



EMPLOYMENT TRIBUNALS

Claimant: Mr M Orr

Respondent: Marks and Spencer plc

JUDGMENT

The claimant's application dated 16 March 2026 for reconsideration of the judgment sent to the parties on 17 December 2025 is refused.

REASONS

Introduction

1. The claimant's application for reconsideration was sent by email of 16 March 2026. The Judgment to which the reconsideration application applies ("the Judgment") was sent to the parties on 17 December 2025.
2. Although the application was dated 16 March 2026, it was not referred to me until 15 April 2026. Due then to Tribunal workload, judicial commitments and non-working time, the decision has taken longer than I had hoped to finalise and send to the parties. It is recognised that a delay in receiving Tribunal decisions has a negative impact on parties, and for that I apologise.
3. In between the Reserved Judgment being sent to the parties and the application for reconsideration, the parties attended a preliminary hearing on 2 March 2026 before Employment Judge Boyes. I have had sight of the Judge's Record of Preliminary Hearing following the hearing on 2 March 2026.
4. The claimant's application for reconsideration consists of a detailed email of 12 pages, including an application for an extension of time. It also attaches two attachments:
 - 4.1. Attachment 1 – email to the Employment Appeal Tribunal dated 4 November 2025 attaching the requisite paperwork, including an extension of time request as the Notice of Appeal was submitted out of time;

- 4.2. Attachment 2 – an email chain from 19 February 2025 to 4 March 2025 between the claimant, the Data Subject Access Request Team, and Mr Armstrong (the respondent's in house solicitor).
5. The Judgment relates to various applications heard at a preliminary hearing on 23 September 2025, specifically;
 - 5.1. The claimant's application to amend the claim;
 - 5.2. The respondent's application to strike out the claims, or for a deposit order in the alternative.
6. The claims that survived that hearing and proceed to a final hearing are:
 - 6.1. Unauthorised deduction of wages; and,
 - 6.2. Whistleblowing.

Issues

7. As set out above, the claimant's application is dated 16 March 2026, seeking reconsideration of the Judgment sent to the parties on 17 December 2025. As such, the application for reconsideration was presented outside of the primary time limit.
8. I therefore firstly have to consider whether to extend time to permit the application for reconsideration to be deemed to have been presented within time. Second, I have to consider whether the application has no reasonable prospect of the judgment being varied or revoked. The Tribunal rules surrounding both aspects are set out in the "Law" section below.

Findings of fact

9. I do not seek to repeat the details within the Judgment. I have set out below the relevant chronology.
10. This claim had been the subject of two preliminary hearings on 23 April and 11 July 2025, prior to the hearing on 23 September 2025 which gave rise to the Judgment.
11. On 17 December 2025, various documents were communicated to the parties via the online portal. The Judgment was one of those documents. The claimant tried to check the document but there was an error with the system and he was unable to do so.
12. On 19 December 2025, a Notice of Hearing was sent to the parties via email regarding the preliminary hearing on 2 March 2026 (listed following my decision and case management orders of 17 December 2025). The claimant saw this, and assumed that the 17 December 2025 communication related to the same matter.

