



EMPLOYMENT TRIBUNALS

Claimant: Mr I D Plotog

Respondent: Portable Battery Recycling Limited

Heard at: Manchester

On: 2 April 2026

Before: Employment Judge Leach (sitting alone)

Representatives

For the claimant: Mr C. Ilangaratne (Counsel)

For the respondent: Mr J Ellison, consultant

Judgment - Reconsideration

Introduction

1. By letter dated 28 October 2025, the claimant (via his solicitors) applied for a reconsideration of my judgment to dismiss complaints of harassment and direct discrimination as being out of time (the Judgment).

2. The Judgment was made at a preliminary hearing on 16 June 2026. Written reasons were subsequently requested and sent to the parties on 14 October 2025.

3. I wrote to the parties on 19 December 2025, explaining that I had decided to list this case for a reconsideration hearing and setting out the issues for reconsideration that I had identified. Neither party disputed these issues.

Reconsideration Grounds

4. These are the grounds for reconsideration identified:

- i. Because the claimant, in his application, has told me that he provided documents to the respondent to include in the bundle of documents for use at the preliminary hearing and these documents were not included (paragraphs 13-15 of the claimant's application)

- ii. Because the claimant, in his application, says that his attempts to comply with directions and provide necessary information were hampered by technical failings on the respondent's part (paragraph 19 of the application)
- iii. To consider whether I should have taken into account section 123(3)(a) Equality Act 2010 (conduct extending over a period). All the complaints of direct discrimination and harassment listed in the First List of Issues (provided following the preliminary hearing on 20 January 2025) are out of time and therefore the most recent of those complaints is outside of the primary time limit. However, the second part of the preliminary hearing before me, considered and determined the claimant's application to amend his claim. The complaints added as a result of the successful amendment application included a complaint of victimization (the claimant's dismissal). Should that have been considered as an act that might have represented the end of a period of conduct extending over that period?
- iv. To consider whether the reasons provided at paragraphs 18 and 19 of the written reasons (sent to the parties on 14 October 2025) cover the complaints of race discrimination identified in the first version of the list of issues at paragraphs 2.1.1 and 2.1.3:

Things not considered as part of this reconsideration

20 Prior to this reconsideration hearing, there have been 3 preliminary hearings in this claim:-

- 20.1 On 24 Jul 2024; a private hearing listed to identify the complaints and make case management orders, but where the judge was able to make little progress and directed that a Romanian interpreter be appointed for the next hearing. (hearing 1, before Employment Judge Cookson)
- 20.2 On 20 January 2025; a private hearing where the focus was on identifying the complaints, producing a list of issues and making case management orders) (hearing 2, before Employment Judge Allen). An interpreter was present at hearing 2.
- 20.3 On 16 June 2025; a public hearing listed to consider the time limit issues. (hearing 3, before me). An interpreter was present at hearing 3.

21 The terms of the reconsideration application include criticism of the outcomes of hearings 1 and 2. I have not considered those matters raised. The claimant had a right of appeal against any decisions made at those hearings and did not do so.

22 Hearing 2 resulted in a proposed list of issues (Annex at page 98-101). This was sent to the parties on 30 January 2025. Paragraph 22 of the record of that hearing gave the parties an opportunity to comment on the proposed list. No comments were received.

This Hearing

5. Mr Ilangaratne provided a written opening document that I read before the hearing started. I was also provided with a bundle of documents comprising 412 pages. Of these, some 250 pages were documents that the claimant says he wanted to provide to the Tribunal at the preliminary hearing on 16 June 2025 but was unable to. Reference in this judgment to page numbers are to this bundle.

Relevant Law

6. Both parties referred me to relevant case law on reconsideration. I note as follows:-

7. 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 Rules of Procedure 2024 (Rules)).

8. The importance of finality was confirmed by the Court of Appeal in **Ministry of Justice v Burton and anor [2016] EWCA Civ 714** in July 2016 where Elias LJ said that:

“the discretion to act in the interests of justice is not open-ended; it should be exercised in a principled way, and the earlier case law cannot be ignored. In particular, the courts have emphasised the importance of finality (Flint v Eastern Electricity Board [1975] ICR 395) which militates against the discretion being exercised too readily; and in Lindsay v Ironsides Ray and Vials [1994] ICR 384 Mummery J held that the failure of a party’s representative to draw attention to a particular argument will not generally justify granting a review.”

