



EMPLOYMENT TRIBUNALS

Claimant: CX

Respondent: Secretary of State for Justice

Heard at: Reading Employment Tribunal (by video, in private)

On: 21 May 2026

Before: Employment Judge Annand

Representation
Claimant: In person
Respondent: Ms Hirsch (Counsel)

RESERVED JUDGMENT

1. The Claimant's claims in Case No 6029721/2025 are struck out due to a) cause of action estoppel and b) the principle in *Henderson v Henderson*. The claim is an abuse of the Tribunal's process.

REASONS

Introduction

2. The Claimant was employed by the Respondent as a prison officer (band 3) from 16 November 2020 until 6 December 2021, when she was dismissed with notice for failing her probationary period. On 1 March 2022, the Claimant contacted Acas for early conciliation purposes. The early conciliation certificate was issued on 16 March 2022. On 19 March 2022, the Claimant submitted a Claim Form to the Employment Tribunal (Case Number: 3303470/2022). At 8.1 of the Claim Form, she indicated she was bringing claims of unfair dismissal, sex discrimination and discrimination on grounds of religion or belief, relating to vegan beliefs. She also complained she had been subjected to sexual harassment.
3. The Respondent submitted a Response to the Claimant's Claim Form but noted that the claims were insufficiently particularised. On 10 July 2022, a preliminary

hearing for case management was listed on 6 December 2022 for 2 hours by telephone. On 27 July 2022, the Respondent asked the Claimant for further information regarding her claims. On 20 August 2022, the Claimant sent a very lengthy and detailed reply, which was approximately 30 pages in length.

4. On 6 December 2022, Employment Judge Manley conducted a preliminary hearing. More time was needed to clarify the Claimant's claims. A further one day preliminary hearing was listed for 25 April 2023. The final hearing was listed for 4 days between 25-28 March 2024. On 23 January 2023, the Claimant set out further information as requested by Employment Judge Manley in the format requested.
5. On 25 April 2023, Employment Judge Manley conducted a further one day preliminary hearing. She heard the Claimant's application to amend her Claim Form and allowed the amendments. The final hearing was extended to six days. A List of Issues was set out in the Case Management Order. The Claimant brought claims of:
 - a) direct sex discrimination
 - b) direct discrimination on grounds of religion or belief (relating to the Claimant's ethical vegan beliefs),
 - c) harassment related to sex and veganism,
 - d) victimisation,
 - e) detriments on grounds of having made a protected disclosure, and
 - f) automatic unfair dismissal on grounds of having made a protected disclosure.
6. On 6 June 2023, the Respondent submitted an Amended Grounds of Resistance.
7. On 8 March 2024, a further preliminary hearing was held. It was listed to decide if a stay should be imposed in light of the possibility of criminal proceedings being pursued against one of the Respondent's witnesses. It was noted that the Claimant was considering applying to amend her claim to include complaints of disability discrimination.
8. On 15 March 2024, a further preliminary hearing was held. The parties were agreed the final hearing could not go ahead on 21-28 March 2024. The Claimant was given advice by the judge about her application to amend and advised that any application would be decided at a preliminary hearing on 23 May 2024. The Claimant confirmed she was also seeking an anonymisation order. It was determined that a stay was not necessary as no criminal proceedings were pending.
9. On 23 May 2024, a further preliminary hearing was held by Employment Judge Shastri-Hurst. The final hearing was listed for 9 days between 11-21 March 2025. The Claimant's application to amend her Claim Form to bring claims of disability discrimination was refused. An anonymisation order was made to protect the Claimant's identity.

10. At the hearing on 23 May 2024, the Claimant sought to add claims of failure to make reasonable adjustments and discrimination arising from disability under section 15 of the Equality Act. The Case Management Order from that hearing was sent to the parties on 10 July 2024.
11. On 12 August 2024, the Claimant appealed the decision to refuse her application to amend her claim to add complaints of disability discrimination to the Employment Appeal Tribunal.
12. On 29 January 2025, Employment Judge Shastri-Hurst provided the parties with written reasons for rejecting the Claimant's application to amend. It is apparent from Employment Judge Shastri-Hurst's reasons that the Claimant's proposed disability discrimination claims related to her dismissal. The alleged unfavourable treatment for the section 15 claim was the dismissal, which the Claimant said she was subjected to because of something arising in consequence of her disability, namely her disability-related absence and/or exercising poor judgment and being prone to making mistakes. The failure to make reasonable adjustments claim related to a failure to consider alternative steps rather than dismissal. In making her amendment application the Claimant relied upon a part of her original claim form which alleged she had been dismissed for failing to meet performance targets on time, but she had been unable to do so because of her sickness absence.
13. It was recorded in Employment Judge Shastri-Hurst's Reasons that the Claimant said she only became aware that her depression could amount to a disability in law when she received the disclosure of documents from the Respondent in November 2023. It was noted by Employment Judge Shastri-Hurst that the Claimant had left it four months to apply to amend her claim. When weighing the respective hardship and prejudice to the parties, Employment Judge Shastri-Hurst concluded there was greater prejudice to the Respondent if the amendment were allowed, than to the Claimant if the amendment was refused.
14. On 5 March 2025, a Rule 3(10) hearing took place in the Employment Appeal Tribunal. It was decided that the Claimant's appeal would be allowed to proceed to a full appeal hearing.
15. The final hearing in the Employment Tribunal took place on 11-21 March 2025 and 28 March 2025. The Tribunal met to deliberate on 9 May 2025, and 19, 20 and 25 June 2025. The allegations to be determined at the final hearing were extensive. The Claimant made 28 allegations of direct sex discrimination, all of which were also alleged to be harassment related to sex, and victimisation, and 19 of which were also said to be detriments on grounds of having made a protected disclosure. The Claimant also made 5 allegations of direct discrimination on grounds of veganism, which were also pleaded as harassment related to veganism, and she brought a claim of automatic unfair dismissal on grounds of having made a protected disclosure.