13. The claimant says that he was in the middle of putting together an appeal to the Employment Appeal Tribunal around this time (December 2025). However, Attachment 1 demonstrates that the claimant had sent everything to the Employment Appeal Tribunal by 4 November 2025. I therefore do not accept that his work on his appeal was a factor preventing him from applying for reconsideration within the correct time limits, given that his work on the appeal was completed over a month prior to him receiving the Judgment he applies for me to reconsider.
14. The claimant goes on to say that “at some point later on, when [he] was filling in the agenda” for the 2 March 2026 hearing, he became aware of a case management order sent on 17 December 2025. I was able to locate the claimant’s email attaching his agenda, which is dated 22 February 2026: in the agenda, the claimant mentions the Judgment in some detail. Further, the claimant in his agenda document raised his objections to the Judgment in as well as other queries/criticisms, over nine pages of text. This means that the claimant had accessed, read and absorbed the Judgment by 22 February 2026 at the latest.
15. On 2 March 2026, a preliminary hearing took place. I have seen the Record of Preliminary Hearing produced by the Judge following that hearing.
16. On 16 March 2026, the claimant made his application for reconsideration of the Judgment sent on 17 December 2025.
17. In terms of the lateness of the application, the claimant relies on various factors. The claimant relies upon his mental disabilities of anxiety and depression as contributing to the delay in the application for reconsideration. I have no medical evidence to support that assertion.
18. The claimant says that the number and title of documents confused him. For the claimant’s information, there are often two or three relevant dates on documents: (1) the date of any hearing, (2) the date on which the Judge completes/approves a document and (3) the date on which a document is sent out to the parties. For clarification, 22 October 2025 and 5 November 2025 are the dates on which I completed certain of the documents that were then sent out to the parties on 17 December 2025. In any event, and regardless of any confusion suffered by the claimant, I repeat my finding above that he was able to access, read and digest the Judgment sufficiently by 22 February 2026 to set out his disagreement to it.
19. The claimant says that the number of documents received on 17 December 2025 added to his confusion. As above, even if there was confusion, that did not prevent the claimant from setting out his disagreement with the Judgment on 22 February 2026. The claimant also relies on the fact that he had orders to meet prior to the 2 March preliminary hearing and so prioritised those.
20. Finally, the claimant raised the point that, previously, I had explained to him that he could not make a reconsideration application in relation to certain

matters. That related to case management orders, which are not subject to reconsideration applications. The claimant says that he was told on 2 March by Employment Judge Boyes that he was able to apply for reconsideration, and so did so within 14 days of that hearing.

Law

21. The following rules from the Employment Tribunal Procedure Rules 2024 (“the 2024 Rules”) are relevant here:

R68 – 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.

R69 – 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.

R70 – 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.

R5 – Time

...

- (7) The Tribunal may, on its own initiative or on the application of a party, extend or shorten any time limit specified in these Rules or in any decision, where or not (in the case of an extension) it has expired.

Extension of time

22. In a scenario in which an extension of time is sought due to ill-health or disability, the Tribunal is likely to require medical evidence. In the case of **Islam v HSBC Bank plc** EAT 0264/16, the Employment Appeal Tribunal (“EAT”) held that the Tribunal had been entitled to find that the limited medical evidence was not determinative of the claimant’s health at the time the application for reconsideration should have been made. Further, the Tribunal had not erred in concluding that the claimant had not proved that he was suffering from depression at the relevant time – **Islam**, paragraph 48.

23. In **Kwik Save Stores v Swain & Others** 1997 ICR 49, Mummery J gave guidance as to how the Tribunal should exercise its discretion regarding whether or not to grant an extension of time –

“The process of exercising the discretion involves taking into account all relevant factors, weighing and balancing them one against the other, and reaching a conclusion which is objectively justified on the grounds of reason and justice. An important part of exercising this discretion is to ask these questions. What prejudice will the applicant for an extension of time suffer if the extension is refused? What prejudice will the other party suffer if the extension is granted? If the likely prejudice to the application for an extension outweighs the likely prejudice to the other party, then that is a factor in favour in granting the extension of time but it is not always decisive”.

24. This concept, that the prejudice to the claimant if the reconsideration application is not allowed to proceed out of time must be considered, was reiterated by HHJ Shanks: **Dean-Verity (formerly Tahirkhell) v Khan Solicitors Ltd** 2022 EAT 128, paragraph 25:

“...of course, the delay and lack of good reason for it are absolutely central to the question whether time should be extended but the prejudice to the claimant of not extending time needs to be weighed properly in the balance and cannot be discounted beforehand because it is also caused by the claimant’s delay.”

