



EMPLOYMENT TRIBUNALS

Claimant: Ilda Esteves

Respondent: Imperial College Healthcare NHS Trust

JUDGMENT ON RECONSIDERATION

1. On 12th June 2025 the Claimant e-mailed the Tribunal with an Application for Reconsideration (the "Application"), which was forwarded to me on 18th September 2025. The request for a reconsideration was in respect of the Reserved Judgment dated 30th May 2025 (the "Judgement"), following a public preliminary hearing on 1st May 2025.
2. Following receipt of the Application, the Tribunal wrote to the parties on 7th October 2025 seeking their views on whether any reconsideration should be carried out at a hearing or on the papers: both parties requested the latter. On 17th November 2025 the parties were directed to provide any written submissions regarding the Application. The Respondent filed written submissions dated 1st December 2025, the Claimant did not submit any further submissions.
3. Having considered the Application and the parties' written submissions, the Claimant's request for reconsideration is granted in part, namely paragraphs 5, 5A and 5B of the Application for Reconsideration are granted.
4. Therefore, the following allegations shall proceed and are not struck out:
 - 4.1 The allegation at paragraph 42(a) of the particulars of claim of direct race discrimination as a result of the Respondent not upholding the Claimant's complaint or grievance of 22nd May 2023 and 6th July 2023;
 - 4.2 The allegation at paragraph 43(a) of the particulars of claim of whistleblowing detriment as a result of the Respondent not upholding the Claimant's complaint or grievance of 22nd May 2023 and 6th July 2023;
 - 4.3 The allegation at paragraph 45 of the particulars of claim insofar as it relates to not upholding the assertion that the Claimant made the protected disclosures at paragraphs 28 and 39 of the particulars of claim; and

- 4.4 The allegation at paragraph 46 of the particulars of claim insofar as it relates to not upholding the assertion that the Claimant committed the protected acts at paragraphs 28 and 30 of the particulars of claim.

REASONS

5. The Tribunal acknowledges that the Judgment does not address the matters set out at paragraphs 4.1 to 4.4 above, and that those matters postdate claim 2214008/2023. Consequently, they were not and could not have been raised as part of claim 2214008/2023 when it was presented, so *res judicata* and *Henderson v Henderson* do not apply. The Tribunal is satisfied that they have a reasonable prospect of success.

BACKGROUND

6. The background is set out at paragraphs 1 to 26 of the Judgment.
7. In summary, in an e-mail sent by the Respondent on 7th October 2022, it notified the Claimant that all arrangements for her to begin work were completed.
8. Following which, the Claimant worked on an assignment for the Respondent from 21st March 2023 to 23rd March 2023, and was given a second assignment on which she worked on 3rd, 4th, 5th, 9th and 10th May 2023. ACAS early conciliation started on 19th June 2023, ending on 31st July 2023. On 20th August 2023 the Claimant presented claim number 22140008/2023 to the Tribunal claiming:
- 8.1 Protected disclosure detriment, in part relying on an e-mail the Claimant sent to the Respondent on 22nd May 2023;
 - 8.2 Direct race and/or age discrimination;
 - 8.3 Harassment related to age and/or race;
 - 8.4 Less favourable treatment of part-time workers; and
 - 8.5 Victimisation
9. At a case management hearing on 25th October 2023 the matter was listed for a public preliminary hearing on 27th February 2024, when Employment Judge Plowright ordered:
- 9.1 Except for an allegation that one of the Respondent's employees stated "when you people come here your DBS should be checked" the claims for direct race and/or age discrimination and harassment related to race and/or age were struck out on the grounds they had no reasonable prospect of success.
 - 9.2 Deposit orders of £50 each were made in respect of the claims for direct race and/or age discrimination and harassment related to race and/or age as these related to the allegation that one of the Respondent's

employees stated “when you people come here your DBS should be checked”.

