



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4103815/2025

Held in Glasgow in chambers on 31 August 2026

Employment Judge D Hoey

Ms Koziol

**Claimant
In person**

Lightbody of Hamilton Limited

**Respondent
Represented by:
Mr Gorasia
(Barrister)
Instructed by Messrs
Analysis Legal**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The claimant's application dated 7 July 2026 for reconsideration of the judgment dated 2 July 2026 is refused, it not being necessary in the interests of justice to reconsider the judgment.

REASONS

1. In a judgment dated 2 July 2026 I considered the evidence that had been led during a 5 day Hearing covering victimisation, harassment and reasonable adjustments, made findings of fact and applied the law. The claim was ill founded and it was dismissed.
2. The claimant sought reconsideration of the decision in an 8 page communication dated 7 July 2026. I considered that there were reasonable prospects of varying the decision. The parties provided their submissions and agreed that the matter would be determined in chambers.

The law

3. 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 68). What is in the interests of justice is a matter for the Tribunal on the facts.

4. It has been held that the reconsideration procedure is not there to act as a quasi-appeal on a point of law where one party or the other considers that the tribunal has erred. Thus in **Trimble v Supertravel Ltd** [1982] IRLR 451, Browne-Wilkinson P stated that 'If the matter has been ventilated and properly argued [at the original hearing] then errors of law of that kind fall to be corrected by this appeal tribunal'. The Employment Appeal Tribunal in that case emphasised that the reconsideration procedure is there so that where there has been an oversight or 'some procedural occurrence' such that a party can be said not to have had a fair opportunity to present their argument on a point of substance, they can bring the matter back before the tribunal for adjudication.
5. The interests of justice must be considered not only from the point of view of the party seeking the reconsideration, but also from the point of view of the party resisting it. An important consideration is the weighty interest of the other party and the public interest that there should, as far as possible, be finality of litigation. As the Court of Appeal described it in **Phipps v Priory Education Services** [2023] EWCA Civ 652 at paragraph 36: 'An application for reconsideration must include a weighing of the injustice to the Applicant if reconsideration is refused against the injustice to the Respondent if it is granted, also giving weight to the public interest in the finality of litigation'.
6. The focus should be on where the interests of justice lie and whether the party in question has had a fair opportunity to be heard in the first instance, rather than whether the facts of what happened can be neatly categorised as a 'procedural mishap' or 'procedural shortcoming'. Those terms were used in **Trimble** to describe the sort of error that might be corrected on a review, and may account for some examples where it is in the interests of justice for a reconsideration to be granted, but Underhill J in **Newcastle Upon Tyne City Council v Marsden** UKEAT/0393/09 at paragraph 16 warned against them being used as a straitjacket.
7. In **Ebury Partners UK Ltd v Davis** [2023] EAT 40 the Employment Appeal Tribunal held that a reconsideration hearing is not an opportunity for a Tribunal to generally review its original decision and amend that decision if it has changed its mind. Ultimately the test is whether reconsideration is necessary in the interests of justice.
8. When considering reconsideration regard must also be had to the overriding objective in Rule 3 to ensure matters are fair and just.

The application

9. The application was broken into 3 separate parts.
10. The **first part** of the application was headed "implementation of reasonable adjustments". The essence of the claimant's complaint was

that the evidence before the Tribunal was such that the complaint of the respondent's failure to comply with the duty to make reasonable adjustments ought to have been upheld.

11. Leaving aside that the purpose of reconsideration is not to revisit the decision but to apply the law as set out above, I carefully considered the submissions of the claimant and those of the respondent. The claimant argued "The Tribunal accepted that: the claimant was disabled; the respondent knew of that disability; the PCP requiring rotation placed her at a substantial disadvantage; and the claimant could undertake only a limited number of suitable duties. Against those findings, the practical implementation of the Occupational Health recommendations became the central issue in determining whether the respondent had complied with its duty to make reasonable adjustments." The claimant submitted that, given the evidence, the respondent had failed in its duty.
12. What, however, the claimant missed in that analysis was that the complaint the claimant had made had not been upheld because the PCP the claimant relied upon in respect of this complaint had not been established in evidence as having been applied to her. During the Hearing much time was spent clarifying precisely what the nature of the complaints were. This was an essential part of the process which the claimant understood. Time was given to the claimant to ensure the issues were properly and comprehensively set out. The PCP on which the complaint was based was that of "rotating workers across production lines". The importance of being precise as to the complaints was understood by the claimant which was why time was afforded in clarifying this precisely and why the evidence was led dealt with the specific points set out in the issues to be determined.
13. Paragraphs 129 and 130 dealt with this issue as follows:
 - "129. ...The first complaint related to the **work rotation during a shift**. The respondent admitted it had a provision, criterion or practice (PCP) of rotating workers across production lines and that the PCP would have put the claimant at a substantial disadvantage in comparison with those who are not disabled. The key issue in relation to this complaint was whether or not the PCP was applied to the claimant. The respondent's position was that the claimant was not rotated fully across production lines. In other words, the shift rotation to which the claimant was subject differed to that applied to other employees.
 130. The respondent's agent's submission has merit. The claimant was not subject to the same shift rotation as other staff. The claimant's position was unique. The shift pattern to which she was subject was bespoke to her and took full account of the duties of which she was capable. The PCP relied upon – rotating workers across production

lines – had not been applied to the claimant. That complaint is ill founded.”

14. The significance of this was that since the PCP had not been applied to the claimant (from the evidence before the Tribunal), the complaint was ill founded. The claimant’s summary of the decision in her reconsideration application omitted this crucial part. As one of the fundamental requirements for a reasonable adjustments complaint had not been established on the evidence, the complaint had to be dismissed – irrespective of the steps taken or not taken and the reasonableness of those steps. It is not in the interests of justice to vary the decision.
15. The **second issue** the claimant raised was headed “the Tribunal’s reasoning about the oiling station”. This relates to the failure to comply with the reasonable adjustments complaint. A central part of the claimant’s case was that she argued she ought to have been able to remain working at the oiling station (and not work in other roles). The reconsideration application refers to the evidence in connection with this issue and analyses the evidence in great detail.
16. However, the reconsideration application fails to note that the reasonable adjustments complaint could not succeed as the PCP the claimant relied upon had not been shown to have been applied to the claimant. On that basis the complaint was not well founded and the issues around the oiling station were not relevant. It is not possible to consider the steps that would have been reasonable to have taken unless the PCP was applied to the claimant. It is not in the interests of justice to vary the decision.
17. **Finally** the claimant refers to “the Tribunal’s reasoning regarding the provision of a suitable chair”. The claimant argues the judgment fails to engage with the evidence and sets out what occupational health and others said about the chair and argues that the duty had been breached.
18. The respondent’s agent submits that the claimant is seeking to re-litigate the claim as what is stated in the reconsideration application does not fairly or properly reflect the position at the Hearing. That is an accurate summary of the position. The issue in respect of the chair had been carefully and clearly focussed by the parties at the outset of the Hearing. The issue was whether the claimant was provided with an “adjustable” chair, that was “suitable” for the claimant. This is set out at paragraphs 134 to 139.
19. From my analysis of the evidence in relation to the issue that was advanced before the Tribunal, the respondent had provided the claimant with an adjustable chair that was suitable for the claimant. While there was an occasion the chair was faulty, the respondent remedied the issue and ensured an adjustable chair that was suitable to the claimant was provided. My judgment set out the evidence that was led, the issues and my decision applying the law to the facts as found in light of the issues.

20. As the respondent's agent notes, one of the claimant's witnesses, Mr Scott, confirmed that as far as he knew the claimant had been given a suitable chair during her shift by the respondent. Mr Scott is the claimant's partner and worked with her at the relevant time. His evidence on this point was clearly relevant as he would have known what the position was. He believed the chair was suitable. I considered his evidence to be accurate.
21. At paragraphs 136 and 137 I set out in detail why I considered the chair to have been suitable. At paragraphs 52 and 54 I noted what the claimant's managers had said about the chair, which I found to be accurate. The respondent had shown the claimant had been provided with a chair that was suitable for her. That was a complete answer to the complaint that had been presented to the Tribunal.
22. The respondent's agent notes that in the claimant's reconsideration application she argues "suitability" of the chair was the central issue but that at the hearing the key issue was said to be whether or not an adjustable chair that was suitable for the claimant had been provided. That is correct. The evidence before the Tribunal focused on whether the claimant had been provided with an adjustable chair that was suitable for the claimant. The evidence before the Tribunal was that this had been provided. It is notable that the claimant had not suggested to any of the respondent's witnesses the issue that is now said to have been key with regard to the medical suitability of the chair that was provided.
23. I consider that the respondent's agent's submission that: "the claimant is seeking to shift her claim post judgment, this matter having been discussed between the Tribunal and the claimant during closing submissions" to be accurate. The claimant had been asked clearly what the issue with the chair was and the claimant had relied upon the fact she said that on occasion a chair had not been provided to her and that on occasion when a chair had been present it was faulty. That was the position set out by the claimant when the issues to be considered were dealt with and during submissions. The issue now being advanced was not the issue raised at the Hearing (and not the issue that the claimant agreed represented her complaint) and accordingly was not an issue about which evidence was led and not an issue dealt with in the judgment.
24. The respondent's agent is correct to note that "At no point did the claimant state to the Tribunal that the adjustable chairs that the respondent had were not suitable". The issue raised was whether the chairs were not provided or when one was provided it was broken. There was no suggestion during the Hearing that the chairs that were provided (and which were not broken) were not suitable in the sense now advanced. The material referred to in the reconsideration application was not material referred to at the Hearing or put to the respondent's witnesses. I explained to the claimant at the outset of the Hearing the importance of ensuring the

issues were accurate since they represented the questions in respect of which evidence would be led and which would be answered in the judgment. This was understood by the claimant.

25. The respondent's agent is correct to submit that the claimant is seeking to "reategorise her claim that none of the chairs provided was medically suitable for her". The evidence before the Tribunal focused on what the issues were (which is not what is being suggested in the reconsideration application). The judgment dealt with the issues the claimant set out in light of the evidence that was led.
26. The respondent's agent notes: "Further evidence of the disingenuous representations now being made by the claimant in this regard can be seen in the claimant's own ET1 form at box 8.2 (page 12 of the trial bundle) where she complains that 'I was given broken chairs or made to wait hours before receiving one'. There is no complaint being made about the chairs not being 'suitable' if they were in working order". The claimant had made it clear that the issue was the absence of a chair or the fact the chair she was given was broken. The issue was not, as is now contended, whether the chairs provided were medically suitable. A party is not entitled to use reconsideration as a vehicle to pursue a complaint that was not advanced at the Hearing. The case that was presented was fully dealt with.
27. It is not in the interests of justice to reconsider the decision which was based upon the issues the parties had set out and the claim that was advanced before the Tribunal. From the evidence presented to the Tribunal, the claimant had been given an adjustable chair that was suitable for her. The decision that was reached was correct from the evidence.

Further issues arising in the application

28. The claimant's reconsideration application raises three further points I require to address.
29. The first is headed "**Timing of Incident** on 19 July 2025". The claimant argues that the timing I set out in the judgment is incorrect given the CCTV footage. This is dealt with at paragraph 19. I took the time of the incident from the time set out in Mr McAlonan's witness statement which the claimant had accepted (and not challenged in cross examination). In their response to the reconsideration application the respondent's agent accepts the CCTV footage shows the incident happened before 11am. I accept the respondent's agent's submission that the timing of the incident is immaterial and had no bearing on my conclusions as to the claimant's complaints. The claimant does not suggest the error in some way results in the substance of the decision being wrong. In any event I am satisfied the decision as to the complaints was correct. The error had no basis upon my judgment as to the substance of the complaints. It is not therefore in the interests of justice to vary the decision.

30. The second issue relates to an error I made at paragraph 8 of the judgment where I state the **bundle ran to 229 pages**. The bundle in fact ran to 339 pages. I referred to the pages to which the parties referred and considered all the relevant productions during the Hearing and in deliberations and in my judgment. This was a typographical error and had no impact upon the decision. The error does not make it in the interests of justice to vary the decision.
31. The final issue that I require to deal with is the claimant's concern as to my **assessment of the evidence**. I set out at length my observations on the evidence at paragraphs 43 to 59. Having heard each of the witnesses and considered the written evidence, I took time to assess the evidence as against each of the issues to ensure relevant facts were found and the law applied. As the respondent's agent notes, a number of the allegations made by the claimant were not based on documentation at all but involved an assessment of whether or not a particular event occurred. That was one reason why the credibility of a witness was relevant since I had to assess on the balance of probabilities what was more likely to have occurred – looking at the context and full surrounding circumstances. I took into account the contemporaneous documents and full factual matrix in assessing each of the factual disputes. I again checked the position in relation to each witness and the decision I reached and I am satisfied it is not in the interest of justice to vary the decision.

Taking a step back

32. I took a step back in relation to the facts and decision in light of the legal principles. I must take account of the facts as I had found in light of the evidence led. Having taken time to reflect on those facts and having considered each of the points made by the claimant both individually and cumulatively, I have concluded that it is not in the interests of justice to vary the decision. The claimant has not raised any points that would have resulted in me reaching a different view.
33. The reconsideration application is therefore refused.

Date sent to parties

14 September 2026