



EMPLOYMENT TRIBUNALS

Claimant: Mr R Balogun

Respondent: VF Services (UK) Ltd

RECONSIDERATION JUDGMENT

The claimant's application dated 2 May 2026 for reconsideration of the judgment sent to the parties on 20 April 2026 is refused.

REASONS

1. The claimant's application is for reconsideration of the costs judgment and full reasons promulgated on 20 April 2026. The application and grounds of application were attached to an email along with a number of supporting documents. The respondent, on their own initiative submitted comments on the application in an email dated 8 May 2026. All the above have been considered.
2. The application having been refused at the preliminary consideration stage, no further comments were sought from the parties.
3. The costs judgment related to costs wasted at an ineffective hearing on 18 November 2025 (the "Hearing"). The application for costs was made at that hearing. The application for costs was determined at a later hearing on 5 March 2026 (the "Costs Hearing"). The claimant attended the Costs Hearing and was represented at the Costs Hearing.
4. References in these reasons to paragraph numbers that are in square brackets are references to paragraph numbers from the reasons promulgated with the costs judgment.

The Law

5. An application for reconsideration is an exception to the general principle that (subject to appeal on a point of law) a decision of an Employment Tribunal is final.

The test is whether it is necessary in the interests of justice to reconsider the judgment (rule 70).

6. Rule 70(2) of the 2024 Rules of Procedure requires reconsideration applications to be refused on preliminary consideration when there is no reasonable prospect of the original decision being varied or revoked.
7. The importance of finality was confirmed by the Court of Appeal in **Ministry of Justice v Burton and anor [2016] EWCA Civ 714** in July 2016 where Elias LJ said that:

“the discretion to act in the interests of justice is not open-ended; it should be exercised in a principled way, and the earlier case law cannot be ignored. In particular, the courts have emphasised the importance of finality (Flint v Eastern Electricity Board [1975] ICR 395) which militates against the discretion being exercised too readily...”

8. Similarly in **Liddington v 2Gether NHS Foundation Trust EAT/0002/16** the EAT chaired by Simler P said in paragraph 34 that:

“a request for reconsideration is not an opportunity for a party to seek to re-litigate matters that have already been litigated, or to reargue matters in a different way or by adopting points previously omitted. There is an underlying public policy principle in all judicial proceedings that there should be finality in litigation, and reconsideration applications are a limited exception to that rule. They are not a means by which to have a second bite at the cherry, nor are they intended to provide parties with the opportunity of a rehearing at which the same evidence and the same arguments can be rehearsed but with different emphasis or additional evidence that was previously available being tendered.”

9. Finally, in common with all powers under the 2024 Rules, preliminary consideration under rule 70(2) must be conducted in accordance with the overriding objective which appears in rule 3, namely to deal with cases fairly and justly. This includes dealing with cases in ways which are proportionate to the complexity and importance of the issues, and avoiding delay. This need for fairness applies to all parties to the claim. Achieving finality in litigation is part of a fair and just adjudication.

The Application

10. The bulk of the claimant's application takes the form of numbered questions. These are grouped by reference to the substance of the grounds in those questions and discussed below. Following this the claimant's grounds included a further summative section which discussed separately.

11. Questions 1-10, 14 and 15

- 11.1. These grounds recite arguments that either were raised at the Costs Hearing by the claimant's representative or were matters that could and should have been raised if the claimant wanted to rely on them.
- 11.2. Reconsideration is not a mechanism to enable a party a second chance to reargue their position in a way they could have, but did not, on the first occasion. These grounds of application for reconsideration are of the type referred to in **Liddington v 2Gether NHS Foundation Trust**. They amount to no more than an attempt to "*reargue matters in a different way or by adopting points previously omitted*".
- 11.3. Accordingly, reconsideration on the grounds set out in questions in the application numbered 1-10 inclusive, 14 and 15 is refused.

12. Questions 11 & 12

- 12.1. The grounds set out in these two questions relate to the discussion which occurred at the Hearing. This particular discussion was about the repeated attempts from the claimant's representative to rely on without prejudice documentation in these proceedings.
- 12.2. Paragraph [22] of the costs order reasons explains that the issue of without prejudice documents was not relevant to the costs application and was entirely disregarded. Accordingly, any reference to this as a ground for reconsideration does not raise any reasonable prospect of the original decision being varied or revoked.
- 12.3. Accordingly, reconsideration on the grounds set out in questions in the application numbered 11 & 12 is refused.