Substantive application

25. The applicant must set out within their for reconsideration application two factors:

- 25.1. Why reconsideration is necessary in the interests of justice; and,
- 25.2. Why the original decision is wrong.
26. In terms of the interests of justice factor, the Tribunal must seek to give effect to the requirement within the overriding objective at rule 3 to deal with cases “fairly and justly”.
27. HHJ Eady KC set out at paragraph 33 of her Judgment in **Outasight VB Ltd v Brown** 2015 ICR D11 EAT that consideration of the interests of justice means:
- “having regard not only to the interests of the party seeking the review or 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”.
28. The recent case of **Hypervolt Ltd v Jackson** [2026] EAT 45 confirmed that there is a two stage process for determining a reconsideration application:
- 28.1. First, there is a mandatory requirement for an employment judge to determine whether there are reasonable prospects of a judgment being varied or revoked. If there are such prospects then;
- 28.2. Secondly, it must go on to seek the other party’s response and the views of parties as to whether the matter can be dealt with without the need for a hearing. The Tribunal can give a provisional view on the application.
29. The EAT held that it was not clear that the Tribunal had properly undertaken the first step set out above, by simply rejecting the application on the basis that it was out of time and it was not in the interests of justice to extend time, without providing reasons for that decision.

Conclusions

Extension of time

30. I have considered each of the factors put forward by the claimant in his application to extend time for the reconsideration application and set out my conclusions below.

Factor 1 – mental disability

31. At this stage of proceedings I have not seen any evidence as to the claimant’s alleged mental impairments. The claimant does not have a disability discrimination claim, but had previously attempted to amend the claim to include one: that application was rejected at the 11 July 2025 hearing. There has therefore been no disclosure regarding the claimant’s alleged disabilities. The claimant has not provided any medical evidence in support of his

application to demonstrate that any mental impairments have impacted his ability to enter a timely application. I therefore am not satisfied that the claimant has proved that any mental impairment had an impact on his ability to meet the deadline for a reconsideration application.

Factor 2 – confusion regarding HMCTS portal

32. The claimant says that he was confused by notifications coming to him on 17 and then 19 December by different means: the 17 December notification came via the HMCTS portal, whereas the 19 December notification was by email. I accept the claimant's submission that there was an initial error on the portal when the claimant first tried to access the 17 December notification. I also accept that the claimant may have been surprised to receive a Judgment via the portal if they had previously been sent to him by email. However, I do not accept that it was reasonable for him to assume that the documentation sent on 19 December was the same as that sent on 17 December. That was a baseless assumption. Regardless of this, however, any confusion as to the documentation was resolved by the latest 22 February 2026, by which time the claimant had been able to read and digest the Judgment.

Factor 3 – appeal preparation and Christmas time

33. As I have set out above, from the documents I have seen it appears that the claimant had completed his Notice of Appeal and sent it in prior to 12 November 2025. Therefore it cannot be that the preparation for that appeal had an impact on how he dealt with a Judgment received in December 2025.

34. I understand that Christmas is a busy time, however any stress or busyness caused by Christmas does not explain why it took the claimant until 16 March 2026, 2.5 months into the new year, to present his application.

Factor 4 – lack of realisation

35. The claimant says that he did not realise he had been sent the Judgment but thought that the only tasks he needed to do related to the March preliminary hearing, and therefore did not need to be completed before February. I do not accept that this is a good reason, but in any event, even if it is a good reason the claimant's realisation altered by latest 22 February 2026 by which time he had been able to read and consider the Judgment.

Factor 5 – prioritisation of tasks

36. The claimant says that he sought to prioritise the tasks. I accept that he prioritised what he considered to be important, as he has done throughout this litigation. However, the claimant was able to take the time to set out in detail his disagreement with the Reserved Judgment in his agenda document sent on 22 February 2026. I therefore consider he had the time available to him in which he could have applied for reconsideration, had he chosen so to do.

Factor 6 – confusion regarding volume of documents

37. I accept that it would take the claimant some time to digest the various documents that came with the Reserved Judgment, necessitated by the manner in which this case has progressed. However, any confusion once again was resolved by the latest 22 February 2026, when the claimant sent his agenda for the 2 March 2026 hearing with comments relating to the Judgment.

Factor 7 – confusion over the term “reserved judgment”

38. The claimant says that he understood the term “reserved judgment” to mean that the judgment had not been finalised and would be discussed. There is no basis for this misunderstanding of the term, and it is not a reasonable misapprehension to make.

Factor 8 – lack of clarity of judgment

39. The claimant says that the Judgment is unclear and he did not feel he could make a reconsideration application until such time as the Judgment was made clear to him. However, no such clarification was provided before 16 March 2026, when the claimant made his reconsideration application. As such, any alleged lack of clarity was not a hurdle to him presenting his application.

