



EMPLOYMENT TRIBUNALS

Claimant: Mr Olufemi Adeniyi
Respondent: Frontier Support Services Limited
Heard at: London South Employment Tribunal via CVP
On: 18 May 2026
Case number: 6002876/2025
Before: Employment Judge M Da Costa sitting alone

ATTENDANCE AND REPRESENTATION

None. This is a decision in chambers following a paper application by the claimant determined without a hearing. The application was for a reconsideration following a strike out judgment dated 25 May 2026 and promulgated 30 May 2026.

RECONSIDERATION DECISION

The decision in summary

1. The claimant's application for reconsideration fails and is refused. This is because, as explained in detail below, the grounds that he puts forward either, variously, do not satisfy the "interests of justice" test in rule 68(1) of the Employment Tribunal Procedure Rules 2024 and, even if they had done so (or in the sole case of ground 6 where that ground did engage rule 68(1)), there would be no reasonable prospect under rule 70(2) of those Rules of my judgment being varied or revoked on the relevant ground.

Background

2. By an ET1 form presented on 27 January 2025, the claimant made a claim for unfair dismissal and dismissal on the ground of a protected disclosure.

3. A preliminary hearing was held on 23 January 2026. The record of that hearing drafted by Employment Judge Curtis states materially as follows:
- (a) The final hearing was set down for 17, 18 and 19 August 2026;
 - (b) The hearing of 23 January 2026 had been listed for the purpose of determining the respondent's applications for the claimant's claims to be struck out or in the alternative to be subject to a deposit order on the grounds that they had little or no reasonable prospect of success;
 - (c) It was not possible to complete the hearing on 23 January 2026 because shortly after the hearing began it became apparent that the claimant had sole caring responsibilities for his three-year-old son who was in the claimant's home with him, and because the claimant said he would have to leave at 3pm to collect his daughter from school. The judge explained that he was not comfortable with continuing the hearing because it appeared to him that the claimant was not able to focus on the proceedings whilst also caring for his son;
 - (d) In the Judge Curtis' opinion, the best way to further the overriding objective, in particular the requirements to deal with cases in a proportionate way, to seek flexibility in proceedings, to save expense, and to avoid delay so far as compatible with proper consideration of the issues, was for him to set out his preliminary view having considered the application, the skeleton arguments on behalf of both parties, and the undisputed contemporaneous documents. The parties could then have an opportunity to make any written submissions on that preliminary view. The case would then be referred to a Judge who would decide what orders to make and whether a further preliminary hearing was necessary;
 - (e) Judge Curtis' preliminary view was that the strike out application was highly likely to fail because the respondent was effectively seeking to conduct a mini-trial of the matters in dispute. He said he thought that was evident from the bundle of documents provided which included a witness statement;
 - (f) Judge Curtis' preliminary view was that the deposit order application was likely to succeed. This was because (i) he found that there were credible contemporaneous documents (WhatsApp messages from the Claimant to Ms. Aquino, Ms. Amoah and Ms. Kanslime); (ii) the Claimant told him that he accepted those were genuine documents and that he sent the messages contained therein (albeit the claimant said that they are only a selected part of wider communications); (iii) on their face, those undisputed contemporaneous documents showed a good reason for a fair dismissal, namely that the Claimant committed misconduct by sending unwanted messages to colleagues asking them for sex (Ms. Aquino), saying that he will kiss them (Ms. Amoah) and saying that he would like to date them and that he knows saying it might cost him his job (Ms. Kanslime); (iv) in that context, it appeared likely that the claimant had little reasonable prospect of success with his assertions that the sole or principal reason for dismissal was that he had made a protected disclosure, that the dismissal was unfair, and that dismissal was outside of the range of reasonable responses.
4. The record of the 23 January 2026 preliminary hearing set down directions for preparation for the final merits hearing. It also set down directions for preparation for the application for strike out and for a deposit order.