13. Questions 13 & 16

- 13.1. These questions raise two distinct grounds that have been combined across both questions.
- 13.2. The first ground relates to the amount of costs the respondent sought.
 - 13.2.1. The amount of costs sought was set out in writing in advance of the Costs Hearing. The claimant's representative could have challenged any specific part of the costs claimed to have been incurred if he had chosen to, either in his written submissions or at the Costs Hearing.
 - 13.2.2. The respondent could have, but chose not to, sought further costs for the costs incurred in attending the Costs Hearing itself.

- 13.2.3. The costs claimed related to time spent that appears to have been entirely proportionate and reasonable for the Hearing. No particular part of the costs claimed were challenged, as recorded at paragraph 37 of the reasons.
- 13.2.4. Reconsideration is not a mechanism to enable a party a second chance to reargue their position in a way they could have, but did not, on the first occasion. This grounds of application for reconsideration is of the type referred to in **Liddington v 2Gether NHS Foundation Trust**. It amounts to no more than an attempt to “*reargue matters in a different way or by adopting points previously omitted*”.
- 13.3. The second ground raised by questions 13 & 16 relates to whether the claimant’s ability to pay the costs awarded should have been taken into account.
- 13.3.1. No supporting documents or evidence regarding the claimant’s ability to pay was produced, either in advanced of the Costs Hearing despite clear orders stating that it should be produced, or at the Costs Hearing.
- 13.3.2. The absence of this supporting evidence was discussed at the outset of the Costs Hearing. It is correct that less weight can be given to a mere assertion that the claimant does not have ability to pay costs, where evidence to support that assertion has been ordered in advance and despite that has not been produced. This was explained to the parties.
- 13.3.3. The alternative would have been an application to postpone the Costs Hearing. Under the 2024 Rules of Procedure (rule 74(2)(c)), any postponement application made less than seven days before a hearing, if granted, triggers an obligation for the Tribunal to consider whether a costs order should be made against the party seeking the postponement.
- 13.3.4. At the Hearing the respondent’s representative confirmed that an application for postponement of the Costs Hearing from the claimant, made at the Costs Hearing, where the reason for the postponement is the claimant’s own failure to comply with orders, would result in a further application for costs.
- 13.3.5. These points were discussed at the Costs Hearing. An adjournment was granted to allow the claimant’s representative to take instructions. Following that, the claimant’s representative confirmed that the claimant did not seek a postponement of the Costs Hearing.

13.3.6. As explained at paragraph [10] of the reasons for the costs judgment the claimant's representative confirmed that his instructions were to proceed with the Costs Hearing. The Tribunal was not invited to take into account the claimant's ability to pay.

13.3.7. Accordingly, the Costs Hearing proceeded on the basis agreed by the claimant's representative, that the Tribunal was not invited to take into account the claimant's ability to pay. Costs having been ordered, it would not be in the interests of justice to allow the claimant to change that position and seek to relitigate and in doing so resist the respondent's costs application by now relying on the claimant's ability to pay.

13.4. Accordingly, reconsideration on the grounds set out in questions in the application numbered 13 and 16 is refused.

14. *General Interests of Justice Argument*

14.1. At the end of the claimant's reconsideration application his representative has set out further grounds titled "*Second, Interests of Justice/disproportionate outcome*".

14.2. This, in part, invites a reconsideration on the basis of fairness, proportionality and taking into account the claimant's ability to pay the costs award. To that extent it adds nothing to the earlier grounds raised and discussed above.

14.3. It does, however, further argue that the claimant had not produced evidence of his means because of his "*mental state*". This was not raised at the Costs Hearing by the claimant or his representative, even when the absence of such evidence was discussed. It was not raised after a short adjournment to allow the claimant's representative to take instructions, from the claimant specifically in relation to the claimant's failure to produce such evidence.

14.4. It is unclear how the claimant's mental state could have prevented his representative from acting by seeking a postponement of the Costs Hearing. This could have been done more than 7 days in advance of the Costs Hearing if he was struggling to obtain from the claimant the relevant evidence regarding the claimant's means, which the claimant had been ordered to disclose in advance of the Costs Hearing.

14.5. The process of reconsideration does not amount to a second chance to better argue a position, or to seek to undo a decision about whether to apply for a postponement, where with hindsight the claimant may have been better advised to seek a postponement of the Costs Hearing to allow for the

production of further relevant evidence, accepting the risk that this may have resulted in a further costs application being made.

- 14.6. This ground of application for reconsideration is of the type referred to in **Liddington v 2Gether NHS Foundation Trust**. It amounts to no more than an attempt to *“have a second bite at the cherry”*. It would not be in the interests of justice to reconsider the decision reached on this ground.
- 14.7. Accordingly, reconsideration on these general interests of justice grounds is refused.

Approved by:

Employment Judge Buzzard
16 June 2026

Judgment sent to the parties on:

7 August 2026

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For the Tribunal: