



EMPLOYMENT TRIBUNALS

Claimant: Mr Jonathan Joseph Squier

Respondent: Native Land Limited

Heard at: London South (by video)

On: 9 July 2026

Before: Employment Judge Martin

REPRESENTATION:

Claimant: In person

Respondent: Mr Cawdrey - Counsel

RESERVED JUDGMENT ON RECONSIDERATION

1. The Respondent's application for reconsideration under Rule 68 is successful.
2. The Remedy Judgment sent to the parties on 4 November 2025 is set aside and cannot be enforced.
3. The Costs Order made at the remedy hearing on 25 September 2025 is set aside and cannot be enforced.
4. The matter will be heard before Employment Judge Martin on 7 to 9 December 2026.

REASONS

Introduction

1. This is the Respondent's application to reconsider the Remedy Judgment and the associated Costs Order. The Respondent submits that it did not receive notice of the remedy hearing and therefore had no fair opportunity to participate. It attributes its non-attendance to failures by its then solicitors, who were responsible for receiving Tribunal communications through the MyHMCTS portal.
2. The Claimant opposes the application. He submits that notice was properly served through the portal and that he also notified the Respondent's solicitors

directly. He says the Respondent's difficulties arose from its own non-compliance and its continued reliance on a solicitor it knew to be unreliable.

Issues

3. The following issues are to be determined:
 - a) Whether the Respondent received notice of the remedy hearing listed for 25 September 2025.
 - b) Whether the Respondent had a fair opportunity to participate in that hearing.
 - c) Whether the failures of the Respondent's then solicitors deprived the Respondent of such an opportunity.
 - d) Whether the circumstances fall within the narrow exception recognised in the authorities, namely where a party, through no fault of its own, has not had a fair opportunity to present its case.
 - e) Whether any procedural irregularity occurred in the Tribunal's own process.
 - f) Whether reconsideration is necessary in the interests of justice under Rule 68.
 - g) If reconsideration is granted, whether the Remedy Judgment and Costs Order should be set aside and the matter relisted.

Applicable Law

4. Rule 68 permits reconsideration where it is necessary in the interests of justice. The focus is not on whether the original decision was wrong, but on whether something has occurred that makes it necessary to revisit the judgment.
5. The authorities recognise a narrow exception where a party, through no fault of its own, has not had a fair opportunity to present its case. This principle is reflected in **Phipps v Priory Education Services Ltd (CA) [2023]** and **Outsight VB Ltd v Brown UKEAT/0253/14/LA**. These cases are considered below.
6. Rule 21 and the Presidential Guidance confirm that default judgment procedures apply only where no response has been filed. They do not apply where a response has been accepted and later struck out under Rule 37. In such circumstances, the matter proceeds to remedy under the ordinary rules, and a Respondent may participate even if its response has been struck out.
7. The overriding objective requires the Tribunal to deal with cases fairly and justly, including ensuring that parties can participate effectively.

The parties' positions

6. The Claimant's case is that the Respondent had a fair opportunity to participate in the remedy hearing listed for 25 September 2025. He says the Notice of Hearing was uploaded to the MyHMCTS portal on 20 June 2025, and that he also notified the Respondent's solicitors directly. He submits that the Respondent was aware that its Response had been struck out following the hearing on 22 May 2025 and knew that a remedy hearing would follow. He says the Respondent failed to take any steps to check the status of the case, failed

to contact the Tribunal, and continued to rely on solicitors who had repeatedly failed to comply with Tribunal orders. The Claimant's position is that the Respondent's absence was the result of its own sustained non-compliance and its choice of representative, not any failure of the Tribunal.