Factor 9 – confusion over right to apply for reconsideration

40. The claimant alleges that he was not clear that he could apply for reconsideration until it was confirmed to him at the 2 March 2026 hearing. However, the explanation and guidance regarding reconsideration and appeal, including the strict time limits applicable, are highlighted within the Judgment cover letter sent to the parties on 17 December 2025. I therefore am not satisfied that it was reasonable for the claimant to be unclear about his right to apply for reconsideration.

Balance of prejudice

41. I now turn to the balance of prejudice. Regarding the prejudice to the claimant, evidently he would suffer the “standard” prejudice of not being able to pursue an application for reconsideration. Beyond that, I cannot see any more forensic prejudice that the claimant would experience were I to deny him an extension of time.

42. Regarding the prejudice to the respondent if I were to allow the application to proceed out of time, they may face the need to incur time and costs in dealing with an application for reconsideration, if it were to get past the initial threshold of not being found to have no reasonable prospects.

Conclusion on extension of time

43. On balance, I conclude that the claimant has put forward no good reason for the delay in presenting the application outside the primary time limit. The

claimant's application should have been made by (taking into account bank holidays) 3 January 2026 to be considered in time. In summary:

- 43.1. The claimant should have known on or shortly after the 17 December 2025 that he had the right to apply for reconsideration;
 - 43.2. He had been able to read and digest the contents of the Judgment he wished to be reconsidered by the latest 22 February 2026;
 - 43.3. His right to apply for reconsideration was confirmed in the hearing on 2 March 2026.
44. Despite these facts, the claimant left it a further fourteen days from 2 March 2026 preliminary hearing to 16 March 2026 to make his application.
45. Although I accept there is some prejudice to the claimant in rejecting the application on the basis that it is out of time, this prejudice does not go beyond the inherent prejudice suffered by any party who is refused an extension in such circumstances.
46. If I am wrong on my refusal to exercise my discretion to grant an extension of time, I will go on to consider the merits of the application itself in any event.

Prospects of success

47. The claimant relies on various grounds, set out below.

Ground 1 – disclosure request/failure to particularise

48. The claimant asserts that any decision within the Judgment based on a lack of particularisation should be reversed. This is primarily on the basis that the respondent had not provided certain disclosure to him, preventing him from particularising aspects of his claim.
49. I note that, in the claimant's application, he remarks that EJ Boyes in the 2 March 2026 preliminary hearing:

“did give legal advice and recommended that the respondent speaks to the person instructing them regarding the DSAR request I made and to make them aware of the issues for not doing it etc, and she did ask the respondent to send me the personal data by 10 April 2026”.

50. The Record of Preliminary Hearing for the 2 March hearing has now been promulgated to the parties and I have seen it. The Judge clearly sets out that the Tribunal cannot give legal advice (paragraphs 48 and 56) or get involved with Data Subject Access Requests (paragraph 52) and the only disclosure orders she made were for standard disclosure: no specific disclosure was ordered.
51. The claimant also records that:

“I told the judge that I wouldn’t be able to answer the questions I was asked to answer at the PH as well as I would like as I haven’t received my personal data yet, and the judge said that it was [fine] and that we could postpone it until I get the personal data”.

52. Again, that is not an accurate reflection of the Summary and Orders made by EJ Boyes. Paragraph 5 of her Order is a list of further information regarding the claimant’s case, as the Judge understood it. The claimant was given 28 days from the date on which the Order was sent to the parties to inform the Tribunal and respondent if any of that recorded information is incorrect.

53. In any event, this Ground does not set out that the decision sent on 17 December 2025 was wrong. In fact it challenges earlier case management in not making disclosure orders.

Ground 2 – reasonable chance of success

54. The claimant seeks to argue that his claims do have a reasonable prospect of success. This is simply to disagree with my findings and conclusions on this issue of reasonable prospect of success. Those findings and conclusions were based on the premise of taking the claimant’s claim at its highest, in other words accepting the facts as the claimant had told them to the Tribunal for the purpose of the strike out application.