16. On the first day of the hearing, the Respondent applied for the hearing to be postponed on the basis that the Claimant had an outstanding appeal to the Employment Appeal Tribunal to add claims of disability discrimination. That application was heard and refused. Oral reasons were given during the first day of the final hearing. The Respondent requested written reasons and applied for a stay so that the refusal to postpone the hearing could be appealed to the Employment Appeal Tribunal. Written reasons for that decision were typed up overnight and sent to the parties on the morning of the second day of the hearing. The Respondent's application for a stay was also refused. Oral reasons were given for that refusal at the hearing, and the written reasons provided to the parties also contained the Tribunal's reasons for refusing that application as well.
17. On 26 June 2025, the Claimant attended a full hearing in the Employment Appeal Tribunal. The Claimant's appeal was not successful. In the Employment Appeal Tribunal judgment, His Honour Judge Auerbach noted that the PCPs the Claimant sought to rely on for the purposes of the reasonable adjustments claim were "a sickness absence policy which fails to discount absences which arise in consequence of disability" and "a requirement that individuals improve their performance despite being absent from work".
18. The parties were sent the Employment Appeal Tribunal judgment on 8 August 2025. On the same day, the Claimant contacted Acas for early conciliation purposes again. She did not provide her home address but wrote in the address box that she wished to remain anonymous. An early conciliation certificate was issued on 11 August 2025, which included the Claimant's name but not her address.
19. On the same day, 11 August 2025, the Claimant lodged a new claim in the Employment Tribunal (Case No: 6029721/2025). In her Claim Form, the Claimant set out her name and her previous address. In the Claim Form, she wrote: "Please note that, due to safety concerns arising from my previous employment (the employer relevant to this claim), I have relocated due to these matters and the address provided on this form is my former address."
20. In the Claimant's new Claim Form she noted, "This claim relates to previous claims heard in March 2025; however the disability discrimination claims and failure to make reasonable adjustments claims are new, fresh, and distinct claims, not a reworking or repetition of earlier matters. The disclosure of key documents in the March 2025 hearing revealed that some relevant evidence had not been provided despite my prior requests, which has directly impacted the timing of bringing these new claims". At Box 8.1, the Claimant ticked the box to indicate she was bringing claims of disability discrimination. In Box 8.2, the Claimant wrote:

"I submit this ET1 to bring fresh claims of disability discrimination and failure to make reasonable adjustments under the Equality Act 2010, arising from the Respondent's conduct during my employment from 16 November 2020 to 6 December 2021. These claims are based on new evidence only disclosed

under Tribunal order during the 10-day hearing in March 2025, including critical Occupational Health (OH) referrals, an Optima OH provider email, and confirmation that dismissal documentation was destroyed. Before starting employment, I disclosed anxiety, depression, and back problems via a pre-employment OH assessment. My mental health-exacerbated by the long-term impact of a violent relationship and multiple bereavements-were fully known to the respondent, their OH and HR departments. Emails and calls during the relevant period also referred to these historical matters, confirming the Respondent's knowledge. The August 2021 OH report confirmed my conditions met the Equality Act definition of disability and recommended adjustments. No such adjustments were implemented. A further OH referral in October 2021 was later confirmed by Optima (26 November 2021) to be incorrect. Optima advised alternative support, yet the Respondent took no action. My line manager's handling of vaccination discussions, including contacting OH and HR to state I was "refusing" the COVID vaccine, aggravated my disability symptoms. In fact, my concerns were based on my father's sudden death from an undiagnosed heart condition, my anxiety and depression, my vegan beliefs, and the emerging evidence of adverse effects-matters overlapping with but distinct from earlier claims.

The Respondent's failures include:

? Not implementing OH-recommended reasonable adjustments.

? Ignoring medical, OH, and HR advice.

? Withholding and delaying key evidence.

? Destroying dismissal records.

? Discrimination linked to my health status, vaccination concerns, and protected beliefs. I confirm these are fresh claims, not previously determined, and are submitted in good faith. I do not seek to influence the pending judgment in earlier proceedings, only to have these new matters considered. I kindly and respectfully request a just and equitable extension of time for the Tribunal to hear them. Please can it be confirmed that the supplementary document 'ET1 Claim Form and Just and Equitable Causes Statement', (12 pages long - ref: R233522/25/80 - final draft ET1) has been received and is accessible. Thank you."

