EMPLOYMENT TRIBUNALS

Claimant: X

Respondent: Y

JUDGMENT

1. The Claimant's application for reconsideration of the **re**considered judgment of 11 February 2026 (sent to the parties on 18 March 2026) is **REFUSED** pursuant to rule 70(2) of the Employment Tribunal Procedure Rules 2024.

REASONS

Background

1. The liability issues in the case were determined on 21 February 2025. The resultant judgment is unchallenged.

2. The Tribunal determined remedy at a hearing on 3 July 2025. The written judgment of 8 July 2025 was the subject of an application for reconsideration made by the Respondent on 20 August 2025, on the basis that the compensatory award exceeded the statutory cap. In due course (following directions made in accordance with the prescribed reconsideration process described further below), I determined to vary the judgment. The Claimant now seeks reconsideration of that reconsidered judgment.

Scope of the current application

3. I treat the Claimant's application as comprised in his two emails of 28 March 2026 and 30 March 2026. They satisfy the requirement of being made within the 14 day time limit set down in rule 69 i.e. within 14 days of 18 March 2026. I have noted the emails were not copied to the Respondent's representative as required under rule 91. The Claimant has suggested this is to protect him from abuse. That is the case despite the Claimant using the same email address that was given openly in his ET1 which was part of the bundle and which the Respondent therefore has already.

4. There is undoubtedly bad feeling between the parties in this long-running case. Concerns of similar nature were expressed by the Claimant previously. I am not in any position to know whether they are right or to adjudicate upon them. More to the point, there is no need for me to do so. The Respondent has no right to be heard or make representations on the application at this

stage of the reconsideration process. That being so, she suffers no prejudice by not having seen the Claimant's emails and it serves no purpose to put off my decision pending notification to her.

Applicable law and procedure

5. The Employment Tribunal Procedure Rules 2024 came into force on 6 January 2025. Those rules apply to procedural aspects of this case from that date onwards.

6. The Tribunal has discretion to reconsider any judgment upon the application of a party where it is in the interests of justice to do so. That arises under rule 68(1). The powers available to it upon reconsideration are: to confirm the judgment, to vary the judgment or to revoke the judgment (rule 68(2)). If the Tribunal determines to revoke the judgment, it has the power to make the decision again and, if appropriate, to reach a different conclusion (rule 68(3)).

7. In accordance with rule 70(2), if the Tribunal considers that there is no reasonable prospect of the judgment being varied or revoked, it is required to refuse the application. Where there is no such refusal, steps are then mandated by which a decision is reached about whether the application should be determined with or without a hearing, there being a presumption in favour of the latter (rules 70(3) and 70(4)).

8. In **Tesco v Ms K Element and others [2026] EAT 33 t**he EAT endorsed the following sequential process for Tribunals to follow when determining reconsideration applications:

1. Has an application for reconsideration been made? [Rule 69]

2. If so, the application for reconsideration must be considered by the Employment Judge [Rule 70(1) and PDPC para 6]

3. Was the application for reconsideration submitted in time? [Rule 69]

4. If not, should time be extended?

5. If not in time, and time is not extended, refuse as out of time (time dismissal)

6. If in time, or time extended, ***is there no reasonable prospect of the judgment being Judgment approved by the court for handing down varied or revoked?***

7. If so, dismiss the application for reconsideration because there is no reasonable prospect of the judgment being varied or revoked and inform the parties of the refusal. (prospects dismissal) [Rule 70(2)]

8. If not, permit the application for reconsideration to proceed (permission to proceed decision)

9. If a permission to proceed decision is taken a notice must be sent to the parties specifying the period by which any written representations in respect of the application (written representations) must be received by the ET, and seeking the views of the parties on whether the application can be determined without a hearing (permission to proceed notice) - the permission to proceed notice may also set out the EJ's provisional views (provisional views) on the application [Rule 70(3)]

10. On receipt of responses, or expiry of time for response, to the permission to proceed notice the EJ must decide whether the reconsideration should be determined on the basis of written representations or at a hearing - the judgment must be reconsidered at a hearing unless the EJ considers, having regard to any written representations, that a hearing is not necessary in the interests of justice (method of determination decision) [Rule 70(4)]

11. If the judgment subject of the reconsideration application was made by a panel the EJ must decide whether the reconsideration should be determined by an EJ or panel (panel composition decision) [PDPC and PC Guidance para 14]

12. If the reconsideration application is to be determined on the basis of written representations the parties must be given a reasonable opportunity to make further written representations (further opportunity for written representations) [Rule 70(5)]

13. Determine the application for reconsideration (reconsideration decision)

[My emphasis]

9. The principles for reconsideration set out in new rule 68 are unchanged from the predecessor rule in the 2013 Rules, with the exception that it is clarified the Tribunal taking the decision again may come to a different conclusion. Correspondingly, the authorities in relation to old rule 70 remain relevant. I confirm I have taken them all into account. It is neither proportionate nor necessary to repeat them here.

