Harvey on Industrial Relations and Employment Law

This Bulletin covers material available to **1 March**.

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LEGISLATION

Changes to ET and EAT rules of procedure

The Tribunal Procedure and Employment Tribunal Procedure (Amendment) Regulations 2026 SI 2026/115 amend the 2024 ET Rules. According to the explanatory notes, this is in order to:

— clarify the availability of dispute resolution appointments and judicial assessments as a means of alternative dispute resolution;

— enable the tribunal to reject the whole or part of a claim or an employer's contract claim, or dismiss the whole or part of a response or reply to an employer's contract claim, if no grounds are set out for it;

— enable the tribunal, if it considers it is in the interests of justice, to disapply rule 22 (effect of non-presentation) if it does not receive a reply to an employer's contract claim in the specified period of time;

— enable the tribunal to direct a party to provide a draft of a case management order to the tribunal or another party;

— enable the tribunal to provide summary reasons for a judgment orally at a hearing and subsequently in writing where requested;

— ensure that any written summary reasons for a judgment do not need to be entered into the Register (as defined in r 2(1) of the ET Rules);

— add a further exception to the requirement to enter copies of judgments into the Register in respect of a refusal of an application to reconsider a judgment, if the refusal is on the grounds that substantially the same application for reconsideration has already been made and refused;

— consolidate and align requirements to provide copies of decisions to a referring court;

— homogenise references in the rules to written records.

The Employment Appeal Tribunal (Amendment) Rules 2026 SI 2026/114 make changes to the 1993 EAT Rules consequential on the changes made to the ET Rules.

Both come into force on 2 March 2026 and will be incorporated into Div R in Issue 334.

DIVISION AI CATEGORIES OF WORKER

Worker status; part-time worker; reserve armed forces member; whether covered

AI [83.05], AI [134], AI [135.03]

***Advocate General for Scotland v Milroy [2026] EAT 25* (*29 January 2026, unreported*)**

The claimant was a member of the reserve forces. When he retired he brought ET proceedings for breach of the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000 SI 2000/1551, based on allegedly unfavourable treatment in relation to his pay and pension calculation. A primary question that arose was whether he was a 'worker' for these purposes at all. The ET held that he was and the MoD appealed.

Lord Fairley P in the EAT dismissed the appeal. On that primary question it was held that the ET had properly applied the rulings in the leading case of *Ministry of Justice v O'Brien* [2013] UKSC 6, [2013] IRLR 315, [2013] ICR 499, where a part-time judge was held to qualify as a 'worker' even though there was (as here with the MoD) no contractual nexus. This was done by praying in aid the Part-time Worker Directive 97/81/EC under which it is relevant to look at whether there was an employment relationship more broadly. In considering this, the ET had taken into account that the claimant was not self-employed (not in itself determinative but relevant), had applied (from *O'Brien* in the ECJ) the test of whether the relationship in question was 'substantially different' from a normal employer/employee relationship and had weighed up all the relevant factors of both similarity and dissimilarity with such a relationship. Its decision, that this case was on the facts similar to that of the judge in *O'Brien,* was therefore one that was open to it, and the Ministry's arguments that it was 'clearly wrong' were rejected. The EAT went on to uphold the ET also on the specific grounds of less favourable treatment in relation to pay and pension.

Who is the employer? secondment arrangements

AI [132.02]

***Bank of Africa UK plc v Hassani [2026] EAT 27* (*11 February 2026, unreported*)**

The question of who is or was 'the employer' does not arise very often, but it did here in a context where the lines of control, etc may well become blurred, ie where the employee has been subject to a relatively lengthy secondment to

another organisation. Have they become the employee of that organisation? The decision of Lord Fairley P in the EAT suggests that this is possible, but likely to be rare.

