact that the police took no further action. He says that the absence of any criminal charges casts doubt on my conclusion that the witnesses were genuinely fearful for their safety. In my view, the fact that the police decided not to press charges is of limited (if any) relevance in circumstances where there is no dispute that the threatening messages were sent.
28. Following on from this point, the Claimant says that there is new evidence that should be taken into account. Documents disclosed to him via a subject access request on 5 March 2026, the day after the hearing, included an internal e-mail to HR from Mr Bains, Senior Legal Counsel at Laing O'Rourke, dated 10 March 2025. In that e-mail, Mr Bains stated: *'I think that we will use this and the other correspondence to see if we can get the ET claim struck out... I would suggest that people don't engage with him. If anyone is feeling threatened, then they should report him and his messages to the police.'* The Claimant says this indicates that the strike-out application was a premeditated legal strategy and that the witnesses were not genuinely fearful for their safety.
29. This is new evidence that was not available to the tribunal at the time it gave its judgment. I consider that it may well be subject to legal advice privilege and therefore inadmissible before the tribunal. But even if it is admissible, I do not accept that it is relevant and would probably have had an important influence on the hearing such as to satisfy the test in *Ladd v Marshall*. It is open to any party to employment tribunal proceedings to adopt a litigation strategy based on legal advice. Given the threatening content of the Claimant's emails, Mr Bains' advice on strike-out is, in my view, unsurprising. There is no suggestion in his email that potential witnesses should feign fear or apprehension.

Ground 8: the tribunal abandoned its favourable interpretation of the Claimant's emails without explanation

30. The Claimant notes that, during the course of the hearing, I asked the Respondent's counsel to comment on a possible favourable interpretation of the emails sent by the Claimant in March 2025: namely, that he was acting defensively and merely warning the Respondent's witnesses not to approach him or his family. He says that I gave no explanation as to why I ultimately rejected that interpretation. My evaluative conclusion was based on the wording of the messages and the context in which they were sent. This is fully addressed in paragraph 24 of my written reasons.

Ground 9: the tribunal's proportionality assessment was inadequate

31. The Claimant says that, when assessing the lesser measures that could have been taken to address the witnesses' fear of physical violence and the other relevant factors, I failed to conduct a cumulative assessment. The relevant factors are discussed in my written reasons. They all feed into my conclusion at paragraph 33 and it is clear from my reasons that no single factor was viewed in isolation.

Ground 10: the tribunal failed to give weight to the Claimant's apology

32. Finally, the Claimant asserts that I failed to assess and give proper weight to the fact that he apologised for his threatening emails. This is dealt with in paragraph 28 of my written reasons, where I place the apology in context and assess the risk that the threatening conduct will recur, notwithstanding the Claimant's apology.

Conclusion

33. Having considered all the points made by the Claimant, I am satisfied that there is no reasonable prospect of the original decision being varied or revoked. The application for reconsideration is refused.

Approved by:
Employment Judge Leverton
30 April 2026

JUDGMENT & REASONS SENT TO THE PARTIES ON
01 May 2026

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