



EMPLOYMENT TRIBUNALS

Claimant: Ms Niamh Millar

Respondent: NHS England

JUDGMENT

The claimant's application dated 12 June 2026 for reconsideration of the judgment of 28 May 2026 is refused.

REASONS

1. The claimant applies for reconsideration of the Reserved Judgment pursuant to Rule 69 of the Employment Tribunal Rules of Procedure 2024. The Judgment was sent to the parties on 29 May 2026. The application for reconsideration was submitted to the Tribunal on 12 June 2026 but was not referred to the Employment Judge until 10 July 2026. The application concerns the Tribunal's findings in relation to PCP 1 and the alleged failure to make reasonable adjustments under sections 20 and 21 Equality Act 2010.
2. The Tribunal has considered the application at the initial consideration stage. The Tribunal notes that the application was not copied to the respondent. At this stage, the Tribunal has considered the application without seeking representations from the respondent.
3. At this stage, the Tribunal must consider whether there is any reasonable prospect of the Judgment being varied or revoked. If there is not, the application may be refused without seeking representations from the respondent.
4. The Tribunal has carefully considered the claimant's application at the initial consideration stage. Insofar as the application asks where the evidential basis for paragraph 138 of the Judgment is to be found, the references below identify material which was before the Tribunal and which supported the finding made. They are given only to identify the evidential basis for the finding already made. They do not reopen the evidence or add a new reason for the Judgment.

5. The application challenges the Tribunal's assessment of the evidence and seeks to revisit conclusions reached after the hearing. Reconsideration is not a means of rearguing such conclusions. To the extent that the claimant contends that the Tribunal erred in its application of the law to the facts, that is a matter for appeal, not reconsideration. The question is whether reconsideration is necessary in the interests of justice. The application identifies no material matter which was overlooked or misunderstood, no procedural unfairness, and no basis on which reconsideration is necessary in the interests of justice.

PCP 1 and phased return

6. The claimant submits that the Tribunal failed to properly consider the Occupational Health recommendation for an extended phased return and the respondent's alleged failure to implement that adjustment. The Tribunal considered the Occupational Health evidence and the evidence concerning the claimant's return-to-work arrangements. The statutory question was not whether the respondent followed Occupational Health advice in every respect. The Tribunal was required to determine whether the statutory test for a failure to make reasonable adjustments was made out, namely whether:

- (a) the respondent applied a provision, criterion or practice;
- (b) that PCP placed the claimant, as a disabled person, at a substantial disadvantage in comparison with persons who were not disabled; and
- (c) there were steps which it was reasonable for the respondent to have to take to avoid that disadvantage.

7. An OH recommendation is relevant evidence. It is not determinative of the reasonable adjustment claim. The Tribunal found that the evidence did not establish that PCP 1 placed the claimant, as a disabled person, at a substantial disadvantage in comparison with persons who were not disabled. The Tribunal further found that, even if the matters relied upon were capable of amounting to a PCP, the requirements of substantial disadvantage and reasonable adjustment were not met.

8. The claimant's propositions do not displace the Tribunal's assessment of the evidence before it, viewed in the round. The claimant's disagreement with those conclusions provides no basis for reconsideration.

Engagement by the respondent

9. The claimant submits that there was no meaningful engagement by the respondent regarding reasonable adjustments and phased working. That assertion does not undermine the Judgment.

10. The contemporaneous documents before the Tribunal showed that the respondent, through HR and relevant managers, was aware of the Occupational Health report, recognised the claimant's circumstances and engaged regarding potential adjustments. Occupational Health had recommended a phased return. That was relevant. However, the report proceeded on the incorrect basis that the claimant was discussing a return to work, rather than being at work and fit for work at that time (email, p. 549). The respondent noted that error and discussed the position with the claimant. In the letter of 6 October 2023, the respondent identified that any new role would require a 'phased induction process' (p. 631). HR's letter of 23 October 2023 recorded a meeting and referred to the agreed aim of arranging a 'phased orientation into a new assignment' (p. 664).

11. The correspondence also included the email of 17 November 2023 from the Chief Delivery Officer, with whom the claimant had personally engaged regarding her circumstances and potential adjustments (p. 720). In that email, he said that the respondent intended to support her in returning successfully to work. He also stated that, if any arrangements were inappropriate for her 'phased orientation into the ... directorate', she should raise that with named contacts.

12. The contemporaneous documents recorded engagement about support, phased orientation and integration into the role. The claimant's complaint is, in substance, that the engagement was inadequate and did not result in implementation of the adjustment she considered necessary. Those propositions do not displace the Tribunal's assessment of the evidence before it, viewed in the round. They amount to disagreement with the Tribunal's evaluation of the evidence, not a basis for reconsideration.

