EMPLOYMENT TRIBUNALS

Claimant: **CX**

Respondent: **Secretary of State for Justice**

JUDGMENT ON RECONSIDERATION

Rules 68-71 of the Employment Tribunal Rules of Procedure 2024

Upon the Claimant's application, made on 1 May 2026, to reconsider the remedy judgment which was sent to the parties on 29 April 2026, under Rule 70 of the Employment Tribunals Rules of Procedure 2024, and without a hearing, the application for reconsideration is refused as there is no reasonable prospect of the judgment being revoked or varied.

REASONS

Introduction

1. On 23-25 February 2026, a remedy hearing was held in this case. A reserved remedy judgment was sent to the parties on 29 April 2026. The Claimant was awarded £53,782.86 in compensation.

2. On 1 May 2026, the Claimant applied for reconsideration of the judgment. She sent the Tribunal three documents:

    1) Grounds for Reconsideration (full skeleton application) (18 pages)
    2) Skeleton Argument (concise summary) - Judge Summary (10 pages)
    3) Road Map / Index of Grounds - Reconsideration of Remedy Hearing (14 pages)

3. The Claimant sent in a further document by email on 1 May 2025, titled Overview document (5 pages).

4. The documents sent in by the Claimant appear to have been written using AI. This appears to be the case because the documents are long, use language that is difficult to understand in places, and are highly repetitive. While it can be tempting for parties to use AI when submitting documents to Tribunals, it is easier for the Tribunal to understand the points that the parties want to make if they write them out themselves, in a single document, using their own words.

5. It appears to the Tribunal that across the documents the Claimant has submitted she is making the following arguments:

    1) The Tribunal erred in reducing the Claimant's compensation for financial loss by 80% on the basis that they did not consider what would have happened absent the discriminatory conduct, but instead relied on the consequences of the discrimination (i.e. the impact on the Claimant's health and performance) to justify the finding that it was highly likely that she would have been dismissed in any event.
    2) The Tribunal's decision to reduce the compensation for personal injury was wrong in law. The apportionment was wrong because the Tribunal also found the matters formed a continuous chain of consequences arising from the discriminatory conduct.
    3) The Tribunal failed to explain why some parts of Dr Scott's report were accepted and some were rejected.
    4) The Tribunal failed to engage with "longitudinal" medical evidence, including evidence submitted by the Claimant after the hearing which the Tribunal did not permit her to admit in evidence.
    5) The Tribunal treated litigation stress as "reducing" compensable loss.
    6) The Tribunal failed to give adequate reasons for its conclusions regarding an uplift for the failure to follow the Acas Code.

6. On 5 May 2026, the Respondent wrote in requesting the remedy judgment be corrected in two places under the slip rule. The date of termination at paragraphs 181 and 182 refer to 2 December 2021 and the Respondent says the correct date is 6 December 2021.

The relevant Rules and case law

7. Rules 68 to 70 of the Employment Tribunals Rules of Procedure 2024 set out the procedure for tribunals to reconsider judgments:

    "**68.**—(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.

    Application for reconsideration

    69. 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.

Process for reconsideration

70.—(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.

8. A tribunal dealing with the question of reconsideration must seek to give effect to the overriding objective to deal with cases 'fairly and justly' in Rule 3. This 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.

9. In *Outasight VB Ltd v Brown* [2015] ICR D11, EAT, Her Honour Judge Eady QC accepted that the wording 'necessary in the interests of justice' in what is now rule 69, under the current Rules, allows employment tribunals a broad discretion to determine whether reconsideration of a judgment is appropriate in the circumstances. However, this discretion must be exercised judicially, 'which 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'.

10. In *Stevenson v Golden Wonder Ltd* [1977] IRLR 474, EAT, Lord McDonald said (regarding the review provisions under an earlier version of the rules) that they were 'not intended to provide parties with the opportunity of a rehearing at which the same evidence can be rehearsed with different emphasis, or further evidence adduced which was available before'.