21. In the document the Claimant attached to her ET1, she complained that the Respondent failed to make reasonable adjustments as set out in the Occupational Health report of 24 August 2021. She also set out that on 26 November 2021 the Occupational Health provider emailed the Respondent to advise them that a further referral made on 14 October 2021 had been incorrectly made and recommended a different type of referral should be made, but the Respondent failed to act on this advice. The Claimant wrote that she was dismissed on 6 December 2021 without any reasonable adjustments being made or proper Occupational Health or HR advice being followed.
22. In this document the Claimant also set out that the hard copy bundle of documents used by Governor Frost at the dismissal hearing was destroyed shortly after the dismissal hearing. The Claimant alleged this significantly prejudiced her ability to prepare her case. She wrote that she only became aware of this during the final hearing in March 2025. She noted that the critical

Occupational Health referral, and Optima email, and the evidence regarding the destruction of the dismissal documents all only came to light in March 2025.

23. Under the heading, “Legal principles supporting just and equitable extension of time”, the Claimant noted she had acted diligently when applying to amend her claim to add claims of disability discrimination when she received partial disclosure in December 2023. The Claimant also referred to six cases which she said were cases that supported the granting of extensions where crucial evidence had been withheld. The Respondent later wrote to the Tribunal and the Claimant (by email on 6 May 2026) to indicate that all the cases referred to appeared to be made up cases. The Claimant was invited to provide copies of the cases and confirm the source that she obtained them from if she was asserting they were real cases. All of the cases did not exist, except one (Barber v Somerset CC) but it was a case that related to a different subject matter to the one cited by the Claimant. The Claimant sent an email in response, on 7 May 2026, stating that she was unrepresented and she had not intended to rely on cases which were not real. She stated her mistake was inadvertent, and she did not have access to professional legal research systems. At the hearing on 21 May 2026, the Claimant confirmed she had used AI which is how she had come to cite case law which did not exist.
24. Up to the final hearing of the Claimant’s first claim in March 2025, the Claimant submitted documents which were lengthy, but which appeared to have been written by her. Since the final hearing, the Claimant appears to have been relying, at least in part, on AI generated documents. The result is that the Claimant has begun to submit extremely lengthy documents to the Tribunal, which are often repetitive. It takes both the Respondent and the Tribunal an unnecessarily long amount of time to read these very lengthy documents. It is entirely understandable that the Claimant wishes to benefit from AI given she is unrepresented. However, the reality is that she is not in a stronger position by virtue of doing so. For example, the arguments set out in the document the Claimant attached to her ET1, and the arguments set out in her skeleton argument for the hearing on 21 May 2026 were difficult to understand in places, and the parts of her claim that needed to be set out with precision were in fact vague.
25. In the document the Claimant attached to her ET1, under the heading, “Respondent’s knowledge and failure to make reasonable adjustments”, the Claimant referred to the Respondent’s failure to accommodate her disabilities. She also noted that her Line Manager had escalated allegations that she was refusing the Covid 19 vaccine, despite her explaining her concerns about a family history of heart problems.
26. Under the heading, “Discrimination connected to health status and Covid 19 vaccination”, the Claimant noted that she was incorrectly characterised as refusing vaccination without reasonable grounds. She noted her refusal was based on legitimate and well-founded concerns linked to her mental health disabilities, triggered by a family history of heart disease. The Claimant also set out under the next heading that the Respondent had conflated her vaccination

concerns, which were distinct from her vegan beliefs, with her disability related concerns around vaccination and mental health. She reiterated the concerns were not related to her vegan beliefs. She noted her claim regarding her vegan belief had already been heard but suggested these were fresh claims made in good faith.

27. In the document the Claimant attached to her ET1, the Claimant set out that the Employment Appeal Tribunal had only been able to look at the documents available at the May 2024 preliminary hearing when she had applied to amend her claim. Therefore, despite applying to rely on the new evidence (obtained in March 2025), she had not been able to put it before the EAT. Specifically, the Employment Appeal Tribunal was not aware of the Occupational Health referral from 14 October 2021, the email from Optima of 26 November 2021, and the evidence relating to destroying the hard copy of documents before Governor Frost at the dismissal hearing.
28. On 17 September 2025, the Claimant was informed her second claim had been rejected under rule 12(b)(ii), which states that a Tribunal must reject a Claim Form if it does not contain each Claimant's address.
29. On 1 October 2025, the parties were sent the liability judgment in respect of the Claimant's first claim (Claim No 3303470/2022). The Claimant succeeded with six complaints of harassment related to sex, seven complaints of direct sex discrimination, four complaints of harassment related to veganism and four complaints of direct discrimination related to veganism.
30. On 14 October 2025, the Claimant requested that the rejection of her second claim be reconsidered.
31. On 20 October 2025, a case management hearing was held in respect of her first claim, and a remedy hearing was listed for 19 and 20 January 2026.
32. On 28 November 2025, a further preliminary hearing was held in relation to the Claimant's first claim. The Schedule of Loss the Claimant had prepared for the liability hearing set out losses of approximately £139,000. In an updated Schedule of Loss, sent to the Respondent after the final hearing, dated 3 November 2025, the Claimant sought £1.2 million to £1.6 million. The significant increase was based on the Claimant arguing that she may be unable to return to work for up to 10 years. As a result, the Respondent asked the Claimant to agree to see a consultant psychiatrist for the purposes of preparing an expert report. The Claimant had agreed, but due to an issue with the availability of experts, and the time needed to produce an expert report, the remedy hearing was put back to 23, 24 and 25 February 2026. At the hearing, the Claimant repeatedly stated she wanted the remedy hearing as soon as possible so that the proceedings could end and she could move on with her life.
33. On 9 January 2026, the Claimant was informed by the Tribunal that her application for reconsideration (regarding the rejection of her second claim) had succeeded. The Claimant was advised that the original decision to reject the

claim was correct but because the defect which led to the rejection had been rectified, the Claim Form was to be treated as having been received on 17 September 2025.

