



EMPLOYMENT TRIBUNALS

Claimant: Mr M Riaz
Respondent: CMR Surgical Limited
Heard at: Bury St Edmunds (by video)
On: 13 August 2026
Before: Employment Judge Graham
Ms Durrant
Mrs Handley-Howarth

Representation:

Claimant: Mr N O'Brien, Counsel
Respondent: Mr S Maini-Thompson, Counsel

UPON APPLICATION made by letter dated **6 May 2026** to reconsider the judgment dated **23 February 2026** under rule 69 of the Employment Tribunal Procedure Rules 2024:

JUDGMENT

1. The Tribunal considers that it is necessary in the interests of justice to reconsider the judgment dated 23 February 2026.
2. On reconsideration, the decision of the Tribunal to strike out the Claim is revoked, and the Tribunal makes case management orders instead so the claim can proceed to a final hearing.

FULL REASONS

Introduction and application

1. The matter was listed for a five day final hearing to take place commencing on 23 February 2026 to hear the Claimant's complaints of direct race discrimination, harassment, victimisation and automatic unfair dismissal.
2. The case had been the subject of extensive case management, including a public preliminary hearing before Employment Judge Laidler on 4 July 2024 where she clarified the list of issues, and before Employment Judge Brown

on 18 October 2024 where she refused to issue a deposit order but struck out one of the alleged protected disclosures relied upon.

3. There had been a history of non-compliance and delayed non-compliance on the part of the Claimant with respect to mitigation documentation.
4. Following an earlier direction from Employment Judge Tynan, at the start of the liability hearing the Respondent applied for a strike out of the claim on the basis of (i) whether the Claimant's conduct of proceedings had been unreasonable; (ii) whether the Claimant had failed to comply with Tribunal orders; and (iii) whether a fair hearing was no longer possible.
5. The Tribunal refused to strike out the claim due to non-compliance with respect to provision of the mitigation documentation as a fair hearing was still possible, and by the time of the final hearing much of it appeared to have been provided, albeit some information was still redacted.
6. However, the Tribunal was minded to strike out the claim, having accepted the Respondent's arguments that the Tribunal could not have faith in the honesty in what the Claimant told the Tribunal. This was on the basis that within his ET1 dated 26 October 2023 he had ticked the box to confirm he had not obtained new employment since termination, and that had not be true. The Claimant had explained in the hearing that was an error and he was still suffering the effects of his termination at the end of July 2023. The Claimant had in fact obtained a new role briefly which had not worked out. The Tribunal had found that not to be credible as the Claimant later advanced other arguments for not sharing the correct information.
7. In addition, there had been a public preliminary hearing before Employment Judge Brown on 18 October 2024, almost a year later. During that hearing Judge Brown declined to issue a deposit order.
8. The Respondent's former solicitors were Mills and Reeve and their note of the hearing records the judge asking the Claimant about his means and he replied he had no income. The judge pressed the Claimant how he was supporting himself and he replied he had savings of £4,000 and nothing else. That was not true as the Claimant had started a new role only weeks before at the start of September 2024 and he was earning £2,200 a week gross.
9. The Claimant told us that the judge had not asked him about his means which we found unlikely as it is a matter the judge would be required to consider under the Tribunal Rules of Procedure. The Claimant also told us that the note of the hearing from the lawyers had been a lie. We found that incredibly unlikely. Whereas the judgment of Judge Brown had not included a record of the discussions about means, we found it highly unlikely the Claimant was not asked about his means by the Judge, and further unlikely that Mills and Reeves would have lied about it.
10. The Claimant told us that he had been worried about his privacy, he did not wish to share his NI number, and he did not want the Respondent to know where he was working. The Tribunal drew a negative inference from this as it suggested that the decision to withhold the information had been intentional, and secondly that the Claimant must have been asked about

this means at the earlier hearing.