7. The Claimant further submits that the Respondent's solicitor had been registered with the MyHMCTS portal since May 2025 and had received earlier notifications through that system. He says the Respondent was aware of difficulties with its solicitor's conduct but did not take steps to replace them. He argues that the Respondent's application is an attempt to reopen a judgment regularly obtained and that the interests of justice do not require reconsideration.
8. The Respondent's case is that it did not receive notice of the remedy hearing and therefore had no fair opportunity to participate. It says the Notice of Hearing was not acted upon by its solicitors who had the access to the portal, and that the solicitor said that there was no email notification despite the firm being registered with MyHMCTS. The Respondent submits that it believed its solicitors were dealing with the matter and had no reason to suspect that a hearing had been listed. It says it was unaware of the hearing date and therefore unable to prepare evidence, challenge the Schedule of Loss, or make submissions on Polkey, contributory fault, ACAS uplift, or costs.
9. The Respondent further submits that the failures of its solicitors were significant and unexplained. It says it acted promptly once it became aware of the Remedy Judgment including dis-instructing its solicitors and submitting the reconsideration application within days. It argues that its non-attendance at the remedy hearing was caused by solicitor default, not by any deliberate or contumelious conduct on its own part. The Respondent relies on the principles in *Phipps* and submits that it was deprived of any fair opportunity to present its case.
10. Both parties agree that the Notice of Hearing was uploaded to the MyHMCTS portal on 20 June 2025. They disagree on whether the Respondent had a fair opportunity to participate and whether the solicitor's failures justify reconsideration.

My conclusions

11. I have carefully considered both parties submissions and the documents in the agreed bundle of documents. I considered the cases of *Phipps* and *Outasight* which both deal with when solicitor default may justify reopening a judgment. Both cases confirm the general rule that a party is fixed with the acts and omissions of its representative. Neither case treats solicitor negligence as a routine basis for reconsideration.
12. The distinction between the two authorities lies in the seriousness of the representative's failings and their effect on the party's ability to participate. In *Phipps*, the claimant was wholly unaware of critical orders, strike-out warnings, and the hearing itself. She had been affirmatively misled by her representative

and had no opportunity to protect her position. The Court of Appeal held that she had been deprived of any fair opportunity to present her case.

13. The Court of Appeal in Phipps reaffirmed the general rule that representative failings do not normally justify reopening a judgment. *“Representative default will not usually justify reconsideration.”* This is the starting point.
14. The Court of Appeal identified a narrow and exceptional category of case saying that the focus is not on the seriousness of the representative’s misconduct but on whether the party personally had any fair opportunity to participate. *“The question is whether the party had a fair opportunity to present their case.”*
15. In Phipps, the claimant was wholly unaware of the hearing, the strike-out warnings, and the orders. She had been misled by her representative and had no chance to protect her position. The Court described this as *“a complete lack of opportunity to engage with the proceedings.”*
16. It was held that the strike-out must result entirely from representative misconduct, not from the party’s own actions. The Court emphasised that the claimant *“was not implicated in any of the representative’s misconduct.”* Where the party has done nothing wrong and has been excluded from the process, fairness may require the judgment to be revisited.
17. The Court held that the Tribunal must consider whether refusing reconsideration would produce a greater injustice than allowing it. The balancing exercise is central to the Rule 68 discretion.
18. The Court noted that such remedies such as negligence claims against a representative may be illusory, particularly where the representative is unregulated or insolvent. The existence of a theoretical claim against the representative does not prevent reconsideration where fairness requires it.
19. The Court observed that warnings and critical orders should be sent to the party personally as well as the representative. It noted that *“had the warnings been sent to the claimant directly, the outcome may have been different.”*
20. The Court concluded that *“the interests of justice required the strike-out to be revoked.”* The interests of justice governs the exercise of discretion under Rule 68.
21. In Outasight the EAT reaffirmed the orthodox position that solicitor failings do not normally justify reopening a judgment. It held that the exceptional category is narrow and applies only where the party has been wholly deprived of any fair opportunity to participate. The EAT emphasised that reconsideration is not justified where the party had *“some knowledge of the proceedings and some opportunity to act.”*
22. The EAT held that negligence or incompetence by a representative *“does not of itself bring the case within the exceptional category.”* The focus is on the party’s opportunity, not the representative’s behaviour. The EAT stated that the

Tribunal must consider “*the position of the party, not merely the conduct of the representative.*”