The claimant was employed by a bank, BCME Ltd, from 2013. In September 2016 she was seconded to work for the respondent BAUK Ltd, a subsidiary of BCME. The secondment documentation clearly said that she was to remain employed by BCME. In 2021 the secondment ended and she returned to work at BCME. Towards the end of it there had been serious disagreements with her managers. She claimed that while at BAUK she had suffered several detriments for having made protected disclosures and that an attempt had been made by them to dismiss her from one of her roles. In her action she named BAUK as first respondent and two of the managers there. There were multiple points at issue as to the alleged detriments, but a primary point as to her claim of automatically unfair whistleblowing dismissal was that it could only succeed if BAUK had *become* her employer.

The ET held that it had (from earlier in 2021 in the middle of the disagreements, when she said they were trying to get rid of her) but the EAT allowed the appeal against this. The judgment says that some of the evidence was complicated by a failure to distinguish properly between the end of a secondment and a dismissal. Moreover, although the ET had got this right it then erred in taking into consideration vague notions such as BCME 'rescinding its control' to the MD of BAUK, and allowing the latter to 'step into the shoes of the employer'. None of this involved the employee in any deliberate change of status which in law (absent, for example, a TUPE transfer) required there to be a common law *novation* of the contract of employment, which would have involved all three parties. Even if there had been a subjective intention of BCME and BAUK to change, that would not have been sufficient. For authority, the judgment cites *Clark v Harney, Westwood and Riegels* [2021] IRLR 528, EAT and *Dynasystems for Trade and General Consulting Ltd v Moseley* UKEAT/0091/17, which are considered at **AI [132.03]**, **AI [132.04]**. Point (d) of the guidance given in *Clark* acknowledges the possibility of a change of employer, but envisages a legally acceptable novation based in a clear pattern of behaviour and the judgment here states that *Dynasystems,* while again referring to a 'seamless and consistent pattern of behaviour', is not to be construed as allowing a contract which initially reflected the parties' intention to be changed at a later date without reference to one of those parties. On the facts here, this was a secondment agreement and remained such throughout.

DIVISION AII CONTRACTS OF EMPLOYMENT

Incorporation of terms; implied incorporation of a collective agreement; contractual status of agreed procedures

AII [47], AII [71], AII [308.03]

Dr MN v NHS Foundation Trust L [2026] EWCA Civ 71

The claimant, a consultant doctor, sought declaratory relief to prevent his Trust from continuing with a formal investigation into him which he said was being done in breach of contract. In particular, the collective agreement in question (Maintaining High Professional Standards, MHPS) stipulated that in these circumstances it was the Medical Director who was to be the case manager, but here that person had delegated the job to the Director of Corporate Affairs. The High Court upheld his claim and the Trust appealed. The primary question was whether the MHPS procedure was incorporated into his contract *at all*. The Trust argued that it was merely procedural guidance and not apt for incorporation. However, the Court of Appeal disagreed and dismissed the appeal.

The arguments for each side contain the classic questions about the implied incorporation of collective agreements, as set out in the text at **AII [47]** ff and **AII [71]** and affirmed most recently in *USDAW v Tesco Stores Ltd* [2024] UKSC 28, [2024] IRLR 998 (see **AII [23.08]**). The decision in favour of incorporation cites in particular the factors that the natural meaning of the relevant provision was in mandatory terms, its incorporation would not be unworkable in practice, any implied power to delegate would be restricted to extreme circumstances such as conflicts of interest or illness and, perhaps most importantly, the potentially grave implications for a consultant's career and reputation of an adverse finding, meaning that contractual procedural safeguards such as requiring involvement of the most senior management were of great importance.

One of the cases relied on is *Hussain v Surrey and Sussex Healthcare NHS Trust* [2011] EWHC 1670, [2012] Med LR 163 which is considered in relation to the contractual effect of internal procedures at **AII [308.03]**; the judgment quotes the judge's summary there of the relevant factors in these cases, which is set out in that paragraph, and it is interesting to note that that case also concerned the applicability of the MHPS and again the result was that the relevant procedural requirements were indeed incorporated.

DIVISION DI UNFAIR DISMISSAL

Reason for the dismissal; more than one reason

DI [870]

***Chand v EE Ltd [2026] EAT 17* (*11 February 2026, unreported*)**

This decision of Lord Fairley in the EAT is a good example of the approach that an ET should take to cases of multiple or composite reasons for

dismissal (given that the statute requires identification of the reason or, if more than one, the principal reason). The claimant was dismissed for gross misconduct based on four episodes which were considered to show fraud and which had been operating on the mind of the dismissing officer. On the claimant's complaint for unfair dismissal, the ET found that none of these episodes disclosed fraud *but* went on to hold that the fourth episode did independently constitute a serious breach of procedure which could and did justify dismissal. However, it did not make a finding that that breach was foremost in the dismissing officer's mind. The claimant appealed, arguing that having found the four episodes and the alleged fraud to have been the operating factors and that the employer had not proved these, the result should have been an immediate finding of unfair dismissal. The EAT agreed and upheld the appeal, substituting a result of unfairness. In doing so, it relied on the leading cases of *Smith v City of Glasgow DC* [1987] IRLR 326, [1989] ICR 796, HL and *Robinson v Combat Stress* UKEAT/0310/14 (5 December 2014, unreported) which are considered at **DI [872]**, **DI [872.01]**. The ET here had made the mistake of relying on, not what had actually swayed the employer but on another ground which *could* have justified dismissal. At [33] the judgment states:

> '*Robinson v. Combat Stress* is entirely consistent with *Smith*. The point made in *Robinson* is simply that a dismissal for misconduct will not necessarily be unfair if the employer proves what was, in fact, the principal reason amongst a series of reasons and also that he acted reasonably in treating that principal reason as a basis for dismissal. As *Robinson* also makes clear, in any case of dismissal for conduct it is necessary for the Tribunal to consider the subjective question of what, in fact, was the principal reason for the dismissal. That is not an exercise in deciding what the decision-maker could have decided. Rather, it is an analysis of what the decision-maker did in fact decide.'

One other side point to note is that the case for the claimant also included an attack on the basic range of reasonable responses test (which the ET had applied properly). It was argued that the case which had cemented it into place in the modern law, *Foley v Post Office* [2000] IRLR 827, [2000] ICR 1283, CA (see **DI [975.02]**), was wrongly decided and should be subject to a leapfrog appeal to the Supreme Court. However, given its primary finding on the appeal, the EAT said it was not necessary to consider this point. Can there be discerned the hiss of head of steam building up here (see **DI [975.03]**)?

Reasonableness; procedural fairness; appeals

DI [1013], DI [1016]

***Milrine v DHL Services Ltd [2026] EAT 31* (*13 February 2026, unreported*)**

The claimant was absent from work for two years for medical reasons. The decision was taken to dismiss him. He sought to appeal, but this went badly

wrong. The appointed officer declined to hear the appeal and the replacement did not turn up for the hearing; the claimant was then asked who he wanted to hear it and to suggest dates, but in fact the hearing did not occur at all. The claimant had started ET proceedings by contacting ACAS, in the belief that that meant he could no longer appeal. When the ET heard his unfair dismissal claim, it dismissed it, concentrating on the substantive fairness and merely commenting on the events surrounding the appeal.

The EAT under Judge Clarke allowed the claimant's appeal. Citing the usual suspects of the case law on appeals, the judgment at [40] sums them up as establishing that:

(1) failure to offer an appeal or providing one that is procedurally defective can on its own make a dismissal unfair, but there is no rule to that effect and it remains a factor;

(2) there is also no rule that this is so only if a proper appeal can be shown to have been potentially effective;

(3) if, however, it is shown that the dismissal would have happened anyway, the result is still an unfair dismissal, but that factor can be taken into account on fixing the remedy (the classic *Polkey* outcome).

