

RESERVED JUDGMENT



EMPLOYMENT TRIBUNALS

Claimant: Mr PJ Rothwell

Respondent: Islam & Co Limited

Heard at: Liverpool

On: 30 June 2026

Before: Employment Judge Shotter (sitting alone)

REPRESENTATION:

Claimant: In person assisted by Ms A Tee, partner

Respondent: Mr Flood, counsel.

JUDGMENT having been sent to the parties on **18 August 2026** and written reasons having been requested by the claimant on the 30 August 2026 in accordance with Rule 60(4) of the Employment Tribunals Rules of Procedure 2024, the following reasons are provided:

REASONS

Background

1. This is a hearing dealing with the claimant's application for a reconsideration and the respondent's application for costs. With the agreement of the parties the reconsideration application was dealt with first, and following oral judgment and reasons being given, the costs application. The claimant could take breaks whenever he wanted, and breaks were given. The claimant was supported by his partner, Ms Tees.
2. I had before me an agreed bundle totalling 340 documents which included the claimant's reconsideration application dated 15 March 2026 and the respondent's rebuttal dated 7 April 2026. The claimant also made an application for a minor clarification at para 38 in an email dated 23 March 2026 which was not raised by either party today and I am satisfied that the Judgment referred to above accurately reflected the evidence before me at the liability hearing and no further clarification was needed.

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3. I have heard and taken into account oral submissions from the claimant and by Mr Flood, which I do not intend to repeat in any great detail given both largely duplicated the written documents referred to above. I gave oral reasons and the Judgment only was sent to the parties on the 18 August 2026 following which the claimant requested reasons and a transcript of the hearing on the 30 August 2026. The hearing was recorded and there are no exceptional circumstances whereby the claimant will not be required to pay the fee. The claimant is referred to the link referenced below and duplicated here: www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/
4. Turning to the claimant's reconsideration application I have followed the same numbering as that set out in the 15 March 2026 application.

Procedural unfairness: respondent's non-compliance and rushed timetable

5. The Judgment deals with what transpired at the outset of the liability hearing. Both parties had been litigants in person until the second day of the liability hearing when the respondent was represented by Ms Halsall of counsel on the 6 & 7 January 2026 and by Mr Flood today. Today, the claimant has referred me to documents in the bundle pointing the finger at the respondent and the Tribunal for non-compliance of earlier case management orders prior to the liability hearing. At the final hearing I took the view that both parties were to blame and attempted to find a way forward in the interests of justice bearing in mind proceedings were issued in 2024 and if the hearing was adjourned it would not be re-listed until 2027 at the earliest.
6. I have revisited the notes taken by me at the liability hearing and it is clear there was a dispute about documents in 2025 and the claimant's application for an unless order rejected, the claimant's supplementary bundle was disputed by the respondent and cutting across the arguments as to who was to blame (reignited by the claimant during his reconsideration hearing) my notes reflect the following was agreed which included an adjournment until the next day in order for the claimant to prepare, which he did.:

"Agreed – parties would email bundles across – R will send to C WS this pm after discussion about relevant docs in supplemental bundle. Both agreed this was a fair way of proceeding. No adjournment. Listing now in 2027 – too late – fair hearing bought into question."

7. It is notable that at no stage during the liability hearing did the claimant give any indication that he had trouble preparing and could not cross-examine witnesses due to this. The claimant gave evidence first with breaks, for example, 20 minutes at one stage. The claimant cross examined Mr Islam from 2.29pm referring to witness statements and documents in the bundle for the rest of the afternoon, before continuing with his cross-examination at 10.05 to 11.16 the next day with

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no indication that he was unable to ask all the questions on cross-examination. It is clear from my notes that I also asked clarifying questions.

8. From 12.19 on the second day of the liability hearing the claimant cross-examined Towfiq Zimmerman referring to pages in the bundle and his witness statements, until 13.06 and did not raise any issue with lack of time or preparation.
9. The claimant made oral submissions from 15.07 to 15.40 after a 35 minute adjournment giving him time to prepare following the respondent's oral submissions. The claimant dealt with the credibility of the respondent's witnesses and the issues in the case, for example, arguing the respondent produced no evidence that the claimant had indicated he did not want to auto enrol into the pension scheme and maintained he had never seen the contract before. The claimant argued that absence of payslips undermined the respondent's credibility.
10. At the end of the hearing the claimant was given time to look at the holiday calculator on the Government website to calculate the holiday he said he was owed, after the respondent conceded that the payslip on termination would not have shown holiday pay. At no stage did the claimant give any indication that he had not been given sufficient time to prepare properly, and on reviewing my notes it is clear he had and as a consequence, asked a number of questions in cross-examination.
11. Taking into account the agreement reached with the parties and the consideration given to the claimant throughout the liability hearing, as reflected in the Judgment, the claimant had and was given the opportunity to prepare his case in full.

Contract forgery: digital evidence overlooked

12. The allegation was a serious one and dealt with in detail within the Judgment and Reasons, which I do not intend to repeat here. During the reconsideration hearing the claimant appeared to suggest that it was the respondent's fault he was unable to obtain expert handwriting evidence, which was not a persuasive argument. It is notable that at no stage did the claimant seek the Tribunal's leave to adduce expert evidence. In short, the claimant is attempting to re-argue his case dissatisfied with the reasons provided in the Judgment. This is not a good reason for me to set aside the judgment on the basis that the claimant fell short in preparing his case before the final hearing.

Ground 3: Disclosure / SAR Issues

13. The respondent is correct that the claimant had not pointed to any documents that would have had a material impact on the outcome, and as I set out above, there was a discussion at the outset about the documents, lack of documents, the claimant's supplementary bundle of documents and later on during the trial, the

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lack of payslips which benefitted the claimant who succeeded in his holiday pay claim. The claimant's SAR application was not relevant, and he had sufficient opportunity to make an application for specific discovery before and during the liability hearing.

Holiday pay and withheld records

14. The burden of proof was on the claimant to prove on the balance of probabilities that he was owed holidays and how many were outstanding on termination. The claimant was given the opportunity to provide this information, even after submissions (see above) after I accepted that no information had been given to the claimant about his holiday pay and it was for the claimant to state what dates he was absent on holiday from work.

Pension Auto-Enrolment

15. Today the claimant clarified that whilst he had not produced any evidence to the effect that an employee cannot validly opt out orally under an auto-enrolment scheme, I as an Employment Judge should have been aware of the requirement for a written opt-out form. I was not aware, and the Judgment is clear on what I believed was the contractual position at the time on the balance of probabilities.

Discrimination time limits: continuing act misapplied

16. The claimant's argument that there was a continuing act has been dealt with in the Judgment, and in the alternative, I found there was no race and religion discrimination for the reasons set out. The less favourable treatment was not the way the respondent dealt with the claimant or his grievance in the list of Issues, but the alleged treatment to Towfiq Zimmerman who was Bengali Muslim when he was allegedly given ACA training and financial support, study leave and payment of exam fees. The claimant's submissions on continuing act are misconceived.

Resignation motive: temporary nature of new role and rejected £28,500 role

17. The claimant is seeking to re-argue the point. The judgment is clear on my findings in relation to the claimant's resignation and his reason for it. In re-reading my notes taken at the liability hearing the following was recorded by me during the claimant's oral submissions: "R cited Corr v Leeds – this strengthens my argument, up until the point I resigned the issue could have been resolved I would have remained in employment with the respondent. I resigned in direct response as grievance mishandling, not for new job, which was mitigation, there was no unreasonable delay." The claimant had sufficient opportunity to argue his case, including during submissions. The fact that he had allegedly turned down a job paying £28,500 before joining the respondent had little if any relevance to his resignation, and the claimant's attempts at this reconsideration hearing to persuade me that it had was an attempt to relitigate and re-argue his position.

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ACAS Code breach on grievance handling – uplift not considered

18. The claimant accepted today that his grievance did not include a claim for holiday pay, which arose on termination. This is the only claim he succeeded on and the ACAS uplift is not applicable.

Comparator credibility issues and missing key witness

19. The claimant is seeking to re-argue his case, and in my notes I cannot find any reference to the claimant cross-examining on this basis, although he did cross-examine Mr Islam on tax experience, when the contract was signed, the grievance, salary and so on. Mr TwofiqUzzaman was not cross-examined on his name, and it is difficult to understand the relevance of the claimant's point.

The law

20. Rule 68 of the 2024 Employment Tribunal Rules provides that reconsideration of a judgment will take place where the Employment Tribunal considers that it is necessary in the interests of justice to do so.

“68. Principles

- 21.(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.
- 22.(2) A judgment under reconsideration may be confirmed, varied or revoked.
- 23.(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.”
24. Rule 69 provides that applications for reconsiderations of judgments should be presented in writing within 14 days of the date on which the written record of the judgment was sent to the parties and should set out why reconsideration is necessary. In this case, the Claimant submitted his application within the stipulated time period, and I was satisfied that his explanation of why he considered reconsideration was necessary had been set out and listed it for hearing.
25. Rule 70(1) notes that the Tribunal must consider any application made under Rule 69, and Rule 70(2) notes that if the Tribunal considers that there is no reasonable prospect of the original decision being varied or revoked then the application must be refused, and the Tribunal must inform the parties of the refusal. Alternatively, Rules 70(3) to (5) set out the process that is then to be followed for further consideration of the application.

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26. In *Outasight VB Ltd v Brown* 2015 ICR D11, EAT, HHJ Eady QC (as she then was) indicated that the wording “*necessary in the interests of justice*” in Rule 70¹ allows employment tribunals a broad discretion to determine whether reconsideration of a judgment is appropriate in the circumstances. She confirmed that that discretion must be exercised judicially, “*which means having regard not only to the interests of the party seeking the review or reconsideration, but also to the interests of the other party to the litigation and to the public interest requirement that there should, so far as possible, be finality of litigation*”.

27. In *AIC Ltd v The Federal Airports Authority of Nigeria* [2020] EWCA Civ 1585 the Court of Appeal provided guidance on the correct approach the courts should take when determining an application to reconsider. Coulson LJ held that there were two distinct questions which the court must ask itself.

“The first was whether the application to reconsider should be entertained in principle; if the court answered the question in the negative, that was the end of the matter. Coulson LJ provided further guidance on first question when he said: ‘In my view, the court should be looking for a sufficiently compelling reason that may justify reconsideration; something which might outweigh the importance of finality and justify the opening up of a question or questions which, following the pronouncement of the order in open court, appeared to have been finally answered...the court should instinctively be looking for something which has been missed or otherwise gone awry: a mistake or a fundamental misapprehension; a fundamental piece of evidence or a point of law that was overlooked. The court’s undoubted jurisdiction to reconsider its earlier order cannot be permitted to become a gateway for a second round of wide-ranging debate.”

When considering an application to reconsider, the courts need to ensure that their jurisdiction must, as Coulson LJ put it, be ‘carefully patrolled’ so that the principle of finality in litigation is not undermined.

Conclusion

28. A judgement can be reconsidered where it is *necessary in the interests of justice* to do. There is an underlying public policy principle in all proceedings of a judicial nature that there should be finality in litigation and reconsiderations are a limited exception to the general rule that judgements should not be reopened and relitigated. It is not a method by which a disappointed party to proceedings can get a second bite of the cherry. In *Stevenson v Golden Wonder Ltd* 1977 IRLR 474, EAT, Lord McDonald said review provisions that they were ‘not intended to provide parties with the opportunity of a rehearing at which the same evidence can be rehearsed with different emphasis, or further evidence adduced which was available before’. This is precisely what the claimant is seeking to do. The claimant’s application for a reconsideration is refused and dismissed taking into account legal principles, the overriding objective and interests of justice.

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Costs

29. In an application dated 7 April 2026 the respondent applied for a costs order against the Claimant on the basis that (a) the Claimant had pursued claims which had no reasonable prospects of success; and/or (b) the Claimant acted unreasonably in the bringing and conduct of the proceedings and the respondent's counsel made a without prejudice offer to settle the case with the Claimant in relation to holiday pay, which the Claimant rejected. The same arguments apply to the reconsideration application.
30. The claimant disputes that he should be ordered to pay costs on the basis that he had acted in good faith, had succeeded in the holiday pay claim, the respondent contributed to the delay and "disrupted" the timetable, and that the without prejudice settlement offer was made one hour before the end of the final hearing to which the claimant did not agree because he believed it would jeopardise any argument on a continuing act.

Claimant's means

31. I have considered the claimant's means following evidence on oath given by the claimant which was not largely disputed by the respondent. It is accepted the claimant is on a temporary contract and earns £28,154 gross per annum. The contract is due to end in October 2026, it may be extended and if it is the claimant may receive a wage rise in April 2027. The claimant is presently seeking alternative employment. The claimant lives with his parents and contributes £200 per month to his parents and £260 per month to his partner in addition paying a contribution for food/groceries. He is paid a net income of £1928 per month and I agree with Mr Flood that the claimant has a substantial disposable income every month, which I have assessed at between £1000 and £1207 approximately given a number of the expenses listed are discretionary lifestyle payments for items such as gym, haircuts, clothes, charity, gifts, holidays, savings and so on.

Law

1. Rule 74. When a costs order or a preparation time order may or must be made
- (1) The Tribunal may make a costs order or a preparation time order (as appropriate) on its own initiative or on the application of a party or, in respect of a costs order under rule 73(1)(b), a witness who has attended or has been ordered to attend to give oral evidence at a hearing.
- (2) The Tribunal must consider making a costs order or a preparation time order where it considers that—
- (a) a party (or that party's representative) has acted vexatiously, abusively, disruptively or otherwise unreasonably in either the bringing of the proceedings, or part of it, or the way that the proceedings, or part of it, have been conducted,
- (b) any claim, response or reply had no reasonable prospect of success, or

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(c) ...

76. The amount of a costs order

2. (1) A costs order may order the paying party to pay—
3. (a) the receiving party a specified amount, not exceeding £20,000, in respect of the costs of the receiving party.

Case law and conclusion

4. In *Gee v Shell UK Ltd [2003] IRLR 82*, the Court of Appeal reiterated that orders for costs in Employment Tribunals remain the exception, rather than the rule.
5. The claimant was a litigant in person. In *AQ Ltd v Holden [2012] IRLR 648*, the Employment Appeal Tribunal held that, while the threshold tests remain the same whether a litigant is professionally represented or not, a Tribunal should not judge a litigant in person by the standards of a professional representative.
6. It is accepted that the legal test for an award of costs is the same, whatever the claim. However, the Employment Tribunal in the case of *Madu v Loughborough College [2025] EAT 52* noted, in many discrimination claims, there will be features that require specialist consideration when that legal test is applied. In that case, the Employment Appeal Tribunal held that a Tribunal had erred when ordering Mr Madu, who had been unrepresented at the outset of his claim, to pay £20,000 in costs. The Tribunal had not taken account of the difficulties faced by an unrepresented claimant who is trying to determine whether a discrimination claim has no reasonable prospects of success. In *Saka v Fitzroy Robinson Ltd UKEAT/0241/00* the Employment Appeal Tribunal referred to the “very real difficulties” which face a Claimant in a discrimination claim noting that a lack of overt evidence may, and often does, make it very difficult for a claimant to know whether they have real prospects of success until the respondents explanation for the conduct which is the subject of the claim is given and tested.
7. In *Madu* above, the Employment Appeal Tribunal drew a parallel between cost orders in discrimination claims and the approach of the House of Lords in the case of *Anwu v Southbank Students Union [2001] IRLR 305*, to the strike out of discrimination claims. The House of Lords held that discrimination claims should not be struck out as an abuse of process for having no reasonable prospects of success, except in **the plainest and most obvious cases** [my emphasis]. It was a matter of public interest that Tribunals should examine the merits and particular facts of discrimination claims. The House of Lords noted that “discrimination cases are generally fact-sensitive, and their proper determination is always vital in our pluralistic society. In this field, perhaps more than any other, the bias in favour of a claim being examined on the merits or demerits of its particular facts is a matter of high public interest.”
8. These legal principles are relevant to the claimant’s complaint of discrimination, however, I find that the claimant’s complaint of direct discrimination had no reasonable prospect of success given the claimant’s less than credible evidence

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on his comparator and the training allegedly offered, and I do not accept the claimant's argument that (a) he did not resign for more money and (b) that his claim concerning the contract and "fabricated" document had a basis.

Deciding whether to take into account the claimant's means

9. I decided in the particular circumstances of this case that it was just and equitable to take into account the claimant's means. The Tribunal is not limited to considering the current state of affairs but may consider what a party could realistically pay over a reasonable period: *Vaughan v London Borough of Lewisham* (No 2) [2013] IRLR 713, UKEAT/0533/12/SM, see para 26. In addition, *Vaughan* held that it was not wrong in principle to make costs order even though no deposit order had been made, or the appellant could not in her present financial circumstances afford to pay where the Tribunal formed a view, might be able to meet it in due course.
10. In *Arrowsmith v Nottingham Trent University* - UKEAT/477/10 the EAT held that while a lie on its own would not necessarily be sufficient to find an award of costs, it was for the Tribunal to examine the context and the nature, gravity and effect of the lie in determining the unreasonableness of the alleged conduct. I found the claimant had made a case "materially dependent on advancing assertions that were untrue..." *Daleside Nursing v Mathew* UKEAT/0519/08/RN, para 10 - recognising that a witness who gives less than credible evidence is potential unreasonable conduct but does not necessarily in every case lead to a costs order.

Costs incurred by the respondent in defending the claimant's reconsideration application.

11. I concluded the claimant's application for a reconsideration was misconceived and had no reasonable prospects of success and ordered the claimant to pay counsel's fees of £1500 as it is likely any VAT will be recoverable by the respondent in any event.

Costs incurred by the respondent in defending the claimant's claims

12. Turning to the liability hearing, I note the respondent did not seek strike out and/or a deposit order, and no offer was made until the costs had been incurred, i.e. near the end of the liability hearing. I also note that the claimant succeeded in his holiday pay claim, concluding the claimant should not be ordered to pay costs on a full liability basis. I have taken a broad brush to the factual matrix as set out in the Judgment and the evidence of means, concluding that the proper exercise of my discretionary power was to order the figure of £4000 (including the costs of today) and not the £7000 sought by the respondent having regard to the impact the claimant's fabricated allegations on this litigation and his ability to pay. The costs of £4000 are a contribution towards counsel's fees only.
13. *Ms M Kapoor V The Governing Body Of Barnhill Community High School* – UKEAT/0352/13/RN – in this case the claimant had put forward false evidence and the EAT held that the Tribunal should have considered all the circumstances of the case, including the procedural history and the extent to which the claimant's lies

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had made material impact on its actual findings. I have looked at the whole picture in this case as set out in Judgment, satisfied there had been unreasonable conduct on the part of the claimant, in bringing and continuing with the proceedings that resulted in costs being incurred by the respondent at the final hearing and the reconsideration hearing. I find that the same analysis applies to the way in which the claimant has approached this litigation as that set out in *Kapoor* above, particularly the claimant's lack of credibility (paras 6 onwards in the Reserved Judgment and Reasons sent to the parties on 10 March 2026).

Conclusion referring to the above and applying legal principles

14. The Tribunal's starting point is that costs do not automatically follow the event and an award for costs does not automatically follow in the event of dishonesty by a party. In arriving at the figure of £4,000 I have attempted to take a broad-brush view of the costs including the behaviour of both parties leading to the final hearing. The purpose of the award is compensatory and not punitive; *Lodwick v London Borough of Southward* [2004] ICR 884 and the judgment of Underhill J in *Barnsley Metropolitan borough Council v Yerrakalva* [2011] EWCA Civ 1255.
15. With reference to the EAT decision in *Mr M Willis V 1) GWB Harthills LLP 2) Miss Hester Russell 3) Mrs Elizabeth Lord* - [2025] EAT 79 HHJ Taylor set out at para.5 the application of Rule 74 and 82 of the 2024 Rules by splitting them into three stages dealt with by the Tribunal.
16. Stage 1: is there conduct that could warrant making a costs order ("threshold conduct"). For the reasons set out above, the Tribunal is satisfied that the claims except for the holiday pay, had no reasonable prospect of success and claimant was guilty of unreasonable conduct that could merit the making of a costs order.
17. Stage 2: if so, should an award of costs be made ("the discretionary decision") – the Employment Tribunal may have regard to ability to pay at this stage. In the case I had regard to ability to pay at both stage 2 and 3. At stage 2 HHJ Taylor made reference to the following; "[a] wide range of factors can be relevant, such as the party's subjective belief in the merits of a complaint or defence, the type of complaint and whether the party had the benefit of legal advice...An Employment Tribunal might conclude where a party is guilty of threshold conduct, and there are no other factors pointing against making a costs order, that a party's total inability to pay is such that no costs order should be made. In other cases, the Employment Tribunal might decide it is appropriate to make a costs order but take account of the party's ability to pay in limiting the award when making the Stage 3 quantum decision. "
18. I considered all the circumstances of this case including the position when the dust of battle had settled and formed a view that without the benefit of hindsight, the claimant ought to have appreciated that the majority of the discrimination claims had no reasonable prospect of success. The problem for the claimant is that that several allegations had no factual basis, and as recorded by the Tribunal in the Judgment, the claimant gave less than credible evidence about them.

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19. Costs do not follow the event; however, statute provides that a costs order may be made where there has been unreasonable conduct, and that includes in discrimination cases. The claimant acted unreasonably when he issued these proceedings making untrue allegations and continued to advance these claims to the end, including during oral submissions.

20. The next stage to be considered is stage 3.

Stage 3: what amount of costs should be awarded

21. The Tribunal refers to its findings above on the broad-brush calculation of the £4000 in a total costs order.

22. HHJ Taylor suggested that at Stage 3 having dealt with stages 1 and 2 the Tribunal should ask itself: if so, what amount of costs should be awarded (“the quantum decision”) and it may also have regard to ability to pay at this stage. As set out above, I took into account the claimant’s ability to pay, satisfied that the award of £4000 can be met by the claimant over time and his ability to pay may improve if the claimant obtains alternative employment and/or is retained by his present employer with a salary rise in April 2027.

23. In conclusion, I recognise it is rare for costs orders to be made in this jurisdiction and that a Tribunal has a wide discretion to award costs where it considers there has been unreasonable conduct at any stage during the proceedings, and where a claim had no reasonable prospect of success from its inception. I found the claimant had acted unreasonably and the majority of his claims had no reasonable prospect of success from inception. Accordingly, the claimant is ordered to pay to the respondent a contribution towards its legal costs in the sum of £4,000.

Approved by:

Employment Judge Shotter

16 September 2026

Judgment sent to the parties on:

25 September 2026

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For the Tribunal:

Notes

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Judgments (apart from judgments under rule 51) and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.

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/