Ground 3 – the “additional schedule” and “reformatted schedule”

55. The claimant asserts that allegations within the Additional Schedule were in fact present within his original Timeline of Events and so were not out of time. The claimant’s Timeline of Events was not presented as part of his claim form, but was in response to the Tribunal’s order following initial consideration of the claim for further and better particulars. That Timeline contained information and allegations that went beyond the contents of the ET1, which led to an amendment application being made: for the detailed account of this procedural history, I refer to paragraphs 8 to 28 of the Judgment.

56. This Ground amounts to the claimant disagreeing with my interpretation and findings on the various amendments that I have dealt with during the life of this claim. That is to challenge previous decisions on those amendments, rather than to disclose grounds as to why it would be in the interests of justice for me to reconsider the Judgment. Nor does it set out why the Judgment itself is wrong.

Ground 4 – the claimant was not given sufficient time to respond to documents served by the respondent

57. The claimant asserts that he did not have time to properly read the skeleton produced by the respondent for the 11 July 2025 hearing. That is to again challenge matters that happened at the 11 July 2025 hearing, rather than to set out why it is in the interests of justice for me to reconsider the decision made in the Judgment, and why the decision was wrong.

Ground 5 – time points

58. Fundamentally, the claimant disagrees with the Judgment. However, it is not sufficient grounds for reconsideration for a party to disagree with a decision. The claimant says his claims were in time and had reasonable prospects. However nothing within his application raises anything that would give such arguments anything other than no reasonable prospects of success.
59. On a specific point, the claimant says he was not sent the “July Schedule”. The Tribunal system shows that the claimant was sent both the Record of Preliminary Hearing and the appended Schedule of Allegations arising from the 11 July 2025 hearing on the 22 July 2025.

Ground 6 – complaints about the various Schedules/Lists of Issues

60. The claimant makes different complaints about the various Schedules and Lists of Issues produced prior to the hearing on 23 September 2025, leading to the Judgment sent on 17 December 2025. This does not present a ground upon which to base a reconsideration application as far as I can see: it does not set out why it would be in the interests of justice to reconsider the Judgment, or why that Judgment was wrong.
61. The claimant’s complaint includes the suggestion that I did not ask him to particularise his pay claim, and then struck it out for lack of particularisation. The detail regarding the pay claims is at paragraphs 128 to 140 of the Judgment. There is no reasonable prospect of the Judgment being varied or revoked on the basis of the claimant’s contention that he was not asked for particularisation and therefore it was unfair to strike out any of the pay claims on the basis of failure to particularise those claims.

To summarise

62. The claimant has either:
- 62.1. Sought to re-litigate, or re-argue the issues that were dealt with at the hearing on 23 September 2025 and which are subject of the Judgment sent on 17 December 2025; or
 - 62.2. Sought to criticise earlier conduct by the respondent or me in previous hearing.
63. Neither of those overarching points demonstrate why it would be in the interests of justice to reconsider the Judgment, or indeed why that Judgment was wrong, as opposed to the claimant simply disagreeing with it.
64. I have, above under Grounds 1 to 6, attempted to pick out the main themes of the claimant’s application. To the extent that I have not specifically mentioned something within that application, I remain of the view that, taken as a whole, the application for reconsideration has no reasonable prospect of success.

65. I therefore refuse the application for reconsideration, first on the basis that it is out of time, but moreover because there is no reasonable prospect of success of the decision being varied or revoked. It is not in the interests of justice for me to reconsider the Judgment.

Tribunal's role

66. On an aside note, the claimant has continually misunderstood the role of the Tribunal and its staff. The Tribunal staff and judiciary are not permitted to provide advice on claims. The claimant ends his application for reconsideration by saying:

“Many of the points on the agenda which I requested guidance on at the PH, I did not receive any guidance on”.

67. It is not the role of the judiciary or Tribunal staff to provide general legal advice to parties, as the claimant has been told several times. Judges can offer explanations on legal points when appropriate, but it is not the role of the judiciary or the Tribunal staff to advise parties on the appropriate action for them to take; that is the role of a legal adviser/representative. The Tribunal must remain neutral.

Date: 8 June 2026

Approved by

Employment Judge Shastri-Hurst

JUDGMENT SENT TO THE PARTIES ON

9 June 2026

FOR THE TRIBUNAL OFFICE