9. Similarly in **Liddington v 2Gether NHS Foundation Trust EAT/0002/16** the EAT chaired by Simler P said in paragraph 34 that:

“a request for reconsideration is not an opportunity for a party to seek to re-litigate matters that have already been litigated, or to reargue matters in a different way or by adopting points previously omitted. There is an underlying public policy principle in all judicial proceedings that there should be finality in litigation, and reconsideration applications are a limited exception to that rule. They are not a means by which to have a second bite at the cherry, nor are they intended to provide parties with the opportunity of a rehearing at which the same evidence and the same arguments can be rehearsed but with different emphasis or additional evidence that was previously available being tendered.”

10. Mr Ilangaratne provided me with an extract from Practical Law which I considered.

11. I also referred myself to the EAT decision in **Sakyi-Opare v. The Albert Kennedy Trust UKEAT/0086/20** which I note below.

Submissions and discussions - grounds (i) and (ii)

12. We started by considering directions I had given at paragraphs 5 of my letter dated 19 December 2025.

5. The claimant's solicitor must also, by no later than 13 February 2026, provide the respondent with written details of the following (having regard to the terms of the reconsideration application):

- a. What were the comments and representations made by the claimant as referred to in paragraph 21 of the application*
- b. A list (by page number) of those documents that the claimant says are in the previous bundle that are relevant to the question of time limit and that the claimant was not allowed to refer to (paragraph 16 of the claimant's application)*
- c. A list of those documents (by description and date if known) that the claimant says were missing and relevant to the issues being considered at the preliminary hearing (paragraph 15 of the claimant's application)*
- d. A list (by page number) of those documents that are referred to at paragraph 14.*

13. These directions were made to ensure fuller details of the claimant's application. Importantly, in the application the claimant made (or appeared to have made) serious allegations about the conduct of the respondent's representatives as well as allegations that the Tribunal had failed to take any account of things the claimant had said.

14. Dealing with the paragraphs a to d above in reverse:-

- 14.1 Re d. At paragraph 14 of his application the claimant stated that the bundle contained several documents that supported elements of his discrimination claim as being in time. I asked that he list those documents.
- 14.2 Re c. At paragraph 15 the claimant alleges that the respondent was in breach of Orders which meant that the bundle was late and there were missing documents in the bundle. The claimant alleges prejudice because of the respondent's failure to comply with orders.
- 14.3 Re b. At paragraph 16 the claimant says that the Tribunal did not allow him an opportunity to explain other elements of his direct discrimination claim during the preliminary hearing on 16 June 2026 and 2 preliminary hearings held before then. The claimant also alleged that the Tribunal (presumably at the hearing on 16 June 2025) failed to allow the claimant to explain how documents in the bundle were relevant to the question of time limit.
- 14.4 Re a. At paragraph 21 the claimant stated that the written reasons provided failed to note and address any of the claimant's comments and representations made during the hearing, making the judgment substantially flawed.

15. I considered it was important to provide the claimant with an opportunity to demonstrate the failings noted. Elsewhere in the reconsideration application, it is stated

- 15.1 That the claimant's attempt to comply with directions and provide necessary information were hampered by technical and administrative failings by the respondent.
- 15.2 That the claimant provided the respondent with relevant disclosure, but the respondent only provided the claimant with a copy of the bundle, minutes before the hearing on 16 June 2025. (if true that would be a breach of the orders made in advance of the hearing on 16 June).
- 15.3 That the bundle had been compiled in an unreasonable manner.

16. As it was the claimant/his solicitors did not provide the information that I had directed them to provide by 13 February 2026. I identified the following from discussions with Mr Ilangaratne and Mr Ellison and from a review of documents:-

- 16.1 The respondent has at all times complied with the case management orders given.
- 16.2 In accordance with case management orders made in preparation for the hearing on 16 June 2025, Mr Ellison on behalf of the respondent sent the claimant a proposed bundle of documents for use at the hearing on 16 June 2025. He did this on 28 April 2025 (401-402). His covering email invited the claimant to identify other documents if he wanted them to be added to the bundle.
- 16.3 The claimant does not now dispute that the email and draft bundle was sent. The explanation I had today was that the email from Mr Ellison had gone into his spam email folder.
- 16.4 The respondent did not receive any response from the claimant. The orders made in preparation for the preliminary hearing then required the claimant to identify any other documents that needed to be included in the bundle for the preliminary hearing. He needed to have done this by 19 May 2025.
- 16.5 On 28 May 2025 (over 2 weeks before the hearing on 16 June 2025) the respondent's representatives sent by post a hard copy of the bundle for use at the preliminary hearing. Mr Ellison told me that it was sent by standard post and not recorded delivery and was unable to provide proof of postage. The claimant says he did not receive it. I am satisfied that Mr Ellison did put the bundle in the post.
- 16.6 The orders also required that any written statement of evidence relevant to the time limit issue was to be provided by 2 June 2025.