5. A Notice of Hearing was issued to the parties on 10 March 2026 notifying of a preliminary hearing for 3 hours on 18 May 2026. The purpose of that hearing was stated to be to consider the respondent's applications for a strike out or a deposit order.
6. The hearing of 18 May 2026 was assigned to me.
7. There was a bundle in the electronic case file. On 18 May 2026 at the start of the hearing, it became apparent to me that there was a **new** bundle that had been prepared for the 18 May 2026 hearing, that I had not seen and that was not on the electronic case file nor on the Document Upload Centre. This included the written submissions of both the respondent and the claimant as to strike out and deposit order.
8. The new bundle was emailed to the Tribunal at the start of the hearing, as I recall by the respondent, and I reviewed it, albeit very briefly. It was the respondent's view that I did not need further reading time because the new bundle was the same as the previous one (which had been prepared for the 23 January 2026 hearing) save for additional claimant documents having been added in a new section dedicated to those new claimant documents. As I recall also and my notes of the hearing bear out, I agreed with the respondent's suggestion that it would suffice for me to be taken to the pertinent parts of the bundle by both the respondent and the claimant. As I recall, the claimant did not object at the time to that course of action, and my notes from the hearing record no such objection.
9. It was clear to me on 18 May 2026 upon inspection, and as I look back at both bundles now at the time of writing this Decision it is again still clear to me, that the only difference between the 2 bundles was that:
 - (a) The new bundle contained the skeleton arguments of both parties as to strike out and deposit order; and
 - (b) In a dedicated section from pages 142 onwards there were documents that the claimant had requested.
10. As I recall and as is borne out by my notes of the hearing of 18 May 2026, the claimant made no significant objection to the contents of the new bundle at the hearing. The only comment that I have noted in my notes is that the claimant said that the documents that he had prepared were a response to the respondent's strike out application document of 15 January 2026 (as opposed to the strike out application document as at 18 May 2026). As I recall, I took the view that since the claimant had seen the new bundle in advance, he could make any observations that he wanted in relation to the respondent's strike out application on 18 May 2026 during the hearing, after he had heard the submissions of the respondent who would refer to the respondent skeleton argument. I took the view that there was no prejudice to the claimant in this respect.

11. As I also recall and as is borne out by my notes of the hearing of 18 May 2026, both parties took me to places in the new bundle, including to both skeleton arguments.
12. After having heard the submissions of the parties, I took time instead of having a lunch break, to consider all the documents before me, along with the arguments of both parties, with a view to making a decision on the strike out and deposit order applications. I asked the parties to return at 2pm. As it transpired, I decided upon their return that I would need more time to consider the respondent's application fully, in order to make a safe decision. For that reason, I reserved judgment.
13. I completed my reserved judgment, with full written reasons, on 25 May 2026 and that document was promulgated to the parties on 30 May 2026. The decision was that the claimant's claims for unfair dismissal and dismissal on the ground of a protected disclosure had no reasonable prospect of success. For that reason, my decision was to strike out the claimant's claims in their entirety pursuant to rule 38(1)(a) of the Employment Tribunal Procedure Rules 2024.
14. On 30 May 2026 the claimant made an application by email for my judgment of 25 May 2026 to be reconsidered. That application was sent to me by email on 02 June 2026.

REASONS FOR THE DECISION

The relevant law

15. By rule 68(1) of the Employment Tribunal Procedure Rules 2024 ("the Rules"), a Tribunal may on the application of a party reconsider any judgment where it is necessary in the interests of justice to do so.
16. By rule 69 of the Rules, an application for reconsideration must be made in writing setting out why reconsideration is necessary and must be sent to the Tribunal no later than 14 days of the later of:
 - (a) the date on which the written judgment sought to be reconsidered was sent to the parties,
 - (b) the date that any written summary reasons were sent, if these were sent separately from the judgment, or
 - (c) the date that any written full reasons were sent, if these were sent separately from the judgment.
17. There is no suggestion that the claimant's application for reconsideration is out of time.
18. By rule 70(1) of the Rules, the Tribunal must consider any application made under rule 69. By rule 70(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. Procedural measures follow in rule 70(3) to (5) if the application is not refused under rule 70(2).

19. A key point is that the obligation to consider any application under rule 70(1) only arises if the “necessary in the interests of justice to do so” hurdle in rule 68(1) has been cleared.