Here, the failures were so clear that only one outcome was possible and the EAT not only allowed the appeal, but substituted a decision of unfairness itself. Two incidental points are worth noticing. First, to the above general principles, the judgment adds that if an ET is to hold a dismissal still fair in spite of appeal irregularities, then the more striking the defects, the more the ET must explain exactly why it was still fair (which had not been done here). Secondly, unusually for an unfair dismissal case, this one was heard with side members who clearly had played an important part in the decision, the judgment noting at [44] that they said that they 'had never seen an appeal quite like this'.

DIVISION DII DETRIMENT

Health and safety detriment; safety officers

DII [79]

***Bryce v Active Security Solutions Ltd [2026] EAT 16* (*21 January 2026, unreported*)**

When a licensed door supervisor (or, per the judgment, 'a bouncer') was sent home after an incident involving the police, he brought several ET complaints, including for detriment contrary to the ERA 1996 s 44(1)(a) **Q [668.14]**. This protects from detriment a person who has been 'designated' by the employer to carry out health and safety functions. The claimant here argued that his functions in regulating entry to premises had a health and safety element. The ET rejected this claim, partly because there had been no detriment, but also because s 44(1)(a) did not apply to him.

He appealed but Lord Fairley P in the EAT dismissed his appeal. His problem was the leading authority on the subsection, the judgment of Eady J

in *Castano v London General Transport Services Ltd* [2020] IRLR 417, EAT where it was held that the reference to being designated was intended to apply to a situation where a particular employee has been designated *over and above their ordinary duties* to carry out specific activities in connection with preventing or reducing risks to health and safety, essentially a health and safety officer function. The fact that a job may have some incidental health and safety duties as part of the job does not qualify. To get around this, the claimant argued that this was too restrictive an interpretation, generally and in the light of the backing Health and Safety Directive 89/391 and should not be followed by the EAT as it was 'manifestly wrong' (under the *British Gas* principles). However, the EAT here disapproved of this argument and followed the existing law. One interesting point about this was that under the Directive designated employees must be given 'adequate time' to fulfil their obligations, 'strongly suggesting that their normal duties and the designated health and safety role are to be regarded as conceptually different'. Given this decision, it was unnecessary to rule on whether there had been a detriment at all.

DIVISION L EQUALITY

Religion or belief; direct discrimination; justifiable objection to the way in which the belief is manifested

L [213.02]

***Ngole v Touchstone Leeds [2026] EAT 29* (*16 February 2026, unreported*)**

Two commonplaces about discrimination law are that there can be an inherent conflict between different protected characteristics and that the distinction between penalising someone for holding a protected belief and doing so for putting it forward in an objectionable manner can be thin and needs to be approached with care. Both of these can be seen in this decision of Judge Tayler in the EAT.

The respondent charity operated in the area of mental health and well-being services; it had particularly strong connection with the LGBTQ+ community. It sought a new member of staff as a discharge mental health worker. The claimant, who had a masters in social work and had been working with residential children, applied for the post. He was interviewed and initially offered the post, subject to references. When these were thought to be inadequate, a manager googled him and found press reports about litigation he had brought against his university which had put him off a course because of his Christian beliefs, particularly that: (1) a marriage can only be between a man and a woman; and (2) sex is biologically immutable (note, this claim was initially unsuccessful, but succeeded before the Court of Appeal: *R* (*Ngole*) *v University of Sheffield* [2019] EWCA Civ 1127). In the light of this, given fears as to how he would be received by some of the charity's clients and the reputational damage with LGBTQ+ organisations, the job offer was withdrawn. In further conversations, he said that he was prepared to give assurances that he would not discriminate between clients, but at a further

meeting the charity said it was not convinced and could not take the risk. The offer remained withdrawn and he brought ET proceedings, including for direct religion/belief discrimination.