11. In addition, what was being argued did not seem credible as the Claimant had asked the Respondent for a reference, therefore it would have had a good idea where he was working, and secondly his previous employer would surely already have seen his NI number. This did not make sense to the Tribunal and appeared not to be credible. The Tribunal considered this to be an attempt to mislead which it drew a negative inference from.
12. Heavy reliance by the Respondent had been placed upon the judgment in the case of ***Sud v The Mayor and Burgesses and the London Borough of Hounslow* UKEATPA/0182/14/DA** [at 33] and the Tribunal accepted that argument.
13. The Tribunal referred itself to the judgment ***Mayanja v City of Bradford Metropolitan District Council* [2025] EAT 160** where HHJ Tayler cautioned tribunals against making an overarching assessment of credibility that is then relied upon in all further assessments [paragraphs 38 and 39]. The Tribunal determined that in the immediate case, it was unfortunately one of those very rare cases where the Claimant's account has been repeatedly so implausible and so inconsistent, that it renders his evidence unreliable generally and that it had no confidence in the veracity of the Claimant's account.
14. The Tribunal determined that its faith in the honesty of the Claimant's evidence had been fatally undermined and that a fair hearing was no longer possible and it struck out the claim in full.
15. The Tribunal had not been asked to consider the list of issues in the claim, and it did not consider of its own volition to what extent the determination of liability in the claim would turn solely on the Claimant's credibility.
16. On 6 May 2026 the Claimant applied for a Reconsideration and argued that the determination of the claim did not rest solely on the Claimant's credibility but also on the other matters to which we have referred above. The Respondent provided its objections shortly thereafter.
17. On 26 May 2026 the Tribunal wrote to the parties with the decision to list this the matter for a Reconsideration hearing including my provisional view that the application should be granted because the determination of the claim did not rest solely on the Claimant's credibility but also on the other matters such as the documents and the Respondent's evidence, and these were not issues which the Tribunal was addressed on, nor took into consideration, when the original judgment was issued.
18. The costs hearing listed for today to consider the Respondent's application for costs against the Claimant was therefore converted to today's Reconsideration hearing.

Submissions

19. The parties gave detailed submissions orally (as well as in writing from Mr O'Brien) and we have taken those into account and referred to the key arguments in the conclusions section below. In summary the Claimant's

position remained that the final determination of the issues did not turn solely upon his own credibility even if it had been damaged; and for the Respondent it maintained that the Tribunal could have no faith in the honesty in what the Claimant says and as a result he has no prospect of shifting the burden of proof, and Mr Maini-Thompson took us through each of the legal issues which had been identified in the claim.

Law

20. Rule 3 of the Employment Tribunal Rules of Procedure 2024 provide as follows:

Overriding objective

3.—(1) *The overriding objective of these Rules is to enable the Tribunal to deal with cases fairly and justly.*

(2) Dealing with a case fairly and justly includes, so far as practicable—

(a) ensuring that the parties are on an equal footing,

(b) dealing with cases in ways which are proportionate to the complexity and importance of the issues,

(c) avoiding unnecessary formality and seeking flexibility in the proceedings,

(d) avoiding delay, so far as compatible with proper consideration of the issues, and

(e) saving expense.

(3) The Tribunal must seek to give effect to the overriding objective when it—

(a) exercises any power under these Rules, or

(b) interprets any rule or practice direction.

(4) The parties and their representatives must—

(a) assist the Tribunal to further the overriding objective, and

(b) co-operate generally with each other and with the Tribunal.

21. Rule 38 provides:

Strike out

38.—(1) The Tribunal may, on its own initiative or on the application of a party, strike out all or part of a claim, response or reply on any of the following grounds—

...

(b) that the manner in which the proceedings have been conducted by or on behalf of the claimant or the respondent (as the case may be) has been scandalous, unreasonable or vexatious;

(c) for non-compliance with any of these Rules or with an order of the Tribunal;

...

(e) that the Tribunal considers that it is no longer possible to have a fair hearing in respect of the claim, response or reply (or the part to be struck out).

(2) A claim, response or reply may not be struck out unless the party advancing it has been given a reasonable opportunity to make representations, either in writing or, if requested by the party, at a hearing.