34. On 2 February 2026, the Respondent submitted a Response Form and a Grounds of Resistance in respect of the second claim (Case No: 6029721/2025). In the Grounds of Resistance, the Respondent alleged the Claimant was seeking to further appeal Employment Judge Shastri-Hurst's decision, and the decision of the Employment Appeal Tribunal and argued that the claims were out of time.
35. On 11 February 2026, the Respondent wrote to the Tribunal asking for the Claimant's second claim to be listed for a public preliminary hearing for strike out on the basis that the Claimant's claims are all out of time and/or the claim should be struck out as an abuse of process.
36. Shortly before the remedy hearing, the Tribunal became aware of a number of issues that needed to be resolved ahead of the remedy hearing. On 17 February 2026, a case management hearing was held in respect of both claims.
37. In respect of the Claimant's second claim (Case no: 6029721/2025), a public preliminary hearing was listed on 21 May 2026 to determine the Respondent's application to strike out the claim as an abuse of process. An Anonymity Order was granted for the Claimant in respect of her second claim.

The parties' arguments

38. For the hearing on 21 May 2026, the Respondent produced a skeleton argument (10 pages), and the Claimant produced a skeleton argument (43 pages).
39. The Respondent set out in its skeleton argument that the Claimant's second claim had been pleaded in a vague manner, which made it difficult to compare her new claim with the application she had made to amend her claim previously. It was said this vagueness was unjustified given the Claimant's experience obtained in the course of the litigation. It was acknowledged that she had added some new elements to her second claim, such as reliance on her beliefs regarding the Covid vaccine, but it was not accepted this was a genuinely new aspect of her claim which arose from the documents not seen until March 2025. It was suggested the Claimant had deliberately set out to frame her new claim to make it look sufficiently different from the claims which had already been heard or refused as amendments.
40. The Respondent also argued that even if the Claimant were able to show that she only received relevant new information in March 2025, she did not contact Acas until five and a half months later, on 8 August 2025, so her claim is out of time in any event. It was set out in the Respondent skeleton that while it was accepted that the Claimant felt strongly about her claim, it appeared she was unwilling to accept that her fight against the Respondent had been determined

and completed. The Respondent said given the Claimant has repeatedly stressed the damage that is being done to her health by the continuation of the proceedings, it would not be prejudicial to her to refuse to grant her an extension of time (albeit the Respondent said it was not arguing this was a decisive factor in the decision regarding an extension of time). The Respondent argued that the fact that the Claimant contacted Acas for early conciliation the day she found out her appeal had been unsuccessful showed the true reason for bringing the second claim was to try to achieve what she had failed to achieve by way of her earlier application to amend and appeal to the EAT.

41. The Respondent also pointed to the Claimant's unreasonable conduct in relying on false cases in her pleadings.
42. The Claimant's skeleton argument set out that the earlier proceedings and Employment Appeal Tribunal decision were based on different and incomplete evidential material. She noted the present claims arise from newly disclosed facts, not previously available. The Claimant said her claims could not have reasonably been advanced earlier due to a lack of knowledge or disclosure. The Claimant set out that she did not previously know, and could not reasonably have known, "that there were material inaccuracies within the Occupational Health referral process, including that an incorrect referral had been made and later identified as inaccurate in the OPTIMA Occupational Health provider email dated 26 November 2021." The Claimant stated she was also not aware that this information was received and not acted upon before her dismissal. The Claimant set out that the Respondent's failures led to an inaccurate understanding of her disabilities which ultimately led to her "dismissal and other unfavourable treatment."
43. In her skeleton argument, under the heading "Failure to make reasonable adjustments/OH evidence", the Claimant wrote "The claims include failures to implement recommendations, inaccurate referrals, and lack of proper consideration of Occupational Health advice." The Claimant set out that her case was that the recommended adjustments were not properly implemented, monitored or reviewed and the recommendations were not acted on prior to her dismissal.
44. At the start of the hearing of 21 May 2026, I sought to understand from the Claimant exactly what allegations of disability discrimination she was complaining about in her second claim.
45. When asked what reasonable adjustments the Claimant was saying the Respondent should have made, she said they could have given her more time between when she returned to work and her dismissal. In other words, they could have delayed the dismissal hearing. She said they also should have made the reasonable adjustments set out in the Occupational Health report of 24 August 2021, namely, "assistance with her workload, additional breaks, timeouts, time off at short notice should she find herself being totally overwhelmed, etc", and compressed hours. She said the Respondent should have paused or suspended the disciplinary action until they had further

Occupational Health advice. She said they could have managed her absence in a supportive way rather than escalating it to a warning and dismissal. She said the Respondent should have ensured the Occupational Health referrals were accurate and acted upon it when they were not. She said they could have offered appropriate workplace support instead of dismissing her for a performance or conduct issue.

46. In terms of the Claimant's claim for discrimination arising from disability. The Claimant clarified that the unfavourable treatment she was complaining about was her dismissal, the written warning, the Occupational Health report not being considered and the Claimant not being re-referred to Occupational Health in October 2021 before her dismissal. The something arising in consequence of her disability that she relied upon was a) her sickness absence, b) her mental health deterioration, and c) the Occupational Health report recommendations.
47. When the Claimant was asked how the position was different when she put in her second Claim Form, compared to when she made the application to amend her first claim to add claims of disability discrimination, she said previously she had not understood that the Respondent had failed to correctly re-refer her to Occupational Health again in October 2021.
48. In the hearing on 21 May 2026, the Claimant was asked about her complaint of discrimination based on her beliefs regarding the coronavirus vaccine. When asked about what the alleged detrimental or less favourable treatment was, the Claimant replied that it was CM Henderson referring in two emails to the Claimant refusing to have the vaccine.

The relevant law

49. In *Virgin Atlantic Airways Ltd v Zodiac Seats UK Ltd (formerly Contour Aerospace Ltd)* [2014] AC 160, SC, Lord Sumption explained a number of legal principles aim to limit abusive litigation and avoid duplication. The first is 'res judicata', a substantive rule of law, and the second is 'abuse of process', a concept which informs a court or tribunal's exercise of its procedural powers.
50. Cause of action estoppel prevents a party pursuing a cause of action that has been dealt with in earlier proceedings involving the same parties. Issue estoppel prevents a party reopening an issue that has been decided in earlier proceedings involving the same parties, and the rule in *Henderson v Henderson* [1843] 3 Hare 100, ChD relates to abuse of process, and precludes a party from raising in subsequent proceedings matters which were not, but could and should have been, raised in the earlier ones. In *Virgin Atlantic Airways Ltd*, Lord Sumption explained the phrase 'res judicata' is used to describe any of these different legal principles, all of which aim to limit abusive and duplicative litigation.
51. Lord Sumption explained the House of Lords decision in *Arnold v National Westminster Bank plc (No. 1)* [1991] 2 AC 93, HL, is authority for the proposition that cause of action estoppel is absolute in relation to all points which had to be

and were decided in order to establish the existence or non-existence of a cause of action. Lord Sumption explained the rationale behind the absolute character of estoppel in these circumstances as being: “Where the existence or non-existence of a cause of action has been decided in earlier proceedings, to allow a direct challenge to the outcome, even in changed circumstances and with material not available before, offends the core policy against the relitigation of identical claims”. Given that cause of action estoppel presents the most rigid obstacle to relitigation, courts and tribunals should consider it first, and only if they find that it does not apply will there be any need to go on to consider issue estoppel or abuse of process. As there is no scope for a claimant to argue that changed circumstances or new evidence should lead to the re-opening of an already-determined cause of action. The issue in cases where cause of action estoppel is alleged to apply to successive sets of proceedings will generally be whether both sets of proceedings rely on the same cause of action.

52. In *Agbenowossi-Koffi v Donvand Ltd t/a Gullivers Travel Associates* [2014] ICR D27, CA, the claimant brought a claim of racial harassment based on a single incident. It was out of time and at a preliminary hearing an employment judge declined to extend time to admit it. She also refused an application to amend the claim to add two further complaints which, if they had been accepted, might have allowed the claimant to plead a continuing act of discrimination. The claimant then presented a new claim form, repeating the original incident alongside the two further complaints. However, an employment judge held that the claim was estopped and the Employment Appeal Tribunal agreed. The Employment Appeal Tribunal held the decision that there was no jurisdiction to hear the claim in respect of the first act was binding between the parties; an issue necessary to the presentation of that claim had been finally determined. The absence of any consideration of the claim’s merits did not affect the position. The Tribunal had correctly applied the principle of res judicata/issue estoppel. The Court of Appeal subsequently dismissed an appeal against the Employment Appeal Tribunal’s decision.
53. In *Thoday v Thoday* [1964] P 181, CA, Lord Justice Diplock explained that where a tribunal has made a finding of fact ‘the existence of which is a condition the fulfilment of which is necessary to the cause of action’ which the tribunal was considering, the parties will be estopped from calling that finding of fact into question in subsequent proceedings. Where, on the other hand, a tribunal has made a finding of fact ‘the existence of which is not of itself a condition the fulfilment of which is necessary to the cause of action... but which is only relevant to proving the fulfilment of such a condition’, there will be no issue estoppel.
54. Lord Keith in *Arnold v National Westminster Bank plc (No.1)* [1991] 2 AC 93, HL stated “Issue estoppel may arise where a particular issue forming a necessary ingredient in a cause of action has been litigated and decided and in subsequent proceedings between the same parties involving a different cause of action to which the same issue is relevant, one of the parties seeks to reopen that issue”. Lord Keith observed that “the underlying principles upon which estoppel is based, public policy and justice, have greater force in cause

of action estoppel, the subject matter of the two proceedings being identical, than they do in issue estoppel, where the subject matter is different". He went on to state that "there may be an exception to issue estoppel in the special circumstance that there has become available to a party further material relevant to the correct determination of a point involved in the earlier proceedings, whether or not that point was specifically raised and decided, being material which could not by reasonable diligence have been adduced in those proceedings".