- 9.3 All other claims were struck out, namely victimisation, protected disclosure detriment and less favourable treatment because she was a part-time worker.
10. The Claimant did not pay the deposits, so the claims at paragraphs 9.2 were struck out by an order dated 9th August 2024.
11. The parties subsequently entered early conciliation on 12th May 2024, which ended on 23rd June 2024. And on 21st July 2024 the Claimant presented claim number 2223380/2024. The claims are set out at paragraphs 19 to 24.5 of the Judgment and include:
- 11.1 Direct race discrimination in respect of:
- (i) The handling of a grievance submitted on 22nd May 2023 and 6th July 2023, including the way meetings were conducted, and the outcome of the grievance and
 - (ii) The delay in dealing with the Claimant's subject access request made on 9th June 2024.
- 11.2 Protected disclosure detriment relying on the matters raised at paragraph 11.1(i) and 11.1(ii) above, and other incidents.
- 11.3 The failure to provide the Claimant with the terms and conditions of employment.
- 11.4 Breach of various express and implied terms of contract.
12. In brief, the Claimant's position was that the Respondent had misled the Tribunal at the case management preliminary hearing in 25th October 2023. As to the hearing on 27th February 2024, the Claimant submits the Respondent gave late and/or inadequate disclosure, and provided the hearing bundle late. Therefore as a result of these procedural irregularities and misleading the Tribunal, the Claimant was denied natural justice, therefore the strike out order dated 27th February 2024 and 9th August 2024 should be set-aside.
13. Absent any particularisation by the Claimant of differences between the two, in the Judgment I found that the e-mails sent on 22nd May 2023 and 6th July 2023 raised the same matters. I also found the Respondent had not misled the Tribunal or failed to comply with any disclosure obligations (see paragraphs 48 and 49 of the Judgment). I therefore did not consider the Claimant's arguments summarised at paragraph 13 above justified setting aside the 27th February and 9th August 2024 orders.
14. In light of my decision, at paragraphs 1 to 2.8 of the Judgment I listed the allegations that were struck out based on Henderson v Henderson and the

principle of res judicata. Paragraph 3 of the Judgment dealt with those aspects of the particulars of claim that were struck out as a result.

15. In broad terms, the Application revisits issues dealt with in the Judgment such as the Respondent allegedly misleading the Tribunal and various procedural irregularities (e.g. inadequate disclosure and late receipt of the hearing bundle in February 2024)
16. Paragraph 1 of the Application complains about the omission of Employment Judge Plowright's 25th October 2023 order from the preliminary hearing bundle. This order was made in separate proceedings, and to the extent it was relevant it was referred to in the first and final paragraphs on page 1 and paragraph 4d of the Claimant's written submissions prepared for the preliminary hearing dated 30th April 2025. It is also referred to at paragraphs 11 and 45 of the Judgment. In the circumstances, I had sufficient information regarding Employment Judge Plowright's order to understand the procedural history and context. That history and context is at paragraphs 3 to 17 of the Judgment.
17. Paragraphs 2(a) to 2(e) of the Application raise matters that were already addressed: my decision and reasons on those points are at paragraph 48 of the Judgment, which confirm I found the Respondent had not misled the Tribunal and there had been no procedural unfairness or irregularity, or none that would justify setting aside the 27th February and 9th August 2024 orders. Contrary to the assertion at paragraph 2(d) of the Application, all these matters were dealt with in the Judgment.
18. As to paragraph 2(f) of the Application, that is dealt with in the Judgment. I found it was implicit that the issue of the particulars of the Claimant's employment contract had already been dealt with by Employment Judge Peer, meaning res judicata applied. Additionally, I found that the Claimant was barred from pursuing this issue within the current proceedings in accordance with *Henderson v Henderson*.
19. In the circumstances, as regards paragraph 2(g) of the Application for reconsideration, I do not consider there have been any procedural failures or misleading conduct to justify a reconsideration on these issues.
20. Paragraph 3(a) of the Application identifies certain documents which the Claimant states were not disclosed. The interview notes have since been disclosed and were at pages 245 to 250 and 256 to 266 of the preliminary hearing bundle. However, and as stated at paragraph 48 of the Judgment, having now had sight of that documentation, the Claimant does not explain how the alleged withholding of those documents undermined her right to natural justice. The reference at paragraph 52 of the Judgment to the Claimant raising a complaint on 7th July 2023 is a typographical error. That is meant to refer to the Claimant's grievance sent on 6th July 2023 as stated elsewhere in paragraph 52 of the Judgment, and also stated elsewhere in the Judgment. This has now been corrected.
21. The allegations at paragraphs 3(b) to 3(d) and paragraphs 3(f) to 3(g) of the Application are dealt with at paragraphs 47 and 48 of the Judgment.