The ET found for him, but only in relation to certain parts of the facts, finding justification in relation to others. His appeal to the EAT was upheld. Applying the key cases of *Bank Mellat v HM Treasury* [2013] UKSC 39, [2014] AC 700, *Page v NHS Trust Development Authority* [2021] EWCA Civ 255, [2021] IRLR 391, [2021] ICR 941 and *Higgs v Farmor's School* [2025] EWCA Civ 109, [2025] IRLR 368 which are considered in the text, it was held that the ET had not sufficiently addressed each individual aspect of his treatment in order to apply a proportionality-based test of justification, and these matters were remitted to the ET for reconsideration. The judgment relies heavily on Underhill LJ's judgment in *Higgs*, quoting his summary at the end with its strong affirmation of the difference between objecting to the way a person expresses their belief and objecting to the very belief itself. Here, an ET must be astute to make sure that the former is not a smoke screen for the latter (see the text at **L [213.11]**). At [74] the judgment contains this guidance:

> 'In a case in which it is asserted that a person has been subjected to detriment, or dismissed, because of an inappropriate manifestation of a protected belief or beliefs it may be helpful to ask:
>
> 1. what is, or were, the reason, or reasons, for the treatment
>
> 2. in respect of each reason:
>
> 2.1 was it genuinely an objection to the manifestation of the belief rather than the holding of belief itself – if it was merely the holding of the belief the treatment cannot be justified
>
> 2.2 if the reason for the treatment was the manifestation of the belief, was there something objectionable or inappropriate in the manifestation of the belief – if not the treatment cannot be justified
>
> 2.3 if the reason for the treatment was something objectionable or inappropriate in the manifestation of the belief, was the treatment prescribed by law and proportionate – applying the *Bank Mellat* test – i.e. 2.3.1 whether the objective of the measure is sufficiently important to justify the limitation of a protected right 2.3.2 whether the measure is rationally connected to the objective 2.3.2 whether a less intrusive measure could have been used without unacceptably compromising the achievement of the objective, and 2.3.4 whether, balancing the severity of the measure's effects on the rights of the persons to whom it applies against the importance of the objective, to the extent that the measure will contribute to its achievement, the former outweighs the latter.
>
> Where there was more than one reason for the treatment, the analysis may not be the same for each reason.'

Direct discrimination; less favourable treatment

L [235]

Thomas v Tindall Riley [2026] IRLR 173, EAT

Direct discrimination cases under the EqA 2010 s 13 **Q [1466]** can involve some complex arguments about comparators and defences, but this case before Carr DHCJ in the EAT shows that a prior requirement that features less often, ie whether there has been any less favourable treatment in the first place, is still of importance.

The claimant was offered a permanent post with her existing employer at a salary of £100,000 pa plus a signing on bonus of £10,000. She considered that this was less than she merited, estimating this at £115,000. She rejected the offer. Subsequently, Ms S was appointed to an equivalent post at a salary of £100,000. As she was ten years younger, the claimant brought a complaint of direct age discrimination. Her argument was that on top of Ms S's salary it had cost the firm £15,000 to recruit her which made her total the £115,000 that the claimant said she had requested. The respondent firm argued that there was no less favourable treatment here and so no possibility of direct discrimination succeeding. The ET agreed and rejected the claim. The claimant appealed but the EAT dismissed the appeal. It agreed with the respondent that what the claimant meant was that, having in salary terms been more favourably treated than Ms S, she should have been treated even more favourably. There was thus no less favourable treatment and the s 13 claim failed.

DIVISION PI PRACTICE AND PROCEDURE

Presentation of the claim; whether it can sensibly be responded to

PI [205], PI [305.03]

Scottish Ambulance Service Board v Chapman [2026] ICR 118, EAT

When a piece of legislation uses the word 'shall' it tends to mean it. This case before Lady Haldane in the EAT concerned its use in (now) rule 13(1) of the ET Rules SI 2024/1155 **R [3610]** which states that if the ET staff find that an application falls within one of the categories set out there they shall refer it to an EJ who, if they agree (in the case of the first four) must reject it (r 2(2)). On the facts here, the staff and EJ appear to have found a way round that, but it was disapproved.