55. In *Henderson v Henderson*, Sir James Wigram VC commented, "where a given matter becomes the subject of litigation in, and of adjudication by, a court of competent jurisdiction, the court requires the parties to that litigation to bring forward their whole case, and will not (except under special circumstances) permit the same parties to open the same subject of litigation in respect of matter which might have been brought forward as part of the subject in contest, but which was not brought forward, only because they have, from negligence, inadvertence, or even accident, omitted part of their case."

56. In *Johnson v Gore Wood and Co* [2002] 2 AC 1, HL, Lord Bingham commented:

"*Henderson v Henderson* abuse of process, as now understood, although separate and distinct from cause of action estoppel and issue estoppel, has much in common with them. The underlying public interest is the same: that there should be finality in litigation and that a party should not be twice vexed in the same matter. This public interest is reinforced by the current emphasis on efficiency and economy in the conduct of litigation, in the interests of the parties and the public as a whole. The bringing of a claim or the raising of a defence in later proceedings may, without more, amount to abuse if the court is satisfied (the onus being on the party alleging abuse) that the claim or defence should have been raised in the earlier proceedings if it was to be raised at all. I would not accept that it is necessary, before abuse may be found, to identify any additional element such as a collateral attack on a previous decision or some dishonesty, but where those elements are present the later proceedings will be much more obviously abusive, and there will rarely be a finding of abuse unless the later proceeding involves what the court regards as unjust harassment of a party. It is, however, wrong to hold that because a matter could have been raised in earlier proceedings it should have been, so as to render the raising of it in later proceedings necessarily abusive. That is to adopt too dogmatic an approach to what should in my opinion be a broad, merits-based judgment which takes account of the public and private interests involved and also takes account of all the facts of the case, focusing attention on the crucial question whether, in all the circumstances, a party is misusing or abusing the process of the court by seeking to raise before it the issue which could have been raised before. As one cannot comprehensively list all possible forms of abuse, so one cannot formulate any hard and fast rule to determine whether, on given facts, abuse is to be found or not. Thus while I would accept that lack of funds would not ordinarily excuse a failure to raise in earlier proceedings an issue which could and should have been raised then, I would not regard it as necessarily irrelevant, particularly if it appears that the lack of

funds has been caused by the party against whom it is sought to claim. While the result may often be the same, it is in my view preferable to ask whether in all the circumstances a party's conduct is an abuse than to ask whether the conduct is an abuse and then, if it is, to ask whether the abuse is excused or justified by special circumstances."

57. In *Virgin Atlantic Airways Ltd*, Lord Sumption confirmed the rule in *Henderson v Henderson* is rooted in the concept of abuse of process, which informs tribunals' and courts' exercise of their procedural powers. In this context, it stretches well beyond the more rigid confines of cause of action estoppel and issue estoppel. It is not, for example, limited to cases where the parties in the first and second set of proceedings are the same.
58. Tribunals considering whether there has been *Henderson v Henderson* abuse of process should adopt a broad, merits-based approach. The question is whether, taking into account all the circumstances, the party is abusing the process of the court by seeking to raise a matter that it could and should have raised before.
59. In *London Borough of Haringey v O'Brien* Employment Appeal Tribunal 0004/16 the claimant presented a disability discrimination claim under section 15 of the Equality Act 2010 on 30 March 2011. Her claim was heard in December 2011. She later sought to bring new proceedings under section 15 in relation to a number of incidents that occurred before 30 March 2011 and another that occurred in July 2011. An employment tribunal ruled that it would be an abuse of process to rely on the pre-30 March incidents but that the claim could go ahead in relation to the July incident. In the tribunal's view, the principle ceased to apply once the claim was lodged. The Employment Appeal Tribunal held that this was an error of law or at least an inadequate explanation of the tribunal's reasoning. Given that it is possible to amend a claim to include matters occurring after its presentation and that there was a pre-hearing review in August 2011 that would have provided the claimant with the opportunity to do so, there was no reason for distinguishing between the pre- and post-presentation allegations. The tribunal was right to find that *Henderson v Henderson* applied to the pre-30 March allegations, and it should have applied the same reasoning to events occurring thereafter but before the full merits hearing in December 2011, or at least to those occurring sufficiently prior to allow for an amendment of the claim. On this basis, the July incident was also caught by the rule.
60. In *Szucs v Green Square Accord Ltd* [2025] EAT 110, the Employment Appeal Tribunal upheld the tribunal's decision to strike out the claimant's claim regarding three unsuccessful job applications he had made. The claimant had previously been employed by the respondent and had issued a claim in 2020, alleging that his dismissal was an act of victimisation. He subsequently applied for further employment and, when unsuccessful, issued a second claim in 2022. The tribunal found, and the Employment Appeal Tribunal agreed, that the second claim was an abuse of process under the *Henderson v Henderson* rule. Although the second claim had been issued after the final hearing of the first

claim, the claimant had known about the outcome of his job applications two months prior to that final hearing. He could and should have applied to amend the first claim to include the allegations that formed the subject of the second claim. This was so even though an amendment application might have been refused so that the claimant would then have had to bring the second claim separately. The abuse of process here was that the claimant had deprived the tribunal of the opportunity of deciding how best to allot time and resources to dealing with the two claims. Furthermore, the Employment Appeal Tribunal rejected the claimant's argument that the strike-out should be set aside because it had deprived him of the opportunity of having his fact-sensitive discrimination claim adjudicated on its merits. The rule in *Henderson v Henderson* was not concerned with the merits of a case at all. There was therefore no reason why the rule should not apply to fact-sensitive discrimination claims as it applies to other cases.

The Tribunal's conclusions

61. The Claimant's second claim is struck out on the basis of cause of action estoppel and on the basis that it is an abuse of the Tribunal's process.
62. In 2024, the Claimant applied to amend her first claim to add claims of failure to make reasonable adjustments and discrimination arising from disability. That application was refused. The Claimant appealed to the Employment Appeal Tribunal. The day that the Claimant was informed that her appeal to the Employment Appeal Tribunal had not been successful, she contacted Acas to obtain a new early conciliation certificate, and three days later submitted a new claim. Her new claims for failure to make reasonable adjustments and discrimination arising from disability related to the same period of employment (August to December 2021) as her application to amend. It is difficult to envisage a more clearcut case of a party attempting to get round a previous Tribunal decision (and Employment Appeal Tribunal decision) that they are unhappy with.
63. The Claimant's main complaints in her second claim are essentially the same as those she sought to add by way of amendment to her first claim. In the hearing on 21 May 2026, the Claimant identified the reasonable adjustments she said the Respondent should have made, as a) they should have delayed the dismissal hearing, b) paused or suspended the disciplinary process, c) managed her absence in a supportive way rather than escalating to a warning and dismissal, and d) offered her workplace support rather than dismissing her. In other words, the main complaint that the Claimant makes in her second claim is that the Respondent should not have dismissed her on 6 December 2021 because they should have made accommodations for her disability. This is the same point the Claimant made in her application to amend before Employment Judge Shastri-Hurst in May 2024, when she argued that the Respondent should have considered alternative steps instead of dismissal. Similarly, the Claimant said at the hearing on 21 May 2026 that one of the alleged acts of unfavourable treatment for the discrimination arising from disability claim was her dismissal. This same argument was made to Employment Judge Shastri-Hurst and was

refused. It is an abuse of the courts process to attempt to circumvent that decision by putting in a new claim.

64. The Claimant is also estopped from bringing claims of failure to make reasonable adjustments and discrimination arising from disability on the basis of cause of action estoppel. As in the case of *Agbenowossi-Koffi v Donvand Ltd t/a Gullivers Travel Associates*, an issue necessary to the presentation of those claims had been finally determined. The absence of any consideration of the claim's merits did not affect the position.
65. I reject the Claimant's argument that she received new documents and information in the final hearing of her first claim in March 2025 which changed her knowledge or understanding of the events such that could justify attempting to re-litigate matters already decided.
66. The Claimant has argued that the Respondent withheld key documents until the March 2025 final hearing. Her argument relates to two documents: 1) an Occupational Health referral form dated 14 October 2021 and 2) an email from Optima health dated 26 November 2021.
67. It is correct that at the final hearing in March 2025 the Respondent disclosed a referral for an Occupational Health appointment that CM Henderson had made for the Claimant on 14 October 2021 (p1735 of the final hearing bundle). However, there was nothing important or revealing contained within that document. The Claimant was aware from documents previously disclosed, and information she was given by CM Henderson at the time of these events, that a further referral to Occupational Health had been made. For example, CM Henderson emailed the Claimant on 14 October 2021 to tell her she had made a referral for an Occupational Health Psychologist assessment and provided her with the reference number (p248 of the final hearing bundle). There was nothing in the referral document itself that materially changed the Claimant's understanding or knowledge about what had occurred at that time.
68. It is also correct that at the final hearing in March 2025 the Respondent disclosed an email sent by Optima Health on 26 November 2021 to CM Henderson advising her that she had requested the wrong type of referral (a psychologist assessment) and suggesting that instead she should submit a mental health advisor referral form (p1737). The facts the Tribunal found regarding the referrals are set out in the liability judgment at paragraphs 150, 151, 153, 165, 175, and 183.
69. Although the Claimant has placed significant weight on the fact that she did not see these two documents until the hearing in March 2025, the Claimant was aware of all the salient points at the time of the events. She was aware in October 2021 that she had been referred to Occupational Health again, and she was aware that by the time of her dismissal she had not had a further appointment. The only new information the Claimant obtained in March 2025 was that CM Henderson had made the wrong type of referral, CM Henderson had been sent an email by Optima health on 26 November 2021 advising her

of this, and she did not take any further action in response. However, this information does not significantly alter the Claimant's understanding of what had occurred. It did not reveal something that the Respondent had previously said was untrue. All this additional information did was provide further explanation for what the Claimant already knew – that she had been referred to Occupational Health for the second time in October 2021 but dismissed before she had an appointment.