22. Part 12 of the Rules provides:

Reconsideration of judgments

Principles

68.—(1) *The Tribunal may, either on its own initiative (which may reflect a request from the Employment Appeal Tribunal) or on the application of a party, reconsider any judgment where it is necessary in the interests of justice to do so.*

(2) *A judgment under reconsideration may be confirmed, varied or revoked.*

(3) *If the judgment under reconsideration is revoked the Tribunal may take the decision again. In doing so, the Tribunal is not required to come to the same conclusion.*

Application for reconsideration

69. *Except where it is made in the course of a hearing, an application for reconsideration must be made in writing setting out why reconsideration is necessary and must be sent to the Tribunal within 14 days of the later of—*

(a) *the date on which the written record of the judgment sought to be reconsidered was sent to the parties, or*

(b) *the date that the written reasons were sent, if these were sent separately.*

Process for reconsideration

70.—(1) *The Tribunal must consider any application made under rule 69 (application for reconsideration).*

(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.

(3) If the application has not been refused under paragraph (2), the Tribunal must send a notice to the parties specifying the period by which any written representations in respect of the application must be received by the Tribunal, and seeking the views of the parties on whether the application can be determined without a hearing. The notice may also set out the Tribunal's provisional views on the application.

(4) If the application has not been refused under paragraph (2), the judgment must be reconsidered at a hearing unless the Tribunal considers, having regard to any written representations provided under paragraph (3), that a hearing is not necessary in the interests of justice.

(5) If the Tribunal determines the application without a hearing the parties must be given a reasonable opportunity to make further written representations in respect of the application.

23. The Court of Appeal in ***Ministry of Justice v Burton and anor* [2016] EWCA Civ 714** observed [at 21] that the discretion to act in the interests of justice is not open ended and should be exercised in a principled way, and it emphasised the importance of finality.

24. The EAT in ***Mayanja v City of Bradford Metropolitan District Council* [2025] EAT 160** cautions tribunals against making an overarching assessment of credibility that is then relied upon in all further assessments. In addition the court held that:

“The decision of the Employment Tribunal was built on foundations of sand because the Employment Tribunal adopted the approach of preferring the evidence of Ms Clipsom to that of the claimant where there was any conflict. If that generalised determination on credibility had not been made, it is unclear whether the decisions would have gone against the claimant in all the other respects.” [39]

25. It is clear therefore that the tribunal should bear in mind that a credibility finding on one matter may not necessarily have the same impact on every legal issue to be decided, thus overarching credibility assessments ought not to be made lightly.

26. In ***Sud v London Borough of Hounslow* UKEAT/0156/14** the EAT upheld the decision to strike out a claim on discovering that the claimant had tampered with medical evidence and tried to mislead the tribunal when applying for a postponement. As per Laing J:

“it is absolutely clear that the Claimant's conduct had been such that a fair trial was no longer possible. The EJ referred in terms to the fact that the Claimant's conduct had fatally undermined the trust that the Tribunal could have in her veracity...” [33]

27. In ***ABN Amro Management Services Ltd and another v Hogben***, **UKEAT/0266/09** the court held that a hopeless or fanciful claim should not be allowed to proceed merely in the hope that cross-examination might uncover something that gives it substance.

