



EMPLOYMENT TRIBUNALS

Claimant: Marcia Chambers
Respondent: West London NHS Trust

RECONSIDERATION

The claimant's application dated 14 May 2026 for reconsideration of the judgment sent to the parties on 1 May 2026 is refused on Grounds 1 to 6 and the judgment on the claims is confirmed. The application for reconsideration is allowed on Ground 7 and a hearing on costs will be listed.

REASONS

Introduction and Background

1. The claimant made an application to reconsider the Judgment dated 20 March 2026 and sent to the parties on 1 May 2026. The claimant lodged that request to the tribunal on 14 May 2026.
2. The judgment related to complaints of harassment related to race and victimisation.
3. The findings of fact of that judgment are set out in paragraphs 13 to 55 of the same document. The conclusions of that judgment are set out in paragraphs 56 to 58 of the same document.
4. The claimant's reconsideration request is set out below, to the extent it relates specifically to the request for that reconsideration:

Ground 1: Wrong legal test for harassment

Ground 2: Misapplication of 'Related to Race'

Ground 3: Perverse findings of fact

Ground 4: Failure to consider cumulative effects of the conduct

Ground 5: Procedural irregularity

Ground 6: Victimisation errors

Ground 7: Costs order unsafe

5. The claimant's representative, who represented the claimant at the final hearing, produced a skeleton argument in support of the reconsideration application which referenced a number of cases. None of the judgements referenced were appended to the skeleton argument.
6. The claimant produced a witness statement dated 14 May 2026 as part of the application for reconsideration.

The Law

7. Rule 68(1) of the Employment Tribunal Procedure Rules 2024 states that:
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.
8. Rule 69 of the Employment Tribunal Procedure Rules 2024 states that:
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.
9. Under the previous version of the Rules a number of reasons could be invoked, i.e:
 - a) that an administrative error had resulted in a wrong decision;
 - b) that the party did not receive notice of the hearing;
 - c) that the decision was made in the absence of the party;
 - d) that new evidence was available, and finally; and/or
 - e) that the interests of justice required a review.
10. Now, all these situations are covered by the single "interests of justice" test. Where I refer to case law, it will be pursuant to the Employment Tribunal Rules of Procedure 2013, albeit they are applicable to the simplification provided for by Rule 68. For example, in **Outasight VB Ltd v Brown** 2015 ICR D11, EAT, her Honour

Judge Eady QC (as she then was) explained that the specific grounds were unnecessary because any consideration of an application under one of those grounds would have taken the interests of justice into account.

11. In **Stevenson v Golden Wonder Ltd** 1977 IRLR 474, *EAT*, Lord McDonald said of the old review provisions 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*'. Case law under the Tribunal Rules 2013 demonstrates that courts and tribunals view the reconsideration provisions in the same manner.

12. The tribunal must seek to give effect to the overriding objective to deal with cases 'fairly and justly' - rule 3. This includes:

- a) ensuring that the parties are on an equal footing;
- b) dealing with cases in ways which are proportionate to the complexity and importance of the issues;
- c) avoiding unnecessary formality and seeking flexibility in the proceedings;
- d) avoiding delay, so far as compatible with proper consideration of the issues; and
- e) saving expense.

13. 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 68, 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*'.

Decision

14. The reasons provided by the claimant for the reconsideration are set out below:

- a) Ground 1: Wrong legal test for harassment
- b) Ground 2: Misapplication of 'Related to Race'
- c) Ground 3: Perverse findings of fact
- d) Ground 4: Failure to consider cumulative effects of the conduct
- e) Ground 5: Procedural irregularity
- f) Ground 6: Victimisation errors

g) Ground 7: Costs order unsafe

a) Ground 1: Wrong legal test for harassment

15. The claimant's representative has asserted on her behalf that the tribunal applied the incorrect legal test by applying the test of 'major incident' in paragraph 45 of the judgment. In reviewing that paragraph of the judgment, it is noted it stated:

'The conduct could not have had the effect of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant. There was no incident that was so major that it could have had that effect on the claimant. The cumulative effect has to be considered in light of the large gaps between incidents and between the reporting of those incidents. The claimant has stated that she considered the conduct to be 'psychological torture'. If the effect on her was as great as she reported, there would not have been such a large gap between the reporting of the incidents in 2021 and 2022 and there would not be such large gaps between incidents. There was no effect of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant.'