The claimant submitted an ET1 alleging discrimination, ticking the box for 'disability', but failing then to give details of disability or the alleged discrimination, as required. The staff admitted the claim and referred it to an EJ who made an order that the claimant must provide the missing material within 14 days. The respondent was then informed of this, and objected because, it said, the original claim was such that, under r 13(1)(b), it was 'in a form that cannot sensibly be responded to'. The respondent appealed, arguing that this procedure was contrary to r 13(1) and (2). The EAT agreed

and remitted the case to a different EJ. In *Secretary of State for Business, Energy and Industrial Strategy v Parry* [2018] EWCA Civ 672, [2018] ICR 1807 the Court of Appeal said that sub-para (1)(b) must be applied realistically and may not rule out a claim where (as there) the employer is perfectly aware of the basis for the claim, *but* the point was that the instant case was not an example of this and the employer could *not* be assumed to be so aware. When *Parry* is discussed at **PI [306.01]** Bean LJ is cited as saying that there may however still be cases where sub-para (1)(b) will still bite and where rejection of the claim for lack of details will be the appropriate course. Interestingly, he instances particularly discrimination cases such as the instant one, where the judgment points out the possibly wide ambit of the law and facts here.

Employment tribunals; false testimony; contempt of court

PI [675.26]

Ajao v Commerzbank AG [2026] EWCA Civ 147

Although ETs are not courts of record, the law of contempt does apply to them. The text at **PI [675.26]** gives this case as an example where the complaint by the respondent was of deliberate falsehoods by the losing claimant. It cites the judgment of Eady J in allowing a contempt action to proceed, to the effect that while a judge must be careful here, it is also the case that parties must be deterred from giving false testimony. The end result of the case can now be seen. The trial judge found the allegations proved and imposed a two-year sentence which was to be immediate, not suspended, according to sentencing guidelines. On the claimant's appeal, the Court of Appeal have upheld the judgment on liability and also the imposition of an immediate sentence of imprisonment, but cut the period to eight months.

ACAS Conciliation; COT3; effect of a general release

PI [693]

Darlington v London Borough of Islington [2026] EAT 11
(*13 January 2026, unreported*)

The claimant was employed by the council in one of its schools. She raised certain safeguarding issues and complained about practices at the school to OFSTED. She left her employment. When she then applied for a job at another school run by the council; it was made conditional on a reference about her time at the first school. This was unfavourable and she did not get the job. She threatened ET proceedings, arguing that the unfavourable reference was because of her protected disclosures. Following negotiations involving ACAS she reached an agreement with the council which resulted in a COT3. This provided for the initial reference to be withdrawn and replaced with a new one and then, in relation to her agreement not to proceed with action, it said:

> 'The employee accepts and agrees that the terms set out in this agreement are in full and final settlement of all and any claims which

> the Employee has or may have in the future against the School, the Employer or any of its governors, officers or employees whether arising from the employment with the Employer, its termination or from events occurring after this agreement has been entered including, but not limited to, claims under …the Employments Rights Act 1996… excluding any claims by the Employee to enforce this agreement, any personal injury claims which have not arisen as at the date of this agreement, and any claims in relation to the Employee's accrued pension entitlements.'

When she reapplied for the job at the second school she was interviewed and a reference requested; the replacement reference was sent but she was still refused the job. She maintained that this was still because of her actions at the first school and brought proceedings for whistleblowing detriment under the ERA 1996 s 47B. The council sought to have these struck out because they were covered by the COT3. The ET agreed and dismissed the claim. She appealed to the EAT arguing that this new claim was not covered by the COT3, being separate and distinct. However, Lord Fairley P upheld the ET's decision. A COT3 has to be interpreted and applied according to its particular wording and here the aim was to compromise all existing and potential future claims. The claimant had argued that such an interpretation would mean that the council could continue to victimise her 'for the rest of her career'. However, the answer to that lay in the terms of the approval of the agreement which was to bar future claims arising from her allegations that she had made protected disclosures *while she was on the respondent's employment at the first school.*

Restriction of proceedings orders; relevant factors

PI [675.11]

Attorney-General v Mallon [2026] IRLR 192, EAT

The power to make a restriction of proceedings order is provided by the ETA 1996 s 33 **Q [905]** where the required conditions are set out. Each case will of course depend on its facts, but this decision of Griffiths J in the EAT to grant a permanent order is a good example of the sort of cases where it is justified.