The claimant’s grounds for reconsideration

20. The claimant’s grounds were as follows:

(a) Ground 1

At the hearing of 18 May 2026, he explicitly told me that he possessed firsthand eyewitness knowledge that his managers/lead accuser were planning to fabricate allegations against him on 18 October 2024 to silence his whistleblowing. He alleged that my legal error was that at the hearing I explicitly stopped that witness (Mr Olanrewaju), who had also joined by telephone link, from giving his oral account, stating to him on the record that his evidence *“was not needed yet and would be heard at the Final Hearing listed for August 2026”*.

(b) Ground 2

On Friday, 29 May 2026, the respondent had sent a chasing email to the Tribunal demanding the immediate release of the judgment. The Tribunal subsequently released the strike-out decision on Saturday, 30 May 2026. This was a rushed release that completely bypassed correspondence sent by the claimant to the Tribunal on 28 May 2026 about alleged bundle tampering, meaning that I signed an order (judgment) without ever realizing that the bundle I had been reading had been *“actively doctored”* by the respondent.

(c) Ground 3

During the hearing, I *“actively defended”* the respondent's skeleton argument, stating that because the respondent wrote that they had based their dismissal on gross misconduct, it was needless to argue the point. He alleged that this was a legal error because under Section 103A of the Employment Rights Act 1996, the employer's written defence is not gospel; instead the Tribunal is legally required to examine the true operational motive for dismissal. He alleged that by accepting the respondent’s written claims at face value and shutting down his arguments regarding the obligation on an employer to carry out a mandatory fair procedure in internal dismissal proceedings, I failed to evaluate the core issue of whistleblowing retaliation.

(d) Ground 4

At the start of the hearing on 18 May 2026, the claimant alleged that I had not reviewed the case documents, and that when in that hearing he explicitly objected to the late bundle, I responded to him that there was nothing new in the bundle that he had not seen and I asked the respondent to confirm if there were changes. The claimant alleged that the Respondent dishonestly stated

there was *"nothing new"* and that I *"relied on this false statement"*. He alleges that in this regard, the respondent actively misled the court, causing severe prejudice to an unrepresented litigant in person.

(e) Ground 5

The claimant alleged that the respondent had *"tampered with the bundle"*. In correspondence that he had sent on 28 May (which it is true I had not seen at the time of writing my strike out judgment) but repeated in his grounds for reconsideration, the allegations were that:

- (i) The new bundle supplied to me at the hearing of 18 May 2026 contained a respondent's skeleton argument that was different from the skeleton argument provided on 15 January 2026 for the previous hearing of 23 January 2026, in that paragraphs 17 to 20 inclusive of that previous document had been removed. He said that those removed paragraphs *"contained false claims"* that the respondent had *"followed a fair procedure"*, and that the claimant had *"never requested further investigations"*.
- (ii) At page 187 of the new bundle, the respondent had *"cut"* a critical part of the email that he sent to HR wherein he had demanded to know why they had explicitly refused to allow key witnesses to attend his disciplinary hearing.
- (iii) The documents at pages 230 and 232 of the bundle had been deliberately blurred by the respondent.
- (iv) The respondent had inserted *"hidden surprise evidence"* at pages 138-139 of the new bundle.

(f) Ground 6

My strike-out decision directly contradicted the overriding objective. This is because I made a mistake as to core factual dates (referencing an incorrect event in September rather than October). The central issue of this case in the claimant's opinion, namely whether a multi-person management conspiracy was hatched on 18 October 2024 to frame him for whistleblowing, was a heavily disputed matter of fact. He possessed signed witness evidence from independent colleagues and audio recordings proving that internal minutes were doctored, inaccurate and falsified. Those were facts that could only be resolved by cross-examination at a full trial.

(g) Ground 7

Due to *"catastrophic network failure"* on 18 May, he was *"forced to conduct the critical hearing entirely over a telephone line"*. He could not see the bundle, easily follow the pages, or *"see the changes"* that I *"was reading"*. He could not *"discover the bundle and documents manipulation by the respondent until a later date (28, May 2026)"*. The claimant alleged that I admitted mid-hearing that I was checking the documents for the first time and struggling to find the facts, and that on record I admitted that I had not seen the new skeleton bundle prior to that moment and requested the Respondent to forward it while the hearing was ongoing.