Helpfully the case management order providing for the exchange of statements noted that it was expected that only the claimant would be providing a statement. Nothing was sent by the claimant.

16.7 At hearing 2 and separate to the orders in preparation for the preliminary hearing noted above, orders providing for the exchange of documents for the final hearing were also made. In the orders that followed hearing 2, the preliminary hearing orders were separately listed to the orders made for the main hearing (see pages 95 and 96). The claimant was required to provide disclosable documents by 31 March 2025. The claimant provided disclosure in accordance with this order (email from claimant to respondent's representatives dated 20 March 2025 – page 380)

17. Following discussions, it was accepted on behalf of the claimant that the respondent had not encountered technical and administrative issues that had prevented compliance with Orders. The claimant's explanation at this hearing was that there must have been confusion between what had been disclosed by the claimant on 20 March and his expectation that these documents would be contained in the bundle.

18. Mr Ilangaratne also noted that a previous case management order had required the inclusion of grievance documents in a bundle prepared for the next preliminary hearing. However, that order was made at the first preliminary hearing in this case – on 24 July 2024 - in preparation for hearing 2, on 20 January 2025. The order was not applicable to the hearing before me on 16 June 2025.

Conclusions to grounds (i) and (ii)

19. I have considered the explanation provided at this hearing – confusion about disclosure and preparation of the bundle; that the claimant must have become confused between the directions for the main hearing and the directions for the preliminary hearing. I have considered the fact that English is not the claimant's first language. In those hearings where he represents himself, he has benefitted at stages from an interpreter.

20. However, this explanation does not explain the lack of engagement by the claimant.

22.1 He knew – or should have done had he paid appropriate attention to the case management orders – that he was to expect a draft bundle of documents by 28 April 2025. As he did not see that he had received this (he had received it, but it had gone into his spam folder) he should have chased;

22.2 in accordance with Order 4.2 (page 96) he should have provided his own additions to the bundle by 19 May. Even assuming some confusion on his part – that he may have thought he had already done this – he should have seen that the respondent was then to provide the claimant with an amended index and pages. Again, no contact was made by the claimant chasing this.

22.3 In accordance with Order 4.3 he should have provided a statement by 2 June. Nothing was provided.

23 I conclude that the explanation now provided by the claimant about the bundle and his expectation for more documents to be included and considered by me, is effectively an attempt to have a second bite of the cherry. Reconsideration on these grounds is refused.

Submissions and discussions – ground iii

24 I identified this as a ground, having regard to paragraph 20 of the reconsideration application that stated as follows:-

“The claimant’s claim for direct race discrimination a series of actions taken by the respondent and had continuous character that lasted over stretched period of time.”

25 When the preliminary hearing on 16 June 2025 was listed to determine whether the race discrimination complaints were in time, all complaints were outside of the primary 3-month time limit under section 123 Equality Act 2010 (even when counting the extension for the purposes of early conciliation.

26 At the preliminary hearing on 16 June 2025, I considered first the time limit issue. On consideration of these I decided that it was not just and equitable to extent time for the reasons provided.

27 I then considered the amendment application and made an order adding complaints relating to the dismissal – being a complaint of unfair dismissal and a complaint of victimisation. The amendment application to add those complaints was made inside the primary time limit, dismissal having occurred on or about 14 March 2025 and the amendment application made on 19 March 2025.

28 I allowed the amendment application to add complaints of unfair dismissal, automatic unfair dismissal (under section 103A Employment Rights Act 1996) and victimisation (section 27 Equality Act 2010)

29 Had I dealt with the amendment application first the claimant would have had one claim made under the Equality Act inside of the primary time limit under section 123 Equality Act 2010. That would have given some prospect to the claimant being able to argue conduct extending over a period – section 123(3)(a) Equality Act 2010.