11. In *Trimble v Supertravel Ltd* [1982] ICR 440, EAT, the EAT observed that it is irrelevant whether a tribunal's alleged error is major or minor, what is relevant is whether or not a decision has been reached after a procedural mishap. Since, in *Trimble*, the tribunal had reached its decision on the point in issue without hearing representations, it would have been appropriate for it to hear argument and to grant the review if satisfied that it had gone wrong. If a matter has been ventilated and properly argued, then any error of law falls to be corrected on appeal and not by review.

12. In *Ebury Partners UK Ltd v Acton Davis* [2023] IRLR 486, the EAT held that while it may be appropriate to reconsider a decision where there has been a procedural mishap meaning that a party has been denied a fair and proper opportunity to put his or her case, reconsideration should not be used to correct a supposed error made by the tribunal after the parties have had such an opportunity. This is particularly the case where the error alleged is one of law which is more appropriately corrected by the EAT.

13. In *Redding v EMI Leisure Ltd* EAT 262/81, the EAT observed: "When you boil down what is said on [the claimant's] behalf, it really comes down to this: that she did not do herself justice at the hearing, so justice requires that there should be a second hearing so that she may. Now, justice means justice to both parties..."

<u>New evidence</u>

14. 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. The underlying principles to be applied by tribunals in such circumstances are the same as those which apply in civil litigation and which are set out in *Ladd v Marshall* [1954] 3 All ER 745, CA. There, the Court of Appeal established that, in order to justify the reception of fresh evidence, it is necessary to show a) that the evidence could not have been obtained with reasonable diligence for use at the original hearing b) that the evidence is relevant and would probably have had an important influence on the hearing; and c) that the evidence is apparently credible.

15. Rule 34(3)(d) of the Employment Tribunal Rules 2004 provided a specific ground for review if "new evidence [had become] available since the conclusion of the hearing to which the decision relates, provided that its existence could not have been reasonably known of or foreseen at that time". The 2024 rules contain no equivalent of rule 34(3)(d), so that a party seeking to adduce new evidence must now argue that reconsideration would be in the interests of justice under Rule 68.

16. In *Outasight VB Ltd v Brown* [2015] ICR D11, EAT, the EAT held that the law regarding reconsideration of a judgment in the light of new evidence did not change with the introduction of the Tribunal Rules 2013. The fact that rule 70 of the Tribunal Rules 2013 dispensed with the specific categories for review did not indicate any change of position: in the EAT's view, the principles set out in *Ladd v Marshall* still applied. Even if those principles were not strictly met, however, the EAT held that the interests of justice may still allow fresh evidence to be adduced where some additional factor or mitigating circumstance has the effect that the evidence in question could not have been obtained with reasonable diligence at an earlier stage. This might apply where, for example, a party was incorrectly refused an adjournment.

17. In *Wileman v Minilec Engineering Ltd* [1988] ICR 318, EAT, the EAT said the employment tribunal will refuse an application for reconsideration on the basis of new evidence unless the new evidence is likely to have an important bearing on the result of the case. The reason for this requirement is that, unless the new evidence is likely to influence the decision, then 'a great deal of time will be taken up by sending cases back to an [employment] tribunal for no purpose'.

Adequacy of reasons

18. In *AB v Home Office* EAT 0363/13 the Appeal Tribunal clarified the correct approach to be taken to applications for reconsideration where an employment tribunal has failed to determine an issue, or where an issue has been determined but the tribunal's reasons for the decision are inadequate. The EAT held that there was a distinction to be drawn between (a) overlooking an issue altogether and therefore not deciding it, and (b) deciding an issue and giving reasons for it which were inadequate or incomplete. An employment judge who, on receiving an application for reconsideration, appreciated that the tribunal had overlooked an issue, should usually arrange for the tribunal to reconsider its judgment. On the other hand, if the judge considered that the tribunal had decided the issue and the reasons were incomplete or inadequate, but there were no reasonable prospects of the judgment being varied or revoked, the judge must not order reconsideration. In this case, the judge had been correct to refuse a review. She was entitled to conclude that the application was, in reality, only an application for better reasons and there was no real prospect of the tribunal varying or revoking its decision.

Reasons for refusal

19. The Claimant's application for reconsideration is refused as there is no reasonable prospect of the reserved remedy judgment being revoked or varied.

20. All of the Claimant's arguments, except the fourth argument, are that the Tribunal misapplied the law or failed to provide adequate reasons. In respect of each of the decisions complained about, there was no procedural error which prevented the Claimant from stating her case. At the remedy hearing, both parties knew that these were matters that the Tribunal was going to decide. The parties were permitted to make submissions on all these matters. The purpose

of reconsideration is not to allow parties a second bite of the cherry because they are unhappy with the Tribunal's decision. As per *Stevenson v Golden Wonder Ltd,* reconsideration is not intended to provide parties with the opportunity of a rehearing at which the same evidence can be rehearsed with different emphasis.

21. As per the cases of *Trimble v Supertravel Ltd, Ebury Partners UK Ltd v Acton Davis,* and *AB v Home Office*, since the Claimant's arguments are that the Tribunal has misapplied the law or failed to provide adequate reasons, these are matters more appropriately decided by the Employment Appeal Tribunal, rather than under the reconsideration process.

22. The Claimant's fourth argument is that "The Tribunal failed to engage with longitudinal medical evidence" and this included evidence submitted by the Claimant after the hearing which the Tribunal did not permit her to admit in evidence.

23. At the remedy hearing, the Respondent relied upon the expert report of Dr Scott. The Claimant had previously agreed to attend an appointment with a consultant psychiatrist at the Respondent's request. When the Claimant received Dr Scott's report, she did not agree with Dr Scott's conclusions.

24. For the remedy hearing, the Claimant produced a 220 page rebuttal to the expert report from Dr Scott. At the start of the rebuttal document, the Claimant wrote: "As a litigant in person, I have been unable to instruct a private psychiatric expert. Therefore, the addendum serves as a factual and evidence-based equivalent to a psychiatric assessment, providing the Tribunal with the full context of my condition and the evidence underpinning it."

25. In her witness statement for the remedy hearing, the Claimant wrote: "Following receipt of the Respondent's psychiatric assessment, I sought to arrange my own independent psychiatric assessment to verify the findings. However, I was unable to locate a suitable medico-legal assessor who could accommodate a litigant in person, and making an application to the Tribunal for such an assessment would have further delayed the Remedy Hearing. For this reason, I instead completed my own detailed addendum of the psychiatrist's assessment carried out on 12 December 2025, cross-referencing it with all available longitudinal medical records."

26. At no point prior to or during the remedy hearing did the Claimant tell the Tribunal that she was due to have an appointment with an NHS Consultant Psychiatrist on 10 March 2026. She did not request a postponement of the hearing in order to be able to attend the appointment and rely on the contents of any subsequent report. While the Claimant is unrepresented, she is aware of the potential to request postponements as she has on a number of occasions in the course of these proceedings objected to the Respondent's applications to adjourn or postpone hearings.

27. After the remedy hearing, on 13 March 2026, the Claimant wrote an email to the Tribunal in which she noted,

> "Please find attached a psychiatric report dated 10 March 2026 authored by Dr Paul Brain, Consultant Psychiatrist within the NHS. This report was only provided to me today (13.03.26) following repeated requests to my GP and NHS services since last year. I have therefore submitted it immediately upon receipt and in good faith. I received the report shortly after 4pm today and have been preparing this correspondence since that time. The report provides an additional NHS psychiatric assessment relating to my ongoing mental health and functional impact, which is directly relevant to the Tribunal's assessment of remedy and loss following the hearing held between 23 February and 25 February 2026. I respectfully request that the Tribunal consider whether this report may be admitted as additional evidence in relation to the reserved remedy judgment. This document does not introduce new allegations or seek to reopen liability findings. It is provided solely to assist the Tribunal in its assessment of ongoing impact and remedy. The respondent has been copied into this correspondence for transparency."

28. The Claimant included in her email an application to adduce Dr Brain's report as evidence.

29. On 22 April 2026, the parties were sent a letter from the Tribunal which noted:

> "Employment Judge Annand has advised that no additional medical evidence submitted after the date of the remedy hearing will be considered by the Tribunal. The Tribunal concluded its deliberations on 3 March 2026. The judgment is in the process of being written up. A further hearing would be required if further evidence were to be admitted and the Tribunal would need to deliberate further. That would not be proportionate in this case, when a three day remedy hearing has already been held."

30. This was not the first time that the Claimant had sought to adduce additional evidence after the hearing had concluded. After the liability hearing in March 2025, on 1 June 2025, the Claimant sent the Tribunal further Universal Credit documents. In the email she noted, "Although the Employment Tribunal hearing has already taken place, I believe the enclosed report from Universal Credit — which confirms a finding of limited capability for work — is relevant both to your deliberations in June and to the upcoming appeal of my disability-related claims, scheduled for 26 June 2025. I had previously indicated that this report was pending, though I was unsure of its release date." The Tribunal noted in paragraph 19 of the liability judgment that as these documents had been sent after the hearing had concluded, they had not been taken into account.

31. Although the Claimant's application to adduce additional evidence from Dr Brain has already been dealt with, I understand the Claimant's fourth argument in her application for reconsideration is based on a fresh evidence argument. Therefore, I have read the report from Dr Brain so that I can apply the principles in *Ladd v Marshall.*

32. The Claimant's application for reconsideration on the basis of fresh evidence is refused.

33. Applying the principles in *Ladd v Marshall:*

    a) I accept that the evidence from Dr Brain could not have been obtained for the remedy hearing. I accept that it is not within the Claimant's control when she is given an appointment to see an NHS Consultant Psychiatrist. However, I do not accept that the Claimant would not have been aware of the fact she had been referred for the appointment (or aware of the appointment date) ahead of the remedy hearing. It was therefore open to the Claimant to apply to postpone the remedy hearing if she wished. It was made clear by the Claimant at the preliminary hearings which occurred ahead of the remedy hearing that she wanted the remedy hearing held as soon as possible.

    b) I also accept the evidence is credible and relevant.

    c) I do not accept that if the Tribunal had been aware of the letter from Dr Brain it would have made any difference to the outcome. Dr Brain's letter provides a summary of the Claimant's condition and her medical history. The Tribunal was aware of all the information in Dr Brain's letter from other sources, primarily the Claimant's GP records, but also the Claimant's evidence to the Tribunal about her conditions, and the information given by the Claimant to Dr Scott. Dr Brain's letter is not an expert report. It does not deal with matters such as apportionment, or prognosis. It does not reach any conclusions about whether the Claimant is fit for work or give an indication of when he thinks she will be fit for work. In short, the new evidence would not have had an important bearing on the result of the case.

34. The Claimant's fourth argument, relating to fresh evidence, is not solely that it should have been admitted by the Tribunal. The wider argument is that the Tribunal "did not adequately engage with unchallenged longitudinal medical evidence". As with the other arguments regarding errors of law and adequacy of reasons, these are matters more appropriately decided by the Employment Appeal Tribunal.

35. For these reasons, the Claimant's application for reconsideration is refused as there is no reasonable prospect of the reserved remedy judgment being revoked or varied. In reaching this decision, I have also had regard to the Respondent's interests, and the public interest requirement that there should, so far as is possible, be finality of litigation.

Approved by

Employment Judge Annand

8 June 2026

JUDGMENT SENT TO THE PARTIES
ON 9 June 2026

FOR THE TRIBUNAL OFFICE