The respondent, a highly qualified scientist, had brought 60 to 70 ET claims between 2017 and 2025; he had made multiple job applications and claimed disability discrimination when not successful. Almost all were unsuccessful, with only one being established and resulting in a financial remedy (*Mallon v AECOM Ltd* [2021] IRLR 438, [2021] ICR 1151, EAT, see **L [395]**, **L [387]**). He had had several costs orders made against him for unreasonable/vexatious conduct. The A-G applied to the EAT for a s 33 order. The respondent argued that he had not thought them all worthless (saying inter alia that he had used AI to assess their worth) and had withdrawn some. Moreover, he argued that such an order would go too far because it would 'effectively end my ability to enforce my rights for the rest of my working life which is sixteen years'. The EAT decided to impose an order and make it permanent. It took into account that: (1) he had habitually and persistently brought proceedings; (2) he had not learned from his earlier cases; (3) there was no reason to

believe he would mend his ways; (4) there was serious wastage of ET resources; and (5) there was an equally serious effect on the respondents to his cases even where they were hopeless, which could not always be reflected in costs orders. As to his point about losing his rights, the judgment makes the key point that such an order is not a complete bar, as a meritorious claim could be allowed to proceed; rather it acts as a necessary *filter* to avoid future abuse (citing Lord Bingham CJ in *A-G v Barker* [2000] 1 FLR 759, [2000] 2 FCR 1, see **PI [675.12]**).

Employment tribunals; reconsideration of judgments

PI [1139]

***Tesco Stores Ltd v Element [2026] EAT 33* (*26 February 2026, unreported*)**

To adapt a cliché, this is the case that keeps on giving. This latest instalment concerned a second set of reconsideration applications relating to a stage two equal value decision. Judge Tayler prefaces his judgment by saying that to describe this as such 'is dispiriting', but in fact the issues had been narrowed down to such an extent that their resolution should make possible a final determination of stage two.

The judgment is of course heavily fact-specific, but of note is a passage at [16]–[21] stressing the mandatory nature of much of the law on reconsiderations, especially in the ET Rules SI 2024/1155 r 70 **R [3667]**. He then points out at [22] that the parties had agreed a series of questions to be answered and decisions to be taken (in the light of some changes in the 2024 Rules) which run to 13 points. He comments that these may be 'a little overengineered' but agrees with the sentiment that it is necessary to follow a structured approach to the mandatory stages for determining a reconsideration application, which he then considers at [24]–[28]. These are too long to set out here, but may well be instructive in future cases. Finally, he comments that experience in the ETs and the EAT has been that there has been a steady increase in reconsideration applications, with multiple applications being not uncommon. He counsels EJs to be on their guard against cases where this is just an attempt to relitigate a losing case.

REFERENCE UPDATE

Bulletin	Case	Reference
563	*XY v AB*	[2026] ICR 47, EAT
567	*GL v AB SpA*	[2026] ICR 14, ECJ
568	*X v Y*	[2026] ICR 1, EAT
568	*DBP v Scottish Ambulance Service*	[2026] ICR 89, EAT

Bulletin	Case	Reference
568	*Henderson v GCRM Ltd*	[2026] ICR 101, EAT
568	*Huntley v Siemans Healthcare Ltd*	[2026] ICR D1
569	*Ahmed v Department for Work and Pensions*	[2026] ICR D3
570	*Sabourin v BT Group plc*	[2026] IRLR 167, EAT
570	*Perkins v Marston (Holdings) Ltd*	[2026] IRLR 182, EAT
570	*Rogerson v Erhard Jensen Ontological Ltd*	[2026] IRLR 213, CA
570	*Bailey v Stonewall Equality Ltd*	[2026] IRLR 220, CA

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