Conclusions and decision

28. It is trite law that there is a clear public interest in discrimination complaints and whistleblowing complaints not being struck out at a preliminary stage without hearing the evidence, however this was not a strike out on the basis of prospects of success, it was a strike out on the basis of the Claimant's conduct of proceedings. When considering a strike out due to the conduct of a party the Tribunal must still decide whether a fair hearing is still possible.
29. At the start of this hearing, I raised that point that whereas we recorded in the strike out judgment that the Claimant had informed Judge Laidler at the preliminary hearing in July 2024 that he had been working between September and December 2023, that was not a factor which the Tribunal had taken into consideration when considering the issue of the Claimant's credibility. That fact had been included to record the Claimant's work since termination of employment, but it was not something which we had placed weight on with respect to setting the record straight when it came to correcting the information in the ET1.
30. Mr Maini-Thompson rightly tells me this did not explain why the ET1 was incorrect in the first place, however the fact remains that the true account was provided on that occasion, correcting in July 2024 what had been wrongly recorded in the ET1. This has been a key factor in our consideration as it impacts our earlier finding that the Claimant had repeatedly provided intentionally false information, including within the ET1.
31. The Claimant tells us today that he had also provided a schedule of loss in advance of the hearing with that information on it. That provides some limited further support that the Claimant had attempted by July 2024 to provide the true account that he had been working. That was not a factor we gave any weight to previously.
32. To be clear we can no longer safely rely upon the contents of the ET1 as undermining the Claimant's credibility to the same degree as we had before, given he provided Judge Laidler with information that he had been working post termination, and that was already included in a schedule of loss. Had we considered that fully at the time we would not have reached the same credibility findings. This was a procedural misstep on our part, it is not due to a fault of either of the parties, but it is a matter which the Tribunal ought to have taken into consideration and given due weight when assessing credibility.
33. The Claimant does not appear to seek to challenge our findings about what

happened in the deposit hearing before Judge Brown. We found that the Claimant was asked about his means, he said he had limited savings and had not been working, and that account was untrue. The judge would surely have asked about means at a deposit hearing, and there is no good reason to believe that Mills and Reeve lied about it and fabricated a note of the evidence.

34. We continue to have serious concerns about what the Claimant told Judge Brown, and likewise his explanations to us which ranged from privacy concerns to not wanting to share his NI number and for the Respondent not to know where he was working, did not make a great deal of sense to us. We remain of the view that the Claimant did not provide Judge Brown with the truth on that occasion, and he further did not give us a true account at the last preliminary hearing. The Claimant continues to face serious credibility issues.
35. We have heard the parties' submissions on this application, and Mr Maini-Thompson makes incredibly powerful arguments about why the judgment ought not to be reconsidered and he argues strongly that having formed that view about the Claimant's credibility the Tribunal cannot have any faith in what the Claimant tells the Tribunal here on in.
36. Mr Maini-Thompson has taken us through the list of issues in this case reminding us that the Claimant bears in the initial burden of proof with respect to the discrimination complaints; he tells us that the Claimant's victimisation complaint depends upon the protected act being not being false or made in bad faith; and as to whistleblowing he tells us that the Claimant bears the burden of showing reasonable belief in what the information tends to show and the public interest element. The impact of the damage to the Claimant's credibility upon each of the claims being pursued is a factor the Tribunal failed to consider at the last hearing. This was a second procedural misstep, it was not the fault of either party, it is something we ought to have considered of our own volition.
37. Continued reliance is placed on the case of **Sud**, although it has been clarified that in that case the Claimant had falsified a document therefore the Tribunal could not have any faith in her honesty. In this case there is no suggestion that the documents are forged, it is simply based upon what the Claimant told Judge Brown about his post termination employment, and what he told us about the reasons why. There was no suggestion before us that the documents are unreliable which was the point Mr O'Brien or the Claimant made in the reconsideration application that the determination of the issues does not rest solely on the Claimant's credibility.
38. Mr Maini-Thompson referred us to the case of **ABN Amro Management Services Ltd** which is often relied upon when considering a strikeout of a discrimination claim. That case, in general terms is authority for the principle that a claim should not be allowed to proceed merely in the hope that cross-examination might uncover something that gives it substance. The point being made by the Respondent is that if we cannot believe anything that the Claimant says then the claim is dead in the water and it matters not what the Respondent says in evidence as he will have failed to discharge the burden of proof.

