



EMPLOYMENT TRIBUNALS

Claimant Ms Karen Macmillan

Respondent Cuerden Developments Limited

Reconsideration Request Refused

The claimant's application for reconsideration is refused for the reasons set out below.

Background to the claim and request

1. By a claim form dated 26 November 2024 the claimant, who was dismissed after two months service, brought complaints for automatically unfair whistleblowing dismissal. She had worked as a nurse in the respondent's nursing home. The respondent said it had dismissed for incidents involving restraint issues, failure to respond to an emergency buzzer, medication administration errors and derogatory remarks made by the claimant. The claim went to a case management hearing before Employment Judge Ross on 29 April 2025 and a list of issues was agreed. The matter came to a final hearing by video on 3,4 and 5 November 2025. The Tribunal heard from the claimant and from three witnesses for the respondent including dismissing officer Ms Lynsey Green. The Tribunal accepted Ms Green's evidence that she had not known that the claimant had "blown the whistle" when she made the decision to terminate employment. The claimant's complaint failed.

2. Full reasons were given orally in judgment on 5 November 2025. The claimant stated during the judgment that she wished to appeal. Judge Aspinall prepared a short form judgment stating the outcome and sent it to HMCTS to be sent to the parties.

History of non response from the Tribunal

3. On 12 November 2025 and each of the following dates the claimant made applications using the Tribunal portal requesting information and or restating her dissatisfaction with the decision: 12 November 2025, a 73 page document, 15 December 2025 a request for re-evaluation of the judges decision, 18 December

2025 an urgent reminder to request the judge to reconsider , 18 December 2025 a 10 page attachment restating grounds for reconsideration, 12 January 2026 request for a copy of the Judgment and Reasons, 13 January 2026 notification of the appeal and repeat request for judgment, reasons and reconsideration, the claimant continued to repeat those requests making a separate application on 15 January 2026, 16 January 2026, 17 January 2026, 19 January 2026, 20 January 2026, 21 January 2026, 23 January 2026, second request on 23 January 2026,

4. The applications came to Judge Aspinall's attention on 27 January 2026. On that day the Judge did not have time to look into the content of each of the applications but could see that the claimant had not had a response. Judge Aspinall gave immediate direction the claimant be written to in the following terms:

Employment Judge Aspinall has on 27 January 2026 seen the claimant's 19 separate applications for reconsideration of the decision to reject a claim made on 5 November 2025. The first application was made in time 12 November 2026.

Judge Aspinall is sorry that HMCTS under resourcing means that

- 1. The judgment does not appear to have been sent out to you and*
- 2. The 19 applications and attachments have only come to her attention today.*

It must look rude that there has been no acknowledgement or reply and judge Aspinall is sorry for that.

There is not time today for Judge Aspinall to read all of those applications and attachments, one alone appears to be 73 pages long. Time has been taken out of her list on 27 February 2026 to review all the applications and attachments and for the Judge to decide whether or not to reconsider the decision.

Please do not send any more submissions to us before that date as it will only result in further time being needed to consider them and further delay. The respondent need not send any communications regarding the applications. The claimant is reminded that she must send anything she sends to the Tribunal to the respondent too. HMCTS has today been asked to send out the judgment.

Please be aware of strict time limits for appeal and for costs applications and do not let HMCTS delays in responding by the reason you delay and miss strict legal deadlines.

5. On 25 February 2026 Judge Aspinall reviewed her list for Friday, 27 February 2026. She directed that the clerk check the file for this case. She was then informed that her letter dictated on 27 January 2026 had not been sent out and that the Judgment from 5 November 2025 appeared to have still not been sent out. She gave urgent direction for it to be sent that same day and understands that the letter was sent. She was informed that in order for the judgment, which was sent to HMCTS by the Judge on 5 November 2025, to be sent to the parties it had to be sent via the promulgations team and that that team was running with a one month backlog. There was no explanation as to why the judgment had not been sent within one month of 5 November 2025.