Paragraph 138 of the Judgment

13. The claimant challenges paragraph 138 of the Judgment, which records that discussions took place regarding working arrangements, planned integration and phased working.

14. The Tribunal is satisfied that the finding was supported by evidence before it. The finding was based on contemporaneous documents in the hearing bundle, including the following. The contemporaneous documentation included references to phased working, phased orientation and support arrangements. The manager was recorded as considering with HR how best to achieve the claimant's transition into the role and to understand 'what support she may need with the process' (p.

724). The Tribunal also had evidence of HR introducing the manager to the claimant and of the manager arranging subsequent discussions with the claimant following the allocation of a temporary role (pp. 725-726). The manager then recorded the discussion and subsequent steps (pp. 727-728), including a plan to 'migrate her into the team' and provide structured support. The claimant's response was: 'Sounds great. Thank you.'

15. The claimant's challenge is, in substance, to the weight and significance which the Tribunal gave to those documents. That does not disclose a basis for reconsideration. It is not necessary in the interests of justice to revisit paragraph 138.

Role of HR and management responsibility

16. The claimant places considerable emphasis upon the role of HR in implementing reasonable adjustments.

17. The duty to make reasonable adjustments is owed by the respondent as employer. Implementation was not, however, a function conducted by HR in isolation. On the evidence before the Tribunal, implementation required engagement between HR, management and the claimant.

18. The evidence was not that responsibility for the claimant's circumstances was left solely with HR. It showed engagement by HR and relevant managers concerning the claimant's working arrangements, integration into the team and support following allocation of a role.

19. The Tribunal notes that PCP 1 was advanced as spanning July 2022 to November 2023. For that reason, the Tribunal also considered the email at p. 182. In that email, Ms Moulds, as the claimant's then putative manager and in advance of the claimant's July 2022 return, proposed a discussion to ensure that the claimant had 'the right return to work plan in place'. She referred to a phased return and invited the claimant to consider what work pattern might ease her back in.

20. The Tribunal referred to that material because it addressed return-to-work arrangements being proposed by the putative manager in advance of the period pleaded and was relevant to the allegation that phased return or return-to-work support was left to HR alone. It supported the Tribunal's assessment that return-to-work arrangements and any adjustments were discussed and considered by managers and staff in the context of the particular role. The evidence did not support the proposition that such arrangements were to be imposed by HR in isolation.

21. The fact that the claimant considers that further or different steps should have been taken in November 2023 does not establish that the statutory duty was breached, still less that reconsideration is necessary in the interests of justice.

Grievance outcome

22. The claimant relies upon the respondent's grievance outcome letter dated 23 January 2025, including findings that aspects of the return-to-work process were not implemented adequately.

23. The Tribunal considered the grievance outcome and the wider evidence relating to the respondent's handling of the claimant's return to work. The grievance outcome was evidence before the Tribunal. It did not bind the Tribunal and was not a substitute for the Tribunal's own findings on the pleaded statutory issues.

24. An acknowledgement in an internal grievance outcome that aspects of a process were not implemented adequately does not of itself establish a breach of sections 20 and 21 Equality Act 2010. The Tribunal was required to determine whether the pleaded PCP existed, whether it placed the claimant at a substantial disadvantage within the meaning of the Equality Act 2010, whether there was a step which it was reasonable for the respondent to have to take to avoid that disadvantage, and whether any such step was not taken.

25. Those were matters for the Tribunal to determine by applying the statutory test to the evidence. The claimant's reliance on the grievance outcome does not displace the Tribunal's assessment of those statutory issues.

Disability knowledge

26. The claimant relies upon the Tribunal's previous finding concerning knowledge of disability and submits that the respondent had constructive knowledge at the material time.

27. The Tribunal's conclusions in relation to PCP 1 did not turn on absence of knowledge. Even assuming knowledge at the material time, that did not dispense with the need for the claimant to establish the existence of a relevant PCP, substantial disadvantage in comparison with persons who were not disabled, a step which it was reasonable for the respondent to have to take to avoid that disadvantage, and a failure to take that step.

28. The Tribunal considered those matters. The claimant's reliance on knowledge does not displace the Tribunal's assessment of PCP, substantial disadvantage or reasonable adjustment.

Conclusion

29. For the reasons set out above, the claimant's propositions do not disclose any basis on which reconsideration is necessary in the interests of justice. There is no reasonable prospect of the Judgment being varied or revoked. The application for reconsideration is therefore refused.

Date: 4 August 2026

Approved by

Employment Judge Harley