22. To the extent that paragraph 3(e) objects to the timing of the Respondent's strike out application dated 22nd February 2024, the Claimant filed written submissions dated 26th February 2024 regarding her objections. Employment Judge Peer's reserved judgment dated 11th March 2024 confirms that submissions were made on all applications, and the submissions were taken into account in the reserved judgment. Therefore, this matter has already been dealt with.
23. Paragraph 4(a) of the Application is dealt with at paragraphs 21 and 22 above.
24. Paragraphs 4(b) to 4(d) states that concerns were raised at the hearing on 27th February 2024, but were dismissed by Employment Judge Peer without due consideration. If that was the case, the appropriate course was for the Claimant to appeal against that decision within the relevant timescale.
25. The Claimant complaints regarding disclosure at paragraphs 4(e) to 4(g) were dealt with at paragraphs 47 and 48 of the Judgment.
26. To the extent that disclosure and alleged misrepresentations at paragraphs 4(h) and 4(i) have not been dealt with herein, the Application for Reconsideration is not the appropriate way to deal with the Claimant's criticisms of previous case management orders. These challenges should have been dealt with by an appeal within the relevant timescale.
27. Regarding paragraphs 5A. to 5D and 5F of the Application:
 - 27.1 The post October 2023 delays in concluding the investigation are dealt with at paragraphs 47 and 48 of the Judgement.
 - 27.2 The allegation of misrepresentations and late disclosure is dealt with at paragraphs 47 and 48 of the Judgment.
 - 27.3 Notwithstanding paragraphs 14 to 14(c) of the Respondent's submissions dated 1st December 2025, I accept that the Claimant's submission that the Judgment only deals with delays in respect of paragraphs 42(a), 43(a), 45 and 46 of the particulars of claim. The Judgment does not deal with her being subjected to discrimination and/or detriment by the Respondent for *"...not upholding...my complaint or grievance of 22 May 2023 and 06 July 2023.."*.
 - 27.4 As stated below, the outcome postdates claim 22140008/2023. It also postdates the Claimant's complaint/grievances of 22nd May 2023 and 6th July 2023. Therefore, I also accept the Claimant could not have raised this failure to uphold her grievance at the date claim 2214008/2023 was presented.
 - 27.5 The Judgment has been amended to reflect the above issues.
28. As to paragraph 5E of the Application the appropriate way to deal with these issues would have been by bringing an appeal within the relevant timescale.

29. The general thrust of paragraphs 6A to 6C of the Application is that the Claimant was sent a ““Bank Contract 2021” which appeared to be her employment contract” on 7th October 2022, but according to the Claimant, the document was not signed, dated or contain her personal details, nor did the contract reflect the duties she was asked to perform. As stated at paragraphs 54 of the Judgment, Employment Judge Peer implicitly found the Claimant was provided with an agreement containing the terms and conditions of employment. The Claimant appears to accept she was given the document, but disputes it reflects the duties she performed. In the circumstances, my earlier decision that Employment Judge Peer found the Claimant was provided with the terms and conditions of her employment is confirmed. As to the document being unsigned and omitting the Claimant’s personal information, Employment Judge Peer found that it was a sample agreement (see paragraph 53 of Employment Judge Peer’s judgment).
30. Paragraph 55 of the Judgment concluded that alternatively, the Claimant was barred from pursuing this issue in accordance with *Henderson v Henderson*. As the Claimant accepts she was sent a contract on 7th October 2022, any dispute regarding that contract could and should have been raised as part of the claim 2214008/2023.
31. Regarding paragraphs 6.1A to 6.1D, it is correct that the main focus of Employment Judge Peer’s reasons on this issue was the Claimant’s job status, but in determining that issue, the Judge found that the Claimant had the status of bank staff based on the sample employment contract (see paragraphs 54 and 55 of EJ Peer’s judgment). Accordingly, it can be inferred that Employment Judge Peer concluded the written agreement sets out the basis of the contractual relationship between the parties, and so was a valid contract. Therefore *res judicata* applies.
32. At paragraphs 6.2A to 6.2C the Claimant argues she did not know the contract was invalid until February 2024, the Claimant was not given permission to amend claim number claim 2214008/2023 on the basis she could issue a fresh claim, yet, she argues, it has been found she is barred from doing so. However, the Claimant’s case is that the contract sent to her on 7th October 2022 is invalid because it did not reflect the work she carried out during the March and May 2023 assignments. That is information that was available to her before claim number 2214008/2023 was presented to the Tribunal on 20th August 2023. Therefore, having not raised this as part of the earlier claim, amounts to an abuse of process to try to pursue it as part of the current claim.
33. In light of paragraphs 53 to 55 of Employment Judge Peer’s judgment, and paragraphs 32 to 33 above, it has already been determined that the basis of the contractual agreement between the parties is reflected in the sample agreement, and so there was a genuine and valid agreement between the parties. Any and all disputes relating to that agreement could and should have been raised as part of the 2214008/2023 claim, and the failure to do so is contrary to *Henderson v Henderson*.

34. For the reason set out above, except for paragraph 3 of the prayer, as it relates to the matters dealt with a paragraphs 27 to 27.4 above, the Application is refused.

Approved by:
Employment Judge Tueje

17th December 2025

Sent to the parties on:

22 December 2025

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For the Tribunal Office:

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