6. On 27 February 2026 Judge Aspinall reviewed the file, revisiting her notes of the hearing and reading the applications for reconsideration made above (the substantive application is the 73 page attachment to the 12 November 2025 application) and further applications made on 8 January 2026, second request on 28 January 2026, a third application but with no content on 28 January 2026, and applications made on 1 February 2026, an application made on 2 February 2026 which said *I was told by a telephone operator that the judge had sent documents to the clerk to be sent to me. They have not been sent to me. Will you please email the documents via the portal as usual.* The judge also saw a second contact made on 2 February 2026 that said *Dear Tribunal it is 13 weeks post hearing. I have not received the judges written reasoning or decision, I have not received my application to the judge for the judges reconsideration of her reasoning can you help?* An application on 3 February 2026 repeating the content from 2 February 2026 and adding *the EAT have asked for both of the above so that I can institute a full appeal with them. Would you kindly respond to this above requests.* An application on 5 February 2026 repeating the above contents and again repeated on 9 February 2026, 16 February 2026 asking that they *please be emailed as a matter of urgency to add to the claimant's claim with the EAT.* The Judge also saw an application dated 17 February 2026 and a repeat application on 22 February 2026.

7. On 25 February 2026 Judge Aspinall's letter which had been dictated on 27 January 2026 was finally emailed to the claimant and respondent.

8. This response is provided with embarrassment and sincere apologies by Judge Aspinall for the delays caused by administrative pressure and backlog. It must have been incredibly frustrating for the claimant not to receive any acknowledgment of her requests for so long and incredibly frustrating for both parties not to have had the Judgment within a month of the November hearing.

9. The claimant requested Written Reasons on 12 January 2026. Judge Aspinall with the support of Regional Employment Judge Franey in reallocating work to allow her time to do this, prepared the Written Reasons on 17 March 2026 and with the prioritised assistance of HMCTS those Reasons were sent to the parties that same day.

10. The claimant then made applications 42 – 44 via the portal chasing up her reconsideration request and confirming, in response to a request from EJ Aspinall, that she sought to rely on the 72 page attachment to her initial request for reconsideration as the comprehensive statement of her grounds for reconsideration. Judge Aspinall acknowledge those communications on 2 April 2026 and informed the claimant that time had again with the intervention of the Regional Employment Judge been set aside on 30 April 2026 to address the request for reconsideration.

Reasons for Refusing Reconsideration

The Relevant Law

11. Rule 68 of the Employment Tribunal Procedure Rules 2024 provides

68. 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.**

69. 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.**

70. 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.**

11. A Tribunal dealing with an application for reconsideration must seek to give effect to the overriding objective to deal with cases fairly and justly contained within Rule 3 of the Regulations. 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.

12. Consideration of whether reconsideration is “necessary in the interests of justice” allows the Tribunal a broad discretion which must be exercised judicially which means having regard not only to the interests of the party seeking the reconsideration but also to the interests of the other party to the litigation, and to the public interest requirement that there should be so far as possible finality in litigation.

13. 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.

14. 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.”

12. 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.”

Application of law on reconsideration

13. The claimant's arguments for reconsideration are set out in writing in her 72 (plus header page makes 73) page application dated 12 November 2025. The claimant confirmed in correspondence that despite multiple other communications, the grounds on which she relied were stated in that document.

33. The claimant claimed automatically unfair dismissal for having made a protected public interest disclosure. As recited above Judgment and Reasons have been provided.

Summary of the grounds for reconsideration

34. The 72 page (the Grounds) document begins by producing the List of Issues and then making submissions on each point. The claimant seeks to argue points that were argued or arguable at the final hearing. For example she says that the respondent had no evidence of any wrongdoing on her part before she made disclosures. The Tribunal made findings of fact at paragraph 37 of the Reasons that Mr Peet had reported his concerns about the claimant's conduct in a restraint issue on 19 October 2024 and had reported a failed medication issue for the claimant on 25 October 2024 and had reported the failure to respond to an emergency buzzer on 29 October 2024. Further there are findings of fact that Miss Cumberbirch reported concerns about the claimant on 24 October 2024, 25 October 2024, 29 October 2024 and 16 November 2024. Paragraph 39 of the Reasons records findings of fact that Lindsay Green discussed those reports with Andrea Holmes Wood and arranged for a letter to be sent to the claimant about those issues, which letter was sent on 21 November 2024. The chronology clearly shows that the respondent was acting on concerns about the claimant's conduct and capability prior to the disclosures.

