



EMPLOYMENT TRIBUNALS

Claimant: Ms R Baker Ellwood

Respondent: Jintana Limited

HELD AT: Liverpool

ON: 27 March 2026
(reconsidered on 13
April 2026)

BEFORE: Employment Judge Johnson

MEMBERS: Mr R Cunningham (attended by CVP)
Mrs L Heath (attended by CVP)

REPRESENTATION:

Claimant: First claimant (attended by CVP)

Respondent: Mr B Hendley (consultant, attended by CVP)

JUDGMENT

UPON APPLICATION made orally by the respondent's representative following the delivery of the judgment on 27 March 2026 and in accordance with Rule 69 of the Employment Tribunal Procedure 2024.

The reconsidered judgment of the Tribunal is that:

- (1) The complaint of inequality of pay on grounds of sex contrary to Chapter 3 of Equality Act 2010, is not well-founded and is unsuccessful.

- (2) When the proceedings were begun the respondent was in breach of its duty to provide the first claimant with a written statement of employment particulars.
- (3) However, because this successful complaint falls within section 11 of the Employment Rights Act 1996 and is not a relevant jurisdiction where section 38 of the Employment Act 2002 applies, no award for this failure can be made.

REASONS

(in relation to the reconsideration of the judgment only)

Introduction

1. Reasons for the substantive part of this judgment including findings of fact were provided orally to the parties at the final hearing during the afternoon of 27 March 2026.
2. These reasons are solely provided in order that the parties have full reasons of why the respondent's application for reconsideration following the oral delivery of the judgment on 27 March 2026 and before the final hearing concluded.
3. The respondent's representative made an application for reconsideration during the course of the final hearing in accordance with Rule 69. They argued that the financial award made in relation to the successful complaint brought under section 11 of the Employment Rights Act 1996 could not be subject to a payment under section 38 Employment Act 2002.
4. The claimant was provided with an explanation regarding the reasons for the respondent's application by Judge Johnson and given an opportunity to make any representations disputing the grounds for the application. The claimant has not provided any representations at the time that this judgment was formally reconsidered on 13 April 2026.

The reconsideration

5. The original judgment of the Tribunal firstly dismissed the claimant's equal pay claim.
6. However, the judgment also determined that the respondent had failed to provide the first claimant with a written statement of employment particulars. This was contrary to section 1 of the Employment Rights Act 1996 and section 11 provides the Employment Tribunal with jurisdiction to hear complaints brought by workers seeking enforcement the duty under section 1.
7. The second part of the judgment in paragraph (2) included the following words relating to this successful complaint: *'It is just and equitable to make an award of an amount equal to four weeks' gross pay. In accordance with section 38 Employment Act 2002 the respondent shall therefore pay the claimant £420.'*

8. However, having considered the respondent's application seeking reconsideration, the Tribunal accepts that section 38 of the Employment Act 2002 does not permit such an award. Section 38 only permits us to make an award for a failure to give statement of employment particulars in relating to circumstances where a claim is made in favour of the claimant under any of the jurisdictions listed in Schedule 5 of the 2002 Act.
9. Schedule 5 of the 2002 Act identifies '*TRIBUNAL JURISDICTIONS TO WHICH SECTION 38 APPLIES*'. However, the only complaints under the Employment Rights Act 1996 which are included are section 23 (unauthorised deductions), section 48 (detriments in employment), section 111 (unfair dismissal) and section 163 (redundancy payments).
10. The claimant's successful complaint under section 11 is not included under Schedule 5 and is therefore not subject to awards under section 38 of the 2002 Act. Consequently, while a declaration of a failure can be made under section 1 relating to written statements of employment particulars, no financial remedy is payable. Moreover, because the claimant no longer works for the respondent, it appears unnecessary for any determination of her particulars to take place as permitted by section 11.
11. Consequently, the judgment has been varied in accordance with section 70 and all references to a payment being made under section 38 of the 2002 are revoked and removed from paragraph (2) of the judgment. Paragraph (3) of the reconsidered judgment has been included as a result of this decision and to explain why no payment arises following the declaration in paragraph (2).

EJ A Johnson

Employment Judge Johnson

Date 13 April 2026

JUDGMENT SENT TO THE PARTIES ON

14 May 2026

FOR THE TRIBUNAL OFFICE

Notes

Reasons for the substantive judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.

The parties should further note that full reasons have been given regarding the reconsideration decision provided within this judgment.

Public access to employment tribunal decisions

Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.

Recording and Transcription

Please note that if a Tribunal hearing has been recorded you may request a transcript of the recording, for which a charge may be payable. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings, and accompanying Guidance, which can be found here:

<https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/>