16. The claimant's representative relied on the cases of **Richmond Pharmacology v Dhaliwal** [2009] IRLR 336, **Weeks v Newham College of Further Education** [2012] EqLR 1014 and **Betsi Cadwaladr University Health Board v Hughes** [2017] UKEAT/0179/16 to assert that severity of conduct is not required, delay in reporting does not negate effect and cumulative effect must be considered. I have considered these cases as part of this decision.

17. The tribunal made findings at paragraphs 42 and 43 of the judgment which specifically addressed the conduct and whether it was related to race. The tribunal found in its judgment that the claimant's view was not reasonable in the circumstances. Paragraphs 42 and 43 of the judgment are reproduced below for ease of reference:

42. *'The evidence showed that there was only one obvious mention of race which was in the claimant's letter of complaint dated 9 August 2021. In evidence the claimant accepted that the reason she believes that Mr Kouadio's conduct was done on the basis of her race was because she could not think of any other reason for his conduct. The Tribunal noted that while there was a contemporaneous note of Mr Kouadio's complaint about the claimant in May 2021, there were no contemporaneous notes of the claimant's allegations.'*

43. *While it may be possible that she did not realise the extent of the conduct in 2021 and, therefore, felt no need to make contemporaneous notes at the time, after August 2021 the claimant described this as a serious situation which was worsening. In her complaint of August 2021 however, her allegation of racism is qualified as she stated “I also believe there are some elements of cultural racism involved his attitude towards me. If not, why has FK singled me out among other nurses for unprovoked hostility? Could it be FK, perceives me as a weak and easy target to hurl insults at?” The claimant put forward an alternative explanation for the conduct alleged. The claimant stated in oral evidence that she did not discuss her race or ethnicity with other members of staff as she viewed it as a private matter. Mr Kouadio, Mr Idris and Mr Tweneboa all agreed with this. The tribunal found that the acts of Mr Kouadio were not done as a result of the claimant’s race. With regard to the acts that the tribunal found did not occur, even if they had occurred, they would not have been due to the claimant’s race for reasons set above.’*

18. It is clear when looking at the entirety of paragraph 45 that the correct legal test was applied and the tribunal considered the cumulative effect of the conduct. The tribunal made a decision on the basis of the evidence and there is no misdirection in relation to the legal test applied. The claimant’s witness statement seeks to re-litigate the issues raised at the final hearing which have been determined by the tribunal.

b) Ground 2: Misapplication of ‘Related to Race’

19. The claimant’s representative has asserted on her behalf that the claimant’s case failed because there was ‘no mention of race’, the claimant ‘could not think of any other reason’ and her colleagues ‘did not know her ethnicity’. This is not an accurate reflection of the tribunal’s findings which are set out above in paragraph 18 (paragraphs 42 to 43 of the judgment).

20. The claimant’s representative relies on the cases of **Nagarajan v London Regional Transport** [1999] IRLR 572 (HL), **Amnesty International v Ahmed** [2009] IRLR 884 and **Showboat Entertainment Centre Ltd v Owens** [1984] IRLR 7 to state that discrimination may be unconscious, ‘related to’ is broad and race need not be the sole or primary reason. **Nagarajan** is a direct race discrimination case which requires different legal considerations to a claim for harassment related to race. It also states that the tribunal may make certain deductions and inferences to establish motivation. As set out above, the tribunal considered the motivations and determined that they were not related to race having heard all the evidence. The tribunal made detailed findings of fact in relation to the individual allegations

as set out in paragraphs 24 to 41 of the judgment. In addition, the tribunal made a determination in relation to the credibility of the witnesses as part of its reasons in paragraphs 15 to 23 of the judgment. The paragraphs directly referencing the tribunal's views of the witnesses' credibility are set out below for ease of reference:

15. *'The tribunal considered the credibility of the claimant's evidence and that of the respondent's witnesses in its assessment of the fact of the case. The claimant's evidence was not always coherent and it was difficult to ascertain some of the details of the allegations she was making. There are no contemporaneous notes of the allegations referenced by the claimant. The complaints are a collection of incidents which occur over a period of months with significant gaps, including one of 10 months, before being brought to the attention of the respondent.'*

23. *The tribunal found the respondent's witnesses credible in light of the documentary evidence including the Dignity at Work policy which set out that the informal procedure was to be followed first before any complaint was formalised. In addition, there are emails documenting the attempts by Mr Idris and Mr Bankole to escalate matters and Mr Mapfumo trying to arrange meetings with the claimant.'*

21. I have considered the cases listed in paragraph 21 above as part of this decision. I have considered that I have to look at the context in which the unwanted conduct occurred. As set out above, this was dealt with at great length in the judgment and was based on the tribunal's view of the evidence and witnesses. The claimant's witness statement seeks to re-litigate the issues raised at the final hearing which have been determined by the tribunal.

c) Ground 3: Perverse findings of fact

22. The claimant's representative asserts on her behalf that finding that incidents 'did not happen' because witnesses 'could not recall' them are perverse and that the tribunal accepted the respondent's explanations without scrutiny. He relies on the case of **Yeboah v Crofton** [2002] IRLR 634 (CA) for the principle that findings with no evidential foundation are perverse. In that case the EAT was overturned by the Court of Appeal because it was permissible for the employment tribunal to make its findings on the evidence before it at the time of the hearing. It is sufficient for the findings made to be permissible on the basis of the evidence heard by the tribunal and only if those findings are perverse should they be remitted before a freshly constituted tribunal. The Court of Appeal went as far as to say that even

where there are doubts by the EAT in relation to such a decision, it should proceed with great care as its role is not to be drawn into a factual investigation.

23. As set out above, the tribunal made its decisions in light of the evidence presented. The claimant's representative had an opportunity to question each witness and did so at great length. The tribunal asked questions of each witness. There was proper scrutiny of all witnesses and the tribunal was entitled to make findings on that basis. The claimant's witness statement seeks to re-litigate the issues raised at the final hearing which have been determined by the tribunal.

d) Ground 4: Failure to consider cumulative effects of the conduct

24. The claimant's representative asserts on her behalf that the tribunal held that 'large gaps' between incidents negated cumulative effect and that this was a material misdirection. He again relied on the case of **Hughes**. This has been dealt with elsewhere in this decision at paragraphs 15 to 18. The tribunal had considered the cumulative effect and determined that the conduct was not related to race and that there was no effect of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant.

e) Ground 5: Procedural irregularity

25. The claimant's representative asserts on her behalf that the tribunal failed to engage with key evidence namely the written complaints, repeated targeting, differential treatment and the respondent's failure to separate staff. He relies on the cases of **HM Prison Service v Dolby** [2003] IRLR 694 and **Evans v Commissioner of Police of the Metropolis** [2015] EWCA Civ 878 for the principle that the tribunal is required to address material evidence and give adequate reasons. **Dolby** is a case related to a strike out application and the payment of a deposit order and has no bearing on the matter being argued by the claimant's representative. The **Evans** case referenced above does not exist with this citation. There is a case of **Evans v Commissioner of Police of the Metropolis** [1993] ICR 151 but this is also in relation to strike out. Neither of the cases is relevant to the argument being made on behalf of the claimant.
26. I have considered whether there was any procedural regularity as detailed by the claimant's representative. The judgment at paragraph 12 stated that the tribunal had regard to documents that were referred to in the hearing bundle. As set out above in paragraph 22 there was scrutiny of witnesses and the hearing lasted five days. The tribunal made detailed findings of fact and gave reasons for those findings in the judgment as detailed above. The claimant's witness statement

seeks to re-litigate the issues raised at the final hearing which have been determined by the tribunal.