35. The Grounds document then cites the NMC Code at length and makes submissions about fire safety. The claimant says that a respondent acting in accordance with NMC Code must have "dated written evidence of wrongdoing". This was not relevant to the List of Issues. The Reasons at paragraph 3 of the List of Issues set out the claimant's burden of proof. The burden of proof was explained to the claimant as set out at paragraph 18 of the Reasons. The Tribunal did not need to decide what was the reason for dismissal, only whether or not the claimant had shown it was whistleblowing. The reasoning is at paragraphs 69-74.

36. The Grounds then say that Judge Aspinall made mistakes:

a. Used old cases

The Reasons show the law that was used.

b. Showed bias in looking at the motivation for whistleblowing

The Reasons show the legal tests applied.

c. Made an untruth in referring to the claimant's other whistleblowing case

The Reasons recite why the claimant was credible or not credible and why the respondent's evidence was preferred to the claimants. The other case is referred to at paragraph 19 of the Reasons.

d. The allegations about the claimant's performance were fabricated

The Reasons show the legal tests. This was not an ordinary unfair dismissal case. In automatically unfair cases the claimant must show the link to the protected disclosure and she could not do that in this case because the Tribunal found Lindsay Green did not know about the whistleblowing when she decided to dismiss.

37. The Grounds document then includes extracts from communications with ACAS in the early conciliation process and says that Judge Aspinall wrongly stated

that the respondent had not had a chance to conciliate. Judge Aspinall has no recollection of having made that statement but if it was said apologises, in any event it was not relevant to the decision making set out in the Reasons.

38. The Grounds then addresses the points at paragraphs 76 – 79 of the Reasons; whether the disclosure made to a prescribed person was about prescribed matters. The Tribunal found that the disclosures would have failed to qualify as fitness to practice matters. Paragraph 80 reasons in the alternative:

“If the Tribunal is wrong about that, and allegations of propping open fire doors against unnamed individuals amount to a fitness to practice matter, then the alleged disclosure would fail because it does not contain sufficient information to amount to a protected disclosure. The claimant failed to name an NMC registrant who she says propped open a fire door.”

39. The Reasons show full reasoning on whether or not the disclosures would have been qualifying protected public interest disclosures under Section 43F and under 43B. They did not need to do this because of the factual finding that Lindsay Green did not know about them when she made the decision to dismiss. Even if the claimant is right, and her disclosures were in law qualifying disclosures, it makes no difference, the claim still fails.

40. The Grounds argue that Judge Aspinall failed to consider the application of Medicines and Healthcare Regulatory Agency regulations. They were not relevant. The Tribunal was not there to decide if there had been breaches or not. It was the claimant’s burden of proof to show that whistleblowing caused her dismissal. The full legal test in automatic unfair dismissal burden of proof in whistleblowing is set out in the Reasons. The claimant failed to meet her burden of proof. The Tribunal accepted the oral evidence of Lindsay Green that she did not know about the disclosures when she dismissed.

41. The Grounds then recite other ways in which the claimant says Judge Aspinall was wrong including but not limited to not chastising the respondent for; failures to comply with case management orders, putting the wrong version of the schedule of loss in the bundle, not providing a call buzzer policy in the bundle to prove the claimant complied. The claimant says Judge Aspinall was wrong not to recognise that the respondent failed a CQC assessment, not to accept that probation notes for the claimant had been fabricated, not to recognise the losses and psychological damage to the claimant, not to chastise the respondent for disclosure failures relating to other incidents of restraint of resident cases in the respondent care home so as to show the concerns the respondent had about the claimant were disingenuous, wrong to allow the respondent to refer to the claimant’s mobile phone use, wrong to rely on the staff allocation sheets. The claimant says Judge Aspinall was wrong not to recognise the seniority of the claimant over a less experienced equally qualified nurse. These matters were not relevant to the List of Issues.

42. The claimant restated that Lindsay Green lied on oath about a staff member’s PIN number. That was addressed in the Reasons at paragraph 23 and checked by the Judge accessing the NMC register during the hearing and presenting it on

screen to all parties.

43. The Grounds state that there was improper behaviour of witness Josh Peet during the hearing as he did not have the door to the room he was in closed so that there was noise which prevented the claimant from hearing the judge. The claimant says *the judge did not reprimand him for breaching the privacy of the hearing*. Judge Aspinall was unaware of any noise that prevented the claimant from hearing. The claimant could have raised it at the time. The Reasons show the support provided to the claimant and all parties and witness so that they could fully engage and give best evidence.

44. The claimant says in the Grounds *Judge Aspinall's attitude towards me and verbal and accusatory tone were in effect bullying in the court room*. Elsewhere she says *Judge Aspinall spoke with disgust in her tone and even with mockery...smiling at the respondents and using their first names and frowning and using my last name throughout*. Judge Aspinall is sorry to hear that the claimant feels that way. The hearing was recorded. The claimant can apply, at cost sadly, for a transcript of the hearing to substantiate this allegation. The claimant can raise concerns about judicial conduct with the Independent Office for Judicial Complaints.

45. The claimant says Judge Aspinall was wrong not to stop when the claimant's screen connection froze during oral judgment. Judge Aspinall has no recollection of that happening and apologises if that was the case. Sadly, IT glitches can occur and if not brought to the judge's attention may result in a party feeling left out. If Judge Aspinall had been aware she would have paused and sought support from the clerk for the claimant. Full support was given to the claimant in joining the hearing from mobile premises using a mobile phone and in ensuring she had sufficient charge and connectivity. In any event, the claimant has now had Full Written Reasons, sought reconsideration and indicated her intention to appeal.

46. The Grounds refer to Mousa [2024] EAT in an attempt to argue that there was an organisational collective prejudice against the claimant. Those arguments, about who knew or must have known about whistleblowing, were addressed at paragraphs 61 – 68 of the Reasons.

47. The Grounds, from pages 49 to 73, then take the form of a revised schedule of loss and bundle of documents including extracts from NMC and other sources.

Decision

48. The Grounds for reconsideration amount to an attempt to relitigate matters that have been determined. Judge Aspinall made a decision applying the law on the facts as she found them to be from the oral and documentary evidence before her at final hearing. In that sense the Grounds represent a "second bite at the cherry" which undermines the principle of finality.

49. Judge Aspinall has read not only the 72 page grounds but all of the claimant's communications. It is her view that there is nothing new here, no new submission,

that would affect or have affected the outcome, that could not have been made or was not made at the final hearing. Dismissing officer Lindsay Green gave oral evidence which was accepted by the Tribunal that she did not know that the claimant had “blown the whistle” when she made the decision to dismiss. That finding is fatal to the claimant’s claim and there is nothing in the claimant’s Grounds or communications to undermine it. It is clear that the claimant remains aggrieved. Judge Aspinall is sorry to hear of the impact of the dismissal and the impact of the Judgment on the claimant. Judge Aspinall is also aware of the impact on the respondent who has made an application for costs.

50. In reaching the decision not to reconsider Judge Aspinall had regard to the importance of finality in litigation for both parties and considered the impact of a reconsideration determination either on paper or in person for the parties and the cost to which that would put both parties. Judge Aspinall considered afresh the relevant law and revisited the notes of hearing, judgment and Written Reasons

51. Judge Aspinall rejects the request for reconsideration on the ground that it is not necessary in the interests of justice as there is no reasonable prospect that any one of the grounds set out in the claimant’s application, or all of them taken together, could lead to the original decision being varied or revoked.

Employment Judge Aspinall

Date: 30 April 2026

JUDGMENT AND REASONS SENT TO THE PARTIES ON

11 June 2026

FOR THE TRIBUNAL OFFICE

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