10. The interests of justice allow for a broad discretion which must be exercised judicially. This 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"*. (as per Her Honour Judge Eady QC, as she then was, in **Outasight VB Limited v Brown 2015 ICR D11 EAT** at paragraph 33).

What is meant by "reasonable prospect" in rule 70(2)?

11. I have not identified case law that gives specific guidance on the term for the purposes of rule 70(2). The test is a familiar concept which applies in various

other strike out provisions. In my judgment the clear use of the word *"no"* reasonable prospect must mean (as it does for strike out cases in reference to the prospect of succeeding in a claim) that the test is not whether the Claimant is *likely* to fail in securing a variation or revocation of the judgment nor whether it is *possible* the application will fail. There must be "no" reasonable prospect **(Balls v Downham Market High School [2011] IRLR 217** ,paragraph 6].

Discussion and Conclusion

12. The Claimant's former solicitors, Farleys, notified the Tribunal that they were no longer acting for him on 23 March 2026. He is therefore without, I assume, the benefit of any legal advice. I have taken that into account when construing the possible bases for reconsideration to which his written application may give rise.

13. Looking at his two emails, I identify three components to the application. The Claimant asks that the Tribunal:

(a) reinstate the original remedy judgment (in the language of rules, I regard this as an application for "revocation" of the **re**considered judgment);

(b) increase the compensatory award ordered under the original judgment so as to include additional heads of loss such as compensation for hurt feelings, stress and reputational harm; and

(c) increase the award of costs to the Claimant so that all of the legal costs he incurred are ordered against the Respondent.

14. I will take these each in turn.

Reinstatement of the original judgment

15. The changes I made to the original remedy judgment all flowed from the failure of the Tribunal to take into account that the law applies a maximum sum which a person who is unfairly dismissed may be awarded as a compensatory award under s.117(1) and (2) ERA and s.123. This is called the statutory cap. As it happens, that cap will be abolished under new laws coming into force in January 202**7**. Those new laws do not apply to the Claimant's case.

16. The exact provision which does apply to the Claimant's case is set out in the previous judgment. It is s.124 (1ZA) ERA 1996 which provides:

124.— Limit of compensatory award etc.

(1) The amount of—

(a) any compensation awarded to a person under section 117(1) and (2), or

(b) a compensatory award to a person calculated in accordance with section 123,

shall not exceed [the amount specified in subsection (1ZA)][1] .

[

(1ZA) The amount specified in this subsection is the lower of—

(a) [£123,543], and

(b) ***52 multiplied by a week's pay of the person concerned.***

[My emphasis]

17. A week's pay is the gross contractual remuneration an employee is entitled to be paid when working their normal hours each week. The Claimant week's pay figure is £437.77. He has not argued to the contrary. The statutory cap in his case is therefore £22, 764.

18. An important point which I stress to the Claimant here is that the Tribunal obtains its powers (sometimes called "jurisdiction") to require employers to pay compensation for unfair dismissal from laws passed by Parliament or from other legislation (secondary legislation) that Parliament has permitted to be brought into force by other means. The Tribunal's powers are limited by what those written laws and any case law which interprets them, say; they are binding. Tribunal Judges who make judgments cannot exceed the powers they have been given.

19. The statutory provision which creates a ceiling on compensation is completely clear. There are a limited range of unfair dismissal cases where it does not apply (e.g. if the reason was because of whistleblowing or discrimination). I have re-checked, and none of them could conceivably apply to the Claimant's case. For these reasons, there is no possibility at all that I will not apply it. Quite simply, the Tribunal has no power to do so.

20. It is very unfortunate that after his long wait to obtain judgement, the Claimant's expectations were wrongly increased in this way. I inadvertently played a part in that, for which I apologise to him. I also appreciate it has a direct impact on the amount he ultimately is left with in his own pocket, after any benefits are recouped and his lawyers are paid. As harsh as it may seem however, that does not change anything. The statutory cap in his case remains £22, 764.

21. Applying the cap to the compensatory award leads not just to the effective removal of his lost earnings from September 2024 to July 2025. In this case it effectively wipes out the 25% ACAS adjustment in his favour (a sum of £8, 685.23).

22. I am satisfied these adjustments have all been made in accordance with established and binding principles. **Hardie Grant London Ltd v Aspden - [2012] All ER (D) 43 (Feb)** supports that positive adjustments in favour of a successful Claimant (which an ACAS uplift is) must first be added to the total compensatory award and the statutory cap then applied as the final step. In other words, the ACAS uplift cannot be added after the cap has been applied i.e. to give the Claimant £22, 764 and the ACAS uplift on top.

23. The adjustments also mirror precisely those requested by Farleys in their letter to the Tribunal of 17 October 2025. I have to assume the letter was written on the Claimant's instructions. But even if he disagrees now with Farley's actions in suggesting this course, it would not affect the outcome of this application. The reason why I varied the judgment is not because both sides' representatives simply asked me to. I reconsidered the judgment because the earlier judgment was fundamentally wrong. What the representatives asked had the effect of bringing the judgment properly within my powers, fixing a common oversight and avoiding what would otherwise be a successful appeal.

24. On this point, I would add that I have considered the Google extract submitted by the Claimant which appears to reflect some research he has undertaken using artificial intelligence (AI). The extract states that if fraudulent delay or gross misconduct leads to lost earnings exceeding the 52 weeks cap, the Claimant can ask the Tribunal to order these losses. I am afraid this is simply incorrect as a matter of legal principle. There is no modification of the statutory cap by reference to such principles. What the Claimant therefore says about the Respondent's conduct before and during the hearing is not a basis on which the statutory cap can be disapplied.

(b) Increased compensation because of harm

25. The Claimant identifies that he has been caused harm and damage to his reputation which cannot be repaired. He infers there is both past and ongoing harm. He wants the compensation to him to be increased as a result. However, there is no scope in unfair dismissal claims to make orders for injury to feelings.

26. So-called "stigma damages", where the fact or nature of the past dismissal or related Tribunal proceedings affect future ability to obtain work, are somewhat different. They may be taken into account but only in the assessment of future financial loss. What is <u>not</u> open to me is to order a free-standing sum for stigma though i.e. to award the Claimant money on account of how the unfair dismissal made him feel or made others feel towards him.

27. "Stigma" was not a point specifically argued before me by the Claimant's lawyers. However, in my view it is reflected already in my decision that the Claimant's loss of earnings flowing from the dismissal endured until 3 July 2025 (see paragraph 74 of my Remedy Judgment Reasons). As the Claimant will appreciate however, it is the statutory cap imposed by Parliament that stops the Tribunal from making the Respondent liable to him for those losses.

28. For these reasons, the Claimant's application discloses no possibility at all of my increasing the compensatory award to him.

(c) Alleged dishonesty/ increase in costs judgment

29. The Claimant contends that the Respondent was "fully insured" in respect of employer's liability to the Claimant. He says that her representatives were paid by Fish Insurers and I was misled by the Respondent/ her representatives who submitted that the Respondent did not have insurance. I

have not seen evidence to support this. The Claimant has sent a link to an Independent Living insurance policy document. That does not take things any further at all in demonstrating his assertion. The document is not personal to the Respondent, it is simply a policy document.

30. The Tribunal would naturally be concerned by clear evidence of dishonesty in the face of the Tribunal. But in terms of remedy, with respect to the Claimant, whatever evidence he produces is not apt to change any remedy he receives for his unfair dismissal.

31. So far as costs are concerned, it is important to remember, I did not limit these in anyway by reference to the Respondent's personal means and alleged inability to pay. This was an argument made by Ms Barlay which I expressly rejected (see paragraphs 88 and 89 of the Remedy Judgment Reasons). The costs of the Claimant which I disallowed (i.e. pre-issue costs up to 7 December 2023) were by reference to the early stage at which they were incurred by the Claimant and allowing time for the Respondent to gather insight into her position (see paragraph 90 of the Remedy Judgment Reasons). There is thus no reasonable prospect of my reversing my decision to disallow these costs; the Respondent's insured status was not a material factor in my decision making.

Enforcement

32. I note that there has been correspondence from the Claimant to the Tribunal saying that the Respondent is refusing to pay the correct amount of the award (his email of 15 April 2026). I have also seen correspondence from the Respondent's representatives (30 March 2026) and from the ET Penalties Officer (2 April 2026) which tend to show that the monies due under the <u>re</u>considered judgment were paid to the Claimant's solicitors by 16 December 2026. He himself appears to accept he received the funds on 14 January 2026. The impression given is that the Claimant has pursued the enforcement of the original judgment before receiving a copy of the reconsidered judgment. This is somewhat odd given Farleys actively requested the reconsideration granted before payment of funds.

33. Regardless, the Claimant must note that the judgment which binds the Respondent is the <u>Re</u>considered Judgment of 11 February 2026 and <u>**not**</u> the original judgment of 8 July 2025.

34. Finally, I apologise it has taken me a little longer than usual to deal with the application which was referred promptly. I had extended leave beginning with the Easter period.

Approved by Tribunal Judge Miller-Varey
acting as an Employment Judge

18 May 2026

JUDGMENT SENT TO THE PARTIES ON

22 June 2026

FOR THE TRIBUNAL OFFICE