f) Ground 6: Victimisation errors

27. The claimant's representative asserts on her behalf that the tribunal failed to apply:

- i. the ***Shamoon v Chief Constable of the RUC*** [2003] ICR 337 (HL) detriment test
- ii. causation (because of protected act)
- iii. s136 Equality Act 2010 burden of proof
- iv. the reasoning is conclusory and inadequate

28. The case of ***Shamoon*** sets out that when the claim relates to victimisation the proscribed ground is whether the claimant committed one of the protected acts and was subjected to less favourable treatment as a result with the comparator being the person who did not commit the protected act. This argument is based on the tribunal's determination of the facts of the case. The victimisation claim is dealt with at paragraphs 49 to 54 of the judgment. The tribunal considered whether there had been a protected act and whether there had been any detriment to the claimant as a result of that protected act.

29. The tribunal made detailed findings of fact before coming to its conclusions having applied the relevant legal test. The tribunal found that there had been two protected acts (paragraph 57 of the judgment). The tribunal went on to consider if there had been any detriment suffered by the claimant as a result of making those protected acts which is set out in paragraphs 51 to 54 of the judgment. The tribunal found that there was no detriment suffered by the claimant (paragraph 54 of the judgment) and made findings in relation to the claimant's physical condition.

30. The burden of proof is on the claimant and the basis of the reasoning is as set out in the judgment. The claimant's witness statement seeks to re-litigate the issues raised at the final hearing which have been determined by the tribunal. The claimant's witness statement seeks to re-litigate the issues raised at the final hearing which have been determined by the tribunal.

g) Ground 7: Costs order unsafe

31. The claimant's representative asserts on behalf of the claimant that the tribunal failed to

- i. Identify unreasonable conduct as set out in ***Birkett v James*** [1978] AC 297
- ii. Consider a proper assessment of means
- iii. Ensure proportionality ***Laing O'Rourke Group Services Ltd v Woolf*** [2010] IRLR 542
- iv. The order is unsafe and inadequately reasoned

32. The case of ***Birkett*** does not address the issues raised as an argument by the claimant's representative and it relates to the dismissal of an action for want of prosecution. I have reviewed the case of ***Laing*** which relates to strike out and does not address the matters argued by the claimant's representative.

33. I have considered the other matters raised by the claimant's representative, the assessment of the claimant's means and the issue of proportionality. The claimant's representative was given an opportunity at the final hearing to raise any issues and adduce any evidence in relation to costs on behalf of the claimant. The claimant's representative did not do so and did not call the claimant to provide such evidence. The findings of the tribunal in relation to costs are at paragraphs 63 to 68 of the judgment. The conclusions are set out at paragraphs 69 to 81. The tribunal took into consideration the evidence presented at the final hearing in relation to costs. However, new evidence has been presented in the form of the claimant's witness statement dated 14 May 2026 stating that she has no savings and is unable to pay the sum ordered as costs.

Conclusion

34. I need to balance the interests of both parties and consider the importance of their being finality to the proceedings in question (*Outasight VB Ltd v Brown 2015 ICR D11, EAT*). I cannot find any new evidence, error or any other reason with which to reconsider this judgment.

35. I have considered carefully *Stevenson v Golden Wonder Ltd 1977 IRLR 474, EAT*, that the reasons provided in the application for reconsideration are the same, or similarly worded, reasons and evidence already fully explored in the final hearing.

36. The request for reconsideration of the harassment and victimisation claims on the basis of Grounds 1 to 6 is refused and the judgment is confirmed.

37. The request for reconsideration of the costs order on the basis of Ground 7 is allowed and a further hearing will be listed to consider the costs order in light of the new evidence.

It is ordered that:

1. The claimant to send to the respondent any financial evidence on which it proposes to rely **within 14 days of receipt of this order.**
2. The parties to send to each other any witness statements on which they propose to rely **within 28 days of receipt of this order.**
3. The claimant to send to the tribunal a bundle containing the above documents **14 days before the hearing date.**
4. The costs order is stayed pending the hearing on this issue.
5. A hearing date to be listed for half a day to deal with the issue of reconsideration of the costs order.

Approved by:

**Employment Judge MJ Smith
12 June 2026**

Sent to the parties on:

12 June 2026

For the Tribunal Office: