EMPLOYMENT TRIBUNALS

Claimant: X

Respondent: Y

JUDGMENT

1. The Claimant's second application for reconsideration of the **re**considered judgment of 11 February 2026 is **REFUSED** pursuant to rule 70(2) of the Employment Tribunal Procedure Rules 2024, **SAVE** in respect of the question of whether the weekly pay figure for the purposes of calculating the statutory cap should also include the weekly pension contribution of the Respondent employer. That aspect will proceed under rule 70(3).

REASONS

Background

1. This case has a long background. That background is summarised in paragraphs 1 and 2 of the written reasons ("the May 2026 Reasons") accompanying the last judgment refusing reconsideration. It is not necessary for me to repeat it here.

2. In response to that judgment, the Claimant has made a further application for reconsideration by correspondence sent on 3 July and 6 July.

Scope of the current application

3. I treat the Claimant's application as a single application albeit comprised in two emails. They both satisfy the requirement of being submitted within the 14-day time limit set down in rule 69. I have noted his emails were copied to the Respondent's representative on this occasion, as required under rule 91.

4. I apologise there has been some delay in undertaking this review of the prospects.

Applicable law and procedure

5. I adopt all that I said in paragraphs 5 to 11 of the May 2026 Reasons. I have approached the current application in accordance with the same principles. The only additional point I would stress is that rule70(2) expressly contemplates an application for reconsideration shall be refused at the prospects stage, when substantially the same application has already been made and refused.

Discussion and conclusion

6. I do not say this latest application is identical to the previous application. There are areas of overlap, however, and repetitive themes. I have teased out some relevant differences which I deem properly within the scope of reconsideration. Although they amount to reformulated arguments and calculations for increasing compensation, there are discernible differences in how the Claimant makes his points. I deal with these below.

7. On the other hand, the Claimant makes significant complaint about matters which are either not within the scope of the reconsideration process, or if they are, it is very far from obvious how they are.

8. Some of his contentions amount to very serious allegations. With all due respect to the Claimant, he has also advanced these in a highly diffuse and haphazard fashion. Broadly they encompass: alleged underpayment and misleading calculation of interest by the Respondent, “deception” in respect of the adjusted recoupment notice, dishonesty by the Respondent’s representatives in respect of their client’s insured status and dishonesty by the Respondent personally, both to the ET and to the police.

9. Bluntly, I have not been able to follow the detail of the various allegations at all reliably. Taken at their very highest and subject of course to proof, these allegations appear potentially to raise issues of contempt (something the Claimant would need to pursue using a quite different process) and of enforcement (equally not something the ET itself deals with directly). I appreciate this will not be obvious to the Claimant, but neither are within the province of reconsideration. The actual powers available to me under the rules are limited. I can also safely conclude that the Claimant is not seeking revocation of the judgment; he has substantially enforced it and received nearly all of the money due. In reality, he wants me to make an upwards variation to the award.

10. The “new” aspects of the Claimant’s application I consider to be within the scope of the reconsideration process, and my corresponding analysis of the prospects test is this:

11. **Incorporation of ACAS uplift into a week’s pay**

10.1 Application: That the statutory cap applied should be calculated as 52 x week’s pay where a week’s pay = the net weekly pay of £376.48 plus 25% reflecting the ACAS uplift. (This would make the figure for a “week’s pay” £470.60 instead of £437.77 and would in turn make the statutory cap £24, 471.)

10.2 Reasons why the prospects test fails: The May 2026 Reasons set out s.124 (1ZA)(b) by which the Claimant cannot be granted a compensatory award greater than £118, 223 or "52 multiplied by a week's pay of the person concerned".

10.3 The meaning of "week's pay" is defined under statute (ss 220 to 229 and s.234 ERA). The precise definition differs according to whether the employee has normal working hours. It takes into account, for example, if they work shifts. In essence, the definitions are jigged so that the week's pay amounts to the **gross** contractual remuneration an employee is entitled to be paid when undertaking their normal weekly hours. This harks back to the contract. There is no provision, under any of the statutory methods of calculating a "week's pay", in which an additional sum by reference to the ACAS uplift can be included. ACAS is not contractual remuneration at all. I am afraid the Claimant is entirely wrong about this. He comments that this result means the "ET judgment rules are fundamentally flawed" and the "ACAS Uplift award...totally pointless". With respect to him, this is the regime that Parliament has imposed.

10.4 There is thus no prospect at all of revising the judgment on these grounds.

(b) Including pension contributions in "a week's pay"
10.5 Application: Unpaid pension contributions should be paid separately from the compensatory award but limited to 52 weeks.

12. **10.6 Reasons why the application passes the prospect test.** Although that is how the Claimant formulates his application, pension loss is recoverable, if at all, as part of the compensatory award rather than as a separate award outside it. That is because it is part of the loss sustained in consequence of the dismissal. I nevertheless consider that, read fairly, the substance of his argument raises the question whether the Respondent's employer pension contributions should also have been included in calculating a week's pay for the purposes of the statutory cap.

13. I note that he has confined his pension loss to 52 weeks, so he does apply a notional cap. In doing so, what he seeks is the same result as if "a week's pay" for the purpose of the statutory cap included the employer's pension contributions. (i.e., if the statutory cap was 52 x (gross weekly pay of £437.77 + £9.53) = £23, 259, this would make the compensatory award £495 more). This is the amount by which he is seeking to have the judgment varied (see capital letter "G" in his email of 3 July 2026).

14. On the evidence currently before me, this is not an argument that reaches the high bar of having "no" reasonable prospect of resulting in variation of the judgment. There is support in case law for employer's pension contributions being included in the calculation of a week's pay for the purposes of the statutory cap (**University of Sunderland v Drossou UKEAT/0341/16/RN).**

15. I would caution however, that even if the legal principle is applicable to the present case, this is very far from saying the application will succeed. There will be other considerations for me in a balancing exercise which is governed by the interests of justice. The factors in play, inevitably, will include that this issue has not been taken previously when the Claimant was professionally represented and is contrary in fact to what the Claimant's own solicitors advanced when the judgment first arose for reconsideration. I have noted the Claimant's recent application suggests his solicitors' agreement to initial variation may not have been given with his instructions. This will need to be considered alongside the strong public interest, shared by the parties, in finality in litigation. The latter is a powerful factor weighing against variation (see paragraph 10 of the May 2026 Reasons).

16. I am entitled to express these provisional views at this stage under rule 70(3). Of course, I remain open minded about the ultimate conclusion. Both parties now have their opportunity to make representations, beginning first with the question of whether I should conduct a hearing to determine the matter. Directions concerning this will follow under separate cover.

Approved by Tribunal Judge Miller-Varey
acting as an Employment Judge

21 September 2026

JUDGMENT SENT TO THE PARTIES ON

15 October 2026

FOR THE TRIBUNAL OFFICE