21. On 02 June 2026 the respondent replied in writing to the claimant's strike out application. They resisted the application.
22. As to the new bundle and the alleged document deficiencies and "manipulation" or "doctored", the respondent wrote in opposition that:
 - (a) The claimant had their skeleton argument because it was put in the bundle before the hearing, that bundle having been sent to the claimant on 15 May at 12.21pm;
 - (b) The change from the first skeleton argument that the claimant referred to amounted to 4 paragraphs as legal submissions on the **Burchell** Test. They removed them for the skeleton in the 2nd bundle as they did not consider it necessary to address tribunal on that test. These were legal submissions not evidence or new defences being asserted.
 - (c) The respondent was not aware of new documents being added to the bundle. The new documents were those of the claimant inserted at his request, with texts still being sent to them for inclusion before the hearing, which they included.
 - (d) The claimant had ample time and was afforded every opportunity to add to or object to any content within the bundle and did so via his texts.
 - (e) The bundle was sent to the claimant before the hearing. It was sent again on the morning of the hearing despite his previous confirmation that he had received it.
 - (f) The matters that the claimant now raised – seemingly alleging bundle faults – were or could have been known to him at the time. He did not flag those up at the time.
 - (g) As with much of the bundle content, the email the claimant says was omitted had no material bearing whatsoever on what was to be determined at the hearing of 18 May 2026. The claimant actually referred to the content of it in cross examination at the hearing with me, so his point was made. The critical point, as argued by the respondent at the hearing, was that the claimant had admitted sending highly offensive and demeaning sexual text messages to female employees, amounting to sexual harassment, even when asked to stop, and that no employer could countenance this in the workplace.
 - (h) The respondent did not accept that documents in the new bundle were not legible. The ones referred to could be read and the claimant never raised this before or at the hearing. Those documents would not in any event have had any material bearing on the strike-out decision.
 - (i) Had the claimant wanted any additional documents included he was at liberty, both upon receipt of the bundle and during the hearing, to produce them.
23. As to the claimant's 7 grounds for reconsideration, the respondent wrote in opposition that:
 - (a) As to ground 1, the witness' evidence referred to had no relevance to the matters to be determined at the hearing of 18 May 2026, and I had tried on several occasions to get this point over to the claimant.

- (b) As to ground 2, my strike out judgment had not been rushed. I said I would do it either later on the day of the hearing (18 May) or conclude it the following day. It was a reserved decision as I wanted time to consider it after what was the best part of a full day's hearing.
- (c) As to ground 3, there was no misdirection on law by me. The claimant failed to understand the specific legal issues in the matter and set out in the skeleton argument with reference to relevant case law, as well as in my judgment.
- (d) As to ground 4, I took time at the start of the hearing to read the bundle. The claimant did not object to the bundle. He had it well before the hearing and agreed the date it was received. The respondent was not aware of a new respondent document in the bundle for the hearing. However, if there was, it was an issue for the claimant, as he was able to raise it at in advance and at the hearing and he did not do so. The new documents were his and clearly put in a section of their own.
- (e) As to ground 5, there is no evidence to support the wild and serious allegation that the respondent had tampered with the bundle for gain. It cannot be logically possible that the respondent had inserted "hidden" documents when they disclosed a bundle with them in it to the claimant. A bundle requires consideration by both parties with responsibility to approve its contents. The claimant could have added or raised any point on the bundle, but he did not do so at the requisite time.
- (f) As to ground 6, the claimant fails to accept the relevant legal issues that led to the strike out being made. The invalid assertion about the strike-out being contrary to the overriding objective was put as an issue about time.
- (g) As to ground 7, the claimant was not forced to conduct the hearing on his phone. He chose to use his phone, possibly like the first hearing which was abandoned for the reasons referred to by me in the judgment. It is the claimant's responsibility to have the bundle with him, and he said that he did. I was very careful before proceeding, to check this was so. I had read the bundle and was conversant with its contents. The previous hearing had ended because the claimant was not ready to proceed. He said he was ready to proceed at the hearing of 18 May 2026 and this point was checked by me.

Application of the Employment Tribunal Procedure Rules 2024 to the claimant's grounds for reconsideration

24. Ground 1:

It is correct that at the hearing of 18 May 2026 I did not allow the claimant's witness Mr Olanrewaju to give an oral account. This is because I was clear in explaining to the parties that the hearing was not a final hearing, and not a trial, but that instead that the purpose of the hearing was to assess the legal arguments about whether the criteria in rule 38 (specifically rule 38(1)(a)) of the Employment Tribunal Procedure Rules 2024 was met. As I said at the hearing, that exercise did not require oral evidence. I did not promise that there would be a final hearing. It was obvious from the nature of the respondent's application that, if that were to succeed, there would be no final hearing. My note of the hearing of 18 May 2026 bears out that I carefully took the claimant through what his case was, namely that

his managers and lead accuser had planned to fabricate allegations against him in order to silence his whistleblowing, and that those were in his opinion the reason for his dismissal. Oral evidence from the witness would not have added materially to that position of the claimant, which he was permitted to state fully at the hearing, and which he did state. I took claimant's account of deliberate conspiratorial fabrication into consideration when I wrote my strike out judgment. That judgment was clear that rule 38(1)(a) was satisfied because the WhatsApp messages sent by the claimant to his accusers would have constituted gross misconduct on the ground of sexual harassment even if the claimant had also made protected disclosures, and that on the basis of established case law, where an employee is dismissed for gross misconduct, the mere existence or knowledge of a protected disclosure does not automatically render it the principal reason for dismissal, and that an employer is therefore entitled to dismiss for misconduct or other behaviour even where that behaviour arises in the context of whistleblowing.

25. For the reasons given in paragraph 24 immediately above, ground 1 does not satisfy the "interests of justice" test in rule 68(1) and, even if it had done so, there would be no reasonable prospect under rule 70(2) of my judgment being varied or revoked on that ground.

26. Ground 2

I reserved my judgment with the express intention of giving the matter my full attention in chambers, out of the hearing, so as to allow my fullest possible consideration. In no sense was the judgment therefore rushed. I completed it on 25 May 2026 and the Tribunal administrative staff promulgated it 5 days later after it had been uploaded by me on 25 May 2026 onto the electronic system. The Tribunal administration staff issuing it on a Saturday reflects their efficiency in seeking to promulgate decisions as quickly as possible after a judge has written them and uploaded them. As to the release of the judgment bypassing the claimant's correspondence about "doctoring" of the bundle, I will explain below that it is clear that no such "doctoring" took place at all.

27. For the reasons given in paragraph 26 immediately above, ground 2 does not satisfy the "interests of justice" test in rule 68(1).

28. Ground 3

The claimant misunderstands the legal basis on which my judgment was based. I did not take the respondent's written defence as "gospel" and neither did I fail to evaluate the issue of whistleblowing retaliation as advanced by the claimant. Having assessed the claimant's case at its highest in terms of whether it had any prospect of passing the **Burchell** test for ordinary unfair dismissal taken alone, at paragraph 47 of my judgment I **then** went on explicitly to address how the claimant's whistleblowing element of his claim **interacted** with the respondent's allegation of gross misconduct by sexual harassment. Drawing from established case law which states that where an employee is dismissed for gross misconduct, the mere existence or knowledge of a protected disclosure does not automatically

render it the principal reason for dismissal, I assessed that the paper trail in the bundle demonstrated that once the respondent had become aware of the allegations of sexual harassment, they had no choice but to investigate that. My finding was that, based on the incontrovertible contemporaneous evidence of the content of the claimant's WhatsApp messages to his accusers, the content of which the claimant did not dispute, there would be no prospect of the claimant establishing at trial that his dismissal did not flow directly from the accusers' sexual harassment allegations, even if there had also been (either before or later) protected disclosures made by the claimant. My judgment was clear that this conclusion was based solely on core facts that were not in dispute. For these reasons I consider that the conclusion that I came to in relation to causation for dismissal was open to me, was rational, and was thus in compliance with the test in section 103A of the Employment Rights Act 1996. Neither did I shut down the claimant's arguments that the respondent was obliged to follow a fair procedure in dismissing him. My note of the hearing of 18 May demonstrates that I probed the claimant on what his points as to fair procedure were. My judgment at paragraph 44 explicitly assesses the issue of procedural irregularity.

29. For the reasons given in paragraph 28 immediately above, ground 3 does not satisfy the "interests of justice" test in rule 68(1) and, even if it had done so, there would be no reasonable prospect under rule 70(2) of my judgment being varied or revoked on that ground.

30. Ground 4

This ground is simply factually incorrect. Events regarding the new bundle are described in paragraphs 7 to 11 above. The respondent's written opposition to this ground also refer, and nothing that the claimant said on 18 May 2026 contradicted what the respondent has written about this point. I was conversant with both bundles. I was referred to parts of them by both parties in the hearing. I had both bundles me when I was deliberating in chambers and writing my judgment. There is no evidence of dishonesty on the part of the respondent, or of the respondent misleading the Tribunal, or of prejudice to the claimant in respect of the bundle, that can remotely be identified. Aside from the claimant's assertion (which I have in my note of the hearing) that the documents in the bundle (by which perhaps he meant his written skeleton argument) were included as a response to the previous skeleton argument, I can see no trace of any material objection to the bundle contents by the claimant at the time. As the respondent says in their written opposition, the difference between the old and new respondent skeleton argument documents were minor (relating solely to removing the paragraphs reciting the **Burchell** test) and immaterial to the outcome, and in any event it was for the claimant to make submissions about bundle content which he did not do at the time. As I recall and as is borne out by my note of the hearing, the claimant took me to parts of the new respondent skeleton argument document in his oral submissions.

31. For the reasons given in paragraph 30 immediately above, ground 4 does not satisfy the "interests of justice" test in rule 68(1).

32. Ground 5

This ground is immaterial, and in part simply factually incorrect. Looking at the new bundle supplied and used for the 18 May 2026 hearing, I observe the following:

- (a) In relation to the changes in the respondent skeleton argument, it is true that paragraphs 17 to 20 of the previous document had been omitted from the corresponding document in the 18 May 2026 bundle. Paragraph 17 had recited why the respondent said the **Burchell** test was satisfied. Paragraph 18 had asserted that the respondent followed a fair procedure. Paragraph 19 had asserted that at no point during the disciplinary process did the claimant suggest any investigations should be carried out or had the claimant mentioned the PID at all, and paragraph 20 had concluded that the section 94 claim by the claimant had no reasonable prospect of success. These points were not the focus of what the claimant was arguing on 18 May 2026 at the hearing, which was that the reason for his dismissal was not gross misconduct. However, I did deal with the **Burchell** test in my judgment, the reason being that I thought it important to assess the prospects of the claimant's ordinary unfair dismissal succeeding **before** I assessed the issue of the connection between that and his whistleblowing allegation. This was not *"manipulation designed to mislead"* the Tribunal or the claimant. It was because the focus of the respondent's argument was that the existence of a whistleblowing complaint does not invalidate an unfair dismissal investigation or automatically render the whistleblowing the primary reason for dismissal. In addition, the claimant was aware of the new bundle before the hearing of 18 May 2026, so there can have been no detriment to him.
- (b) As to the claimant's allegations that email content on page 187 was *"cut"*, he is correct that there is some material missing from that page 187 in the bundle. At the bottom of page 187 there appears the email from the claimant asking for Jennifer and Clara Burfutt to be present at the adjusted disciplinary hearing, then in the middle of the page appears Ms Griffiths' answer that this is not possible (because the hearing is for the claimant to put his case and not for him to question anybody involved), then at the top of the page appears the response from the claimant alleging that *"this is not an investigation anymore"* and asking the real reason why *"it's needless for witnesses of an important case and accusations to not be present when requested to do so by the defendant"*. However, the full and complete emails in that chain are also available at pages 230, 231 and 232 of the bundle in the "claimant's section" of that bundle. It is not clear that any missing content on page 187 was deliberate, and in any event it is clear that the claimant himself supplied the full chain for inclusion in the bundle, which was as a matter of fact added. Therefore, it is patently clear that the full information was as a matter of fact included in the bundle, and that there can therefore have been no deliberate attempt at manipulation in this respect by the respondent, because it was the respondent who put together the bundle that added pages 230 to 232.
- (c) As to pages 230 and 232 of the bundle, they are blurred but they are on inspection still easily legible.