23. The EAT held that the interests of justice test remains central. The discretion must be exercised “*with regard to the overriding objective.*”
24. In *Outasight*, the claimant had some knowledge of the proceedings and some opportunity to act. The representative’s failings were serious, but the claimant was not wholly excluded from the process. The Employment Appeal Tribunal emphasised that the narrow exception applies only where the party’s lack of opportunity is complete and not attributable to their own conduct.
25. On careful analysis, I find that this case aligns more closely with *Phipps* than with *Outasight*. I find that the Respondent had no actual knowledge of the remedy hearing. The Notice of Hearing was uploaded to the portal, but it was acted upon by the Respondent’s solicitors. The Respondent believed that its solicitors were dealing with the matter and had no reason to suspect that a hearing had been listed. It therefore had no opportunity to prepare evidence, challenge the Schedule of Loss, or make submissions on Polkey, contributory fault, ACAS uplift, or costs.
26. I find that as in *Phipps*, the Respondent had a complete lack of opportunity. The failures of its solicitors were many, significant and unexplained. Significantly, this case is not the only case where the same solicitors have been found not to have kept its clients informed of progress of their case. The Respondent provided a first instance judgment showing this.
27. I considered what the Respondent did once it realised that a judgment had been given. I find that it acted promptly disability-instructing its solicitors and submitting the reconsideration application within days. There is no evidence of tactical disengagement or deliberate non-compliance by the Respondent itself. To the contrary, the Respondent appears to have been chasing its solicitor for information to no avail. It was suggested that the Respondent was at fault in continuing to instruct its solicitor even though it had difficulties in communicating with them. I have find on balance that does not detract from the Respondent being entitled to assume its solicitor was acting on its behalf even though communication was difficult. From what I have seen the dereliction from the Respondent’s solicitor was extreme.
28. The Claimant submits that this case is similar to *Outasight*. I do not agree. There is no finding that the Respondent had partial knowledge of the proceedings or could reasonably have taken steps to engage. I am satisfied that the Respondent’s absence was caused by solicitor default, not by any failure on its own part.
29. Both authorities stress that the focus is on the party’s opportunity, not the representative’s behaviour. Applying that principle here, the Respondent personally had no fair chance to know what was happening, comply with orders, or participate in the remedy hearing. The hearing proceeded entirely on the Claimant’s unchallenged evidence.

30. Finally, both cases recognise that alternative remedies against the representative are not determinative. The question remains whether refusing reconsideration would produce a greater injustice than allowing the matter to be reopened. In the present case, given the substantial financial consequences of the remedy determination and the Respondent's complete lack of opportunity to participate, the interests of justice require reconsideration.
31. I considered whether the Respondent received notice of the remedy hearing listed for 25 September 2025. The notice was not sent to the Respondent itself but was sent via the portal which only the solicitor had access to. I am satisfied that the Respondent was not informed of the date and therefore did not have a fair opportunity to participate in that hearing. This opportunity was denied by the actions (or inactions) of the Respondent's solicitor. As a result, through no fault of its own, the respondent was deprived of the opportunity to attend the hearing and make its representations.
32. On balance, I find that the circumstances here fall within the narrow exception recognised in the authorities, namely where a party, through no fault of its own, has not had a fair opportunity to present its case.
33. As acknowledged by the parties, there was no procedural irregularities in the Tribunal's own processes.
34. Finally, I considered whether reconsideration is necessary in the interests of justice under Rule 68. The remedy determination involved substantial financial consequences. The Respondent's inability to participate caused material prejudice. There are clearly arguments to be had including in relation to contribution and to Polkey. On balance, taking into account the Claimant's submissions about the length of time these proceedings have already lasted, I find that refusing reconsideration would produce a greater injustice than allowing the matter to be reopened.

Conclusion

35. For those reasons, reconsideration is necessary in the interests of justice. The Remedy Judgment and Costs Order are set aside. The provisional hearing discussed at this hearing will go ahead and a separate order will be made to prepare for that hearing.

Approved by:
Employment Judge Martin
Date: 9 July 2026

Sent to the parties on:
Date: 21 July 2026

Notes

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a

request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision. If written reasons are provided they will be placed online.

All judgments (apart from judgments under Rule 51) and any written reasons for the judgments are published, in full, online at <https://www.gov.uk/employment-tribunal-decisions> shortly after a copy has been sent to the claimants and respondents.

If a Tribunal hearing has been recorded, you may request a transcript of the recording. Unless there are exceptional circumstances, you will have to pay for it. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings and accompanying Guidance, which can be found at www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/