39. We consider that the reliance on **ABN Amro** might be overstated in this context as we are dealing solely with a strike out on the basis of credibility. The case is not authority for a general principle that if the Claimant is not believed on one thing then the whole claim must fail, although we appreciate the point being made that if, as we previously found, the Claimant's credibility was fatally damaged, then it would be hard to see how he could shift the burden of proof. As we have noted, there is a clear public interest in discrimination and whistleblowing claims not being struck out first without hearing the evidence except in obvious cases.
40. I have referred the parties to the judgment in the case of **Mayanja** and in that case HHJ Tayler warned very clearly against making credibility findings which are then relied upon in all further assessments.
41. There is a parallel with this case and an obvious difference. The parallel is that this Tribunal essentially made the decision that the Claimant was not believed about his explanations about his ET1 and what happened before Judge Brown, therefore he could not be believed at all on anything else. However the difference in **Mayanja** is that the Tribunal had at least heard the evidence and made credibility findings on the evidence, in this case we have not heard any of the evidence at all, the claim did not get off the ground.
42. The concern of this Tribunal is as follows. Credibility findings were made which, had there been consideration of what the Claimant told Judge Laidler, would have been less strident. We would not have formed the view that we could have no faith at all in what the Claimant had said as he provided the candid account to Judge Laidler at the July 2024 hearing. If we leave aside the incorrect contents of the ET1, we are left with what the Claimant told Judge Brown and then his explanations to us. We still have serious concerns about the Claimant's credibility based on those matters, there is doubt that the Claimant's credibility as Mr O'Brien appears to recognise, is seriously damaged, however in our view it is not fair to say it is destroyed. We have limited faith in what the Claimant tells us, but that is not the same as no faith.
43. We are also concerned, as Mr O'Brien has said in his reconsideration application and skeleton, is that the Claimant's credibility is just one factor of many when it comes to final determination of the issues in this case. Some of the documents may very well speak for themselves, for example the alleged protected acts and protected disclosures, although we recognise that the reasonable belief still needs to be tested for whistleblowing and the bad faith element needs to be tested for the victimisation complaint, however these are matters which can be resolved in cross examination of the Claimant.
44. The determination of the issues, for example the relationship between the alleged protected act, the protected disclosures, and the termination, are matters which the Respondent can answer and do not depend upon the Claimant's own credibility provided that he is able to persuade the Tribunal that he has carried out something which is protected in the first place.
45. We further remain mindful of that clear guidance in **Mayanja** against making overarching credibility findings, noting that no evidence at all was heard

before the claim was struck out, and we remind ourselves of the strong public interest in discrimination and whistleblowing claims not being struck out without hearing the evidence except in the most obvious cases.

46. The Tribunal had made two procedural missteps at the last hearing, firstly failing to attach weight to what the Claimant had told Judge Laidler, and now that we have done so that has reduced our credibility concerns to some degree, such that we can no longer safely find that the we can have no faith at all in what the Claimant tells us. The Claimant's credibility is damaged but not destroyed. That alone would be a just and equitable reason for reconsidering the strike out.
47. Secondly the Tribunal did not examine what those credibility findings would mean with respect to the list of issues. Having now performed that exercise and forming the view that the Claimant's credibility is damaged not destroyed, it appears to us that much may turn on what the documents say and the Respondent's own evidence. It will be a matter for the final hearing as to whether the Claimant has been able to shift the burden of proof or not, but that will depend upon a number of factors, not merely the Claimant's own credibility.
48. It appears to us that a fair hearing is still possible, and whereas there is some impact on the fairness to the Respondent in revoking the earlier judgment, it will be able to challenge the Claimant's credibility in the final hearing by way of cross examination.
49. With that in mind it is in the interests of justice for the judgment to be reconsidered and to revoke the strike out of the claim, and for it to proceed to a final hearing before a differently constituted Tribunal panel.
50. The future hearing will remain listed via video for the reasons previously given, however we accept the Claimant's explanation that he did not throw the bundle on the table at the last hearing, that reference in the earlier judgment is also revoked.
51. We thank Mr O'Brien for his assistance at short notice, and also to Mr Maini-Thompson for his assistance on this second occasion and helping to move matters forward pragmatically.

Approved by:

Employment Judge Graham
13 August 2026

JUDGMENT SENT TO THE PARTIES ON

18 August 2026

FOR THE TRIBUNAL OFFICE

Notes

All judgments (apart from judgments under Rule 51) and any written full 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 here:

www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/