(d) As to pages 138 and 139, the allegation of hidden surprise inclusion of evidence is simply untrue. In both bundles as I view them now, the identical document is included, at pages 138 and 139 in the new bundle and at pages 99 and 100 of the previous bundle.

33. For the reasons given in paragraph 32 immediately above, ground 5 does not satisfy the “interests of justice” test in rule 68(1) and, even if it had done so, there would be no reasonable prospect under rule 70(2) of my judgment being varied or revoked on that ground.

34. Ground 6

The allegation is that I mistook the date of the “JA” allegation as having been alleged to occur in September rather than October. On inspection if the bundle I accept that I did make that error. The claimant alleges that this is a key error because (a) it is a heavily disputed matter and (b) the date is key because the event was reported a few days after he alleges that a plot to frame him was “hatched”. His point is that all of this could only have been resolved via cross-examination and witness evidence at trial. In this respect, the claimant misunderstands my reasoning in my strike out judgment. My judgment made it crystal clear that the event which this relates to did not form part of any of my findings at all, precisely and explicitly as stated in the judgment because I had not had the benefit of witness evidence under cross-examination on the point. My judgment also made it crystal clear that my assessment of sexual harassment was based solely and exclusively on the WhatsApp messages, the content of which was never in dispute. Finally, as set out in paragraph 28 above, I accepted the submission of the respondent as to the lack of connection between gross misconduct leading to dismissal (even explicitly on the basis of the claimant’s case at its highest so as to avoid a mini trial of any disputed facts) and any context of whistleblowing. As I said in paragraph 28 above for the reasons given therein, I consider that the conclusion that I came to in relation to causation for dismissal was open to me, was rational, and was thus in compliance with the test in section 103A of the Employment Rights Act 1996. For all of these reasons, even if I did make a mistake as to the date of the event the claimant cites (for which I apologise), this was immaterial to the basis and the outcome of my judgment.

35. Since it appears that I did make an error as to the date of the event that the claimant cites, I consider that this objection of the claimant’s does engage the “interests of justice” test in rule 68(1). However, for the reasons given in paragraph 34 immediately above, there would be no reasonable prospect under rule 70(2) of my judgment being varied or revoked on ground 6. This is because the error had no effect and was therefore immaterial.

36. Ground 7

It is simply not true that the claimant was in any way “forced” to conduct the hearing over the telephone. He did indeed participate via telephone. However, this was because when he initially joined by video link (as did the respondent and their

representative per the Notice of Hearing and in full compliance with previous directions), he appeared blurred on my screen and it was difficult for both me and the respondent to hear him. To my recollection, he logged out and in again to attempt to resolve the problem. The sound problem appeared to relate to him wearing headphones. After several attempts it was decided, as I recall on the claimant's own initiative, that he would try to join via telephone link instead. After he did that, all parties and myself were satisfied that we could hear him. He did speak quickly and I repeatedly asked him to slow down so as to ensure I could understand him properly. He did not at any stage in the hearing complain that joining by telephone was inadequate, that he could not hear any party or me, nor at any stage that he did complain that he did not have the bundle with him. Even if he had not had the paper bundle with him, there is no reason why (and he gave none at the hearing) he could not have had the bundle with him on a computer whilst he spoke via the telephone link. As I recall and my hearing notes bear out, he must have had the bundle with him (either on paper or electronically) because he took me to pages in it. As I have explained in paragraph 32 above, there was no "*document manipulation*" at all and even if there had been, he could and should have flagged it at the hearing. I have already explained in paragraphs 7 to 11 and 30 above that I was fully conversant with the bundles. For all these reasons, this ground 7 is not remotely substantiated.

37. For the reasons given in paragraph 36 immediately above, ground 7 does not satisfy the "interests of justice" test in rule 68(1).

Employment Judge M Da Costa
7th July 2026

Judgment sent to the parties on:
9th July 2026

For the Tribunal Office

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