



IN THE EMPLOYMENT TRIBUNAL (SCOTLAND) AT EDINBURGH

**Reconsideration and Determination, in terms of Rule 70, of the Application at the instance of the Second Named Respondent made, in terms of Rule 69, on 9 January 2026 for Reconsideration of the Tribunal's Judgment of 8th, issued to parties on 9th, April 2026
4102140/2023 & 4105349/2023**

Employment Judge J G d'Inverno

E McDougall

Claimant

Arnold Clark Automobiles Limited

1st Respondent

N Gilhooly

2nd Respondent

Edinburgh 24 and 27 April 2026

A. Upon considering on 24th and upon resuming consideration on 27 April 2026 in terms of Rule 70 of the Employment Tribunals Procedure Rules 2024, of the 2nd named respondent's Application dated 9 April 2026 and made under Rule 69, for reconsideration of the Tribunal's Judgment of 8th, issued to parties on 9 April 2026, and,

B. Upon considering, in terms of Rule 70(2) that there is no reasonable prospect of the Judgment being varied or revoked on the grounds advanced,

The Employment Judge (d’Inverno);

(FIRST) Refuses the Application for Reconsideration.

Date sent to parties

14 May 2026

NOTE OF REASONS

1. On 9 April 2026 the 2nd named respondent made timeous application, in terms of Rule 69, for reconsideration of the Tribunal’s Judgment dated 8th and issued to parties on 9 April 2026.
2. The Application was considered by the Tribunal on 24 and 27 April 2026.
3. The Application consists of 5 paragraphs and is in the following terms:-

“1. ALI KHAN – contradictory evidence

Ali Khan was the only witness who purported to provide direct evidence of physical misconduct.

Ali Khan was the only witness who purported to provide direct evidence of physical misconduct.

However:

- In his initial account, he **did not report witnessing any inappropriate conduct**

- In a later statement, he introduced for the first time an allegation that he witnessed me unhook the claimant's bra

This represents a **fundamental inconsistency**.

It is respectfully submitted that the Judgment does not adequately address:

- The **significance of this contradiction**
- Why the latter account was preferred
- Whether it was safe to rely upon this evidence.

2. ORIGIN OF THE SECOND STATEMENT

During the hearing, it was confirmed by HR that:

- The second statement from Ali Khan was **not volunteered independently**
- It was obtained **following contact initiated by the claimant**

This is a highly material factor in assessing:

- The **credibility and reliability** of the revised account
- The **weight** that should properly be attached to that evidence

It is respectfully submitted that the Judgment does not address this context

3. LACK OF CORROBORATION

The alleged conduct was said to have taken place:

- In a **busy showroom environment**
- With **numerous staff present**
- In a setting with **CCTV coverage**

However:

- No other witnesses gave evidence supporting these allegations
- No CCTV evidence was produced
- Multiple witnesses gave evidence inconsistent with the claimant's account

It is respectfully submitted that the Judgment does not adequately explain how serious allegations of this nature were accepted in the absence of corroboration

4. CRIMINAL PROCEEDINGS (CONTEXT ONLY)

The allegations were the subject of criminal proceedings, which resulted in a **not proven verdict**.

While I fully accept the Tribunal applies a different standard of proof, this outcome remains relevant context when assessing:

- The **strength and reliability** of the underlying allegations
- The **weight of the evidence overall**

5. INTERESTS OF JUSTICE

Taken together, the above matters raised concerns as to whether:

- Key evidence was fully evaluated
- Proper weight was given to contradictory testimony
- The reliability of the only direct witness was sufficiently scrutinised.

REQUEST

In light of the above, I respectfully request that the Tribunal reconsider its Judgment in the interests of justice. I remain grateful for the Tribunal's time and consideration.

Yours faithfully

Neil Gilhooly

2nd respondent"

4. Paragraphs 1 and 2 of the Application relate solely to the Finding in Fact made by the Tribunal of the 5th instance of harassment and relating to the claimant's protected characteristic of Sex and Sexual Harassment at the hands of the 2nd respondent which is the subject of the Tribunal's Finding in Fact at paragraph 139 (page 35) of the Note of Reasons attached to the Judgment; viz,

"139. In January of 2023, on an occasion which was witnessed by her fellow employee Ali Khan, the 2nd respondent unhooked the claimant's bra while the claimant was sitting at her desk on the shop floor."

5. The remaining paragraphs of the Application that is paragraphs 3, 4 and 5, fall to be read as applying to the Tribunal's Findings set out at paragraphs 136, 137, 138 and 139 at page 35 of the Note of Reasons, and in terms of which it finds in fact the occurrence of the 5 instances of section 26 and section 26(1) and section 26(2)

Harassment respectively listed as harassment issues; 1.1.1, 1.1.2, 1.1.3, 1.1.4, and 1.1.5 on the Final List of Issues at page 170 of the bundle.

6. In approaching consideration of paragraphs 1 and 2 of the Application which are directed towards the “reliability and credibility” of Ali Khan, as given by way of written witness statement in the internal investigation/disciplinary processes which proceeded at the instance of the 1st respondent into the allegations of misconduct directed respectively against the claimant and against the 2nd respondent, it is important to bear in mind that the witness Ali Khan gave no oral evidence before the Employment Tribunal at the Final Hearing. None of the parties, including the 2nd respondent, led Ali Khan as a witness of fact in order that the credibility and reliability of his evidence as to the particular incident which is the subject of the Tribunal’s Finding in Fact at paragraph 139 of its Note of Reasons might be challenged in cross examination.
7. There was before the Tribunal as documentary evidence copies of statements given by various individuals in those internal investigation and disciplinary processes. There was however no witness statement executed and produced in terms of Judge Hoey’s earlier Orders which was said to constitute the evidence in chief of Ali Khan for the purposes of the Employment Tribunal Final Hearing nor did Ali Khan attend as a witness.
8. Neither was it the function of the Tribunal, at the Final Hearing into the claimant’s complaints to conduct a rehearing of the internal investigatory and disciplinary processes conducted by the 1st respondent. Rather, its function was to determine the issues of fact and of fact and in law set out as being in dispute between the parties in terms of the Final List of Issues, upon a consideration of the oral and documentary evidence presented, while applying the civil standard of proof of “on the balance of probabilities”.

Paragraphs 1 and 2 of the Application

9. Paragraphs 1 and 2 of the Application for Reconsideration (“The Application”) are directed towards the Tribunal’s Finding in Fact paragraph 139 of the Note of Reasons which is in the following terms:-

“139. In January of 2023, on an occasion which was witnessed by her fellow employee Ali Khan, the 2nd respondent unhooked the claimant’s bra while the claimant was sitting at her desk on the shop floor. [Harassment Issue 1.1.5]

10. The criticisms advanced, and the submissions made, by the 2nd named respondent at paragraphs 1 and 2 of the Application were criticisms advanced, submissions made by the 2nd respondent in terms of his own witness statement (evidence in chief) and the submissions made by him at the Final Hearing (submissions at paragraph 300 page 66 of the Note of Reasons, and were considered by the Tribunal in reaching its determination. As indicated above no party, including the 2nd respondent, brought Ali Khan as a witness in order that his evidence might be challenged in cross examination at the Tribunal hearing the mechanism for which is provided in section 3 of the Civil Evidence (Scotland) Act 1998; viz:-

“Statement as evidence as to credibility.

In any civil proceedings a statement made otherwise than in the course of the proof by a person who at their proof is examined as to the statement, shall be admissible as evidence in so far as it tends to reflect favourably or unfavourably on that person’s credibility.”

10. At paragraph 338 of the Note of Reasons the Tribunal makes clear that in circumstances where the 2nd respondent did not cross examine the claimant and directly challenge her evidence in respect of, amongst others, the allegation of harassment in question the Tribunal accepted the claimant’s evidence as credible and in the circumstances, sufficiently specific and reliable such as to establish on the balance of probabilities that the claimant was subject to those instances of unwanted conduct at the hands of the 2nd respondent. It was on that evidence of

the claimant principally, and not the documentary copies and references to the hearsay evidence of Ali Khan given in the internal proceedings that the Tribunal made its relevant Findings in Fact. The 2nd Respondent who opted to absent himself from the Proceedings during the entirety of the Claimant's case and part of the 1st Respondent's case, notwithstanding the Tribunal's immediate granting on the first day of hearing of his subsequently medically vouched application that he be allowed to participate remotely, made no application to re-open the Claimant's case for the purposes of challenging the Claimant's evidence in Cross-examination nor did he make any application to Adjourn or postpone proceedings subsequent to those dealt with by the Tribunal, all as set out in its Note of Reasons and Record of Proceedings attached to its Judgement.

11. At paragraph 139 of its Findings in Fact the Tribunal makes reference to Ali Khan for the purpose of distinguishing and identifying a single instance of what, in terms of the claimant's averments, as reflected in the Final List of Issues was said to have been multiple instances of the 2nd respondent unhooking the claimant's bra in the month of January 2023. In making the Finding in Fact set out at paragraph 139 of the Note of Reasons the Tribunal relied upon the evidence of the claimant, unchallenged by the 2nd respondent in cross examination which it accepted as credible, and in the circumstances, sufficiently specific and reliable in that regard.
12. The Tribunal accorded little weight to the hearsay evidence of Ali Khan given in the internal process.
13. In relation to paragraphs 1 and 2 of the Application the Tribunal considers the set out grounds to be grounds which have already been substantially argued before the Tribunal and considered and disposed of at the Final Hearing and further considers that there is no reasonable prospect of the Tribunal's Judgment being varied or revoked on the grounds advanced.

3 Lack of Corroboration

14. Paragraph 3 challenges the Tribunal making Findings in Fact as to the occurrence of the alleged incidents of harassment of the claimant at the hands of the 2nd named respondent on the grounds that the claimant's evidence was not corroborated by the evidence of another witness.
15. It is settled law, since the passing of the Civil Evidence (Scotland) Act section 1 of which abolished the requirement for corroboration in any civil proceedings in Scotland and confirmed that the court (which term includes the statutory court which is the Employment Tribunal (Scotland)) shall be entitled to find a fact proved (by a single source of) evidence notwithstanding that the evidence is not corroborated. It was open to an Employment Tribunal to make the Findings in Fact which are the subject of the Application for review on the evidence of the claimant which it accepted as credible and reliable in the circumstances set out at paragraph 338 of the Note of Reasons.
16. The Tribunal considers that there is no reasonable prospect of its Judgment being varied or revoked on the ground advanced at paragraph 3 of the Application.

Paragraph 4 of the Application “(Criminal Proceedings (Context Only))”

17. On the one hand this paragraph is described by the applicant as being for “context only” but on the other hand is included by him in his Application for Reconsideration. For the avoidance of doubt therefore the Tribunal addresses it.
18. The substance of the paragraph (ground advanced) is that “the allegations were the subject of criminal proceedings which resulted in a not proven verdict. And that that outcome is relevant when assessing “the strength and reliability of the underlying allegations and the weight of the evidence overall.”
19. The Tribunal firstly records that this is a matter which in the bald terms set out in paragraph 4 of the Application was evidence before the Tribunal in terms of the 2nd

respondent's belatedly lodged witness statement and was further, in the same bald terms, the subject of submissions made by him [paragraph 303].

20. The Tribunal respectfully disagrees with the applicant's contention that the fact of a not proven verdict having been entered in his favour in criminal proceedings, the scope of which it appears to have been accepted by all parties was much wider than those before the Tribunal was a matter which fettered the Tribunal's ability to assess the evidence before it at the Final Hearing and to thereafter make the Findings in Fact which it has. As the applicant recognises in terms within paragraph 4 of the Application the standard of proof applicable in civil proceedings before the Employment Tribunal is that of on the balance of probabilities whereas in the criminal proceedings to which reference is made the standard is that of "beyond reasonable doubt". Separately but equally materially the verdict returned in the criminal proceedings was so returned upon consideration of the evidence of witnesses who did not give evidence before the Employment Tribunal.
21. For the avoidance of doubt the Tribunal considers that there is no reasonable prospect of its Judgment being varied or revoked on the grounds advanced at paragraph 4 of the Application.

Paragraph 5 of the Application – "INTERESTS OF JUSTICE"

22. Paragraph 5 is a summary of the matters set out in paragraphs 1, 2 and 3 of the Application and is in the following terms:-

"Taken together, the above matters raised concerns as to whether:

- Key evidence was fully evaluated
- Proper weight was given to contradictory testimony
- The reliability of the only direct witness was sufficiently scrutinised.

Paragraph 5 is followed by a request that, *"in light of the above, I respectfully request that the Tribunal reconsider its Judgment in the interests of justice."*

23. The Tribunal has already dealt with each of the matters set out in paragraphs 1, 2, 3, and for that matter paragraph 4 of the Application and parties are referred to the

relevant paragraphs above. Standing the same the Tribunal does not consider that the interests of justice require that its Judgment of 8th/9th April 2026 be varied or revoked.

24. In the circumstances, and for the reasons set out above the Tribunal considers that there is no reasonable prospect of its Judgment being varied or revoked on the grounds advanced in the 2nd respondent's Application for Reconsideration and accordingly refuses the Application in terms of Rule 70(2) of the Employment Tribunal Procedure Rules 2024.

Date sent to parties

14 May 2026