30 I have referred myself to the EAT decision in **Sakyi-Opore v. The Albert Kenndy Trust UKEAT/0086/20**. In that case the EAT decided that an Employment Tribunal had erred in dismissing a claim because all existing complaints were out of time, without considering an application to amend to add complaints that would have been in time and therefore kept the claim alive.

31 I note particularly paragraph 20 and 21 of the Judgment:-

20. The Employment Tribunal was, in my judgement, required to determine the Claimant’s application to amend before then addressing

the time point that might have arisen in this case. The error made by the Employment Tribunal is, in my judgement, material to its ultimate decision because the Claimant was contending that her claim form should be amended to include events that had taken place after it was filed. In my judgement, only in the context of there being a determination one way or the other of that application could the Employment Tribunal then go on to consider the issue of whether any other part of the claim was out of time by reason of there being no “conduct extending over a period” and, if so, whether time should be extended. That is particularly so because the Claimant’s case was that the more recent events of January 2019 demonstrated a continuous and ongoing sequence of harassment on the part of the Respondent towards her, going back to the earliest of the events with which her claim was concerned. Whilst the Employment Tribunal in its Reasons rejected the Claimant’s argument on there being “conduct extending over a period”, in doing so it did not address the application to amend or the substance of the January 2019 allegations.

21. *Further, if the application to amend had been allowed then even if the Claimant’s arguments regarding there being “conduct extending over a period” had still been rejected then the inclusion of the more recent January 2019 allegation in the claim would have been a relevant (and, I emphasise, relevant: not determinative) factor in considering whether to extend time for the earlier allegations insofar as they had been presented out of time.*

32 I have made the same error. The amendment application should have been considered first. That would have kept alive an argument that the complaints made under the Equality Act 2010 when considered together, amounted to conduct extending over a period.

Conclusion to ground iii

For the reasons stated above the reconsideration application succeeds to the extent that the claimant is entitled to have considered at the final hearing, the issue as to whether there was conduct extending over a period ending in the claimant’s dismissal (an alleged act of victimisation).

Submission and discussions – ground iv

33 In his opening note/submissions, Mr Ilangaratne says this on the issue:

“Had Employment Judge Leach had access to all the evidence in this current reconsideration Bundle which the claimant had intended to have included in the Bundle for the Preliminary Hearing on 16 June 2025 (but was not through fault of his own) Employment Judge Leach may have reached a different conclusion.” Mr Ilangaratne then provides a quote from one of the grievance documents dated 15 June 2023 referring to his job being given away on 12 June 2023.

34 I have set out above my findings about documents not being included in the bundle. The claimant did not engage in case management. Had he participated and required the inclusion of documents in the bundle I might have taken a different view on this issue. But he did not and asking me now to consider the strength of his case (on the time limit point) in the light of the documentation provided is asking for a “second bite of the cherry.”

Conclusions to ground iv

35 For the reasons stated above, ground iv is rejected.

Reconsideration outcome

36 Had I identified that there was one complaint inside the primary time limits then I would have gone on to consider whether I could at that preliminary hearing, make a fair decision as to whether there had been conduct extending over a period. My conclusion would have been no, having regard to authorities such as **Hendrix v Metropolitan Police Commissioner [2002] EWCA 1686** – to which reference was made during this reconsideration hearing.

37 Mr Ellison noted the time gap between the alleged discriminatory acts. The last of the acts identified in the List of complaints and issues arising from Hearing 2 is 15 June 2023 (not being entitled to company sick pay). The dismissal was March 2025, some 22 months later. I have considered this and the indication from both parties that different individuals in the respondent company were involved in different acts. These points might make the allegation that there was conduct extending over a period a weak one and if so, it is open to the respondent to apply for a deposit order. However, I also note that the claimant was absent due to sickness for much (if not all) of the period between June 2023 and dismissal. Had I recognised the last in the alleged series of acts (conduct extending) was in time, I would have permitted the discrimination complaints to continue to that extent.

38 For the avoidance of doubt, at the preliminary hearing on 16 June 2025, I considered and reached a judgment that it would not be just and equitable to extend time – if the complaints were presented outside of the primary time limit. The issue that keeps them potentially in time is the alleged application of section 123(3)(a) and not section 123(1)(b).

Approved by:

Employment Judge Leach

7 April 2026

JUDGMENT SENT TO THE PARTIES
15 May 2026

FOR THE TRIBUNAL OFFICE

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