70. Overall, I reject the Claimant's argument that the additional documents materially changed her knowledge or understanding of what occurred. There was nothing in the new disclosure which justifies the Claimant bringing new claims of failure to make reasonable adjustments and discrimination arising from disability, when her application to amend to include those claims has already been decided and rejected.
71. Further, the Claimant has argued that at the final hearing in March 2025 she learned that the dismissal bundle was destroyed. The evidence of CM Henderson was that she prepared a hard copy bundle of papers for Governor Frost ahead of the meeting between the Claimant and Governor Frost on 2 December 2021. It was confirmed at the final hearing in March 2025 that Governor Frost's bundle had not been kept after the dismissal hearing. CM Henderson had also produced a time line of events for Governor Frost, which referred to various documents in the bundle produced for Governor Frost. The vast majority of the documents provided to Governor Frost were in the bundle for the final hearing, but not all. It was unfortunate the bundle that Governor Frost was presented with by CM Henderson was not kept. The Claimant has argued that this significantly prejudiced her ability to prepare her case, but she has not set out how this is linked to putting in a new claim for disability discrimination. I cannot see any link between the Claimant's discovery that the hard copy bundle of documents provided to Governor Frost ahead of the meeting on 2 December 2021 was not retained and the Claimant suggestion that this justifies putting in a new claim for disability discrimination, after her previous application to amend was refused. Even if the Claimant had been aware of this information in May 2024, it is unlikely to have made any difference to Employment Judge Shastri-Hurst's decision because there simply does not seem to be any link between this fact and the Claimant's wish to bring a claim of disability discrimination. The Claimant was already aware of the facts she needed to know in order to be able to make her application to amend to add claims of disability discrimination.
72. In the hearing on 21 May 2026, the Claimant confirmed that as a part of her second claim, she also wished to complain about the Respondent's failure to make the adjustments recommended in the Occupational Health report of 24 August 2021, namely "assistance with her workload, additional breaks, timeouts, time off at short notice should she find herself being totally overwhelmed, etc", and a failure to offer compressed hours, which was also referred to in the report. The Claimant was aware in August 2021 that she had been seen by Occupational Health. She saw a copy of the August 2021 Occupational Health report and its recommendations prior to her dismissal. She

was sent a copy by Governor Frost on 16 November 2021 ahead of the dismissal meeting. The minutes of the meeting on 2 December 2021 indicate the report was referred to in the meeting. The Claimant was therefore aware at the time of her dismissal that the Respondent had not made the adjustments recommended in the August 2021 Occupational Health report, although the Claimant was only in work for a very short period of time between the report in August 2021 and her dismissal in December 2021. The Claimant was off work from 30 August 2021 until 9 November 2021. She then returned to work but only until 17 November 2021 before she was signed off sick again, and then subsequently dismissed. The Claimant was also provided with a copy of the August 2021 Occupational Health report in November 2023 as a part of the Respondent's disclosure. The Claimant could therefore have pleaded this argument in her original Claim Form or applied to include this reasonable adjustment argument as a part of her amendment application. As per *Henderson v Henderson*, these were matters which could and should have been raised in the earlier proceedings, but which were not.

73. I am not certain whether the Claimant did seek to make this argument to Employment Judge Shastri-Hurst, because at the hearing on 21 May 2026 I did not have a copy of the paperwork presented to Employment Judge Shastri-Hurst in May 2024. Employment Judge Shastri-Hurst recorded in her Reasons that the Claimant had produced a List of Issues for the purpose of the amendment application, with the benefit of some legal assistance. The List of Issues is also referred to in the Employment Appeal Tribunal judgment. At the hearing in May 2026, the Claimant said she did not recall having ever produced a List of Issues. The Respondent's legal representation has changed since May 2024. I therefore was not able to obtain a copy of the List of Issues presented to Employment Judge Shastri-Hurst. In any event, the Claimant had all the relevant information at the time of her dismissal and ahead of her application to amend her claim in May 2024. Nothing new came to light in March 2025 which could justify her putting in a further claim seeking a further opportunity to bring disability discrimination claims about the Respondent's alleged failure to implement the recommendations made by Occupational Health in August 2021.
74. The principle in *Henderson v Henderson* also applies to the Claimant's other proposed acts of unfavourable treatment in her second claim, namely a) the written warning, b) the Occupational Health report not being considered and c) the Claimant not being re-referred to Occupational Health in October 2021 before her dismissal. The Claimant was aware of these events at the time. These were matters which could and should have been raised in the earlier proceedings, if the Claimant wished to pursue them.
75. Finally, the Claimant's second claim includes a new type of claim relating to the Claimant's beliefs about the Covid 19 vaccination. I have found this a difficult claim to understand. In the document attached to her ET1, the Claimant noted that she was incorrectly characterised as refusing vaccination without reasonable grounds. She noted her refusal was based on legitimate and well-founded concerns linked to her mental health disabilities, triggered by a family history of heart disease. The Claimant also set out under the next heading that

the Respondent had conflated her vaccination concerns, which were distinct from her vegan beliefs, with her disability related concerns around vaccination and mental health. She reiterated the concerns were not related to her vegan beliefs, because her claim regarding her vegan beliefs had already been heard, and this was a fresh claim made in good faith.

76. Firstly, I rejected the Claimant's suggestion that her concerns about the vaccination were not related to her vegan beliefs. The final hearing bundle for the Claimant's first claim contained several documents, written by the Claimant, where she asserted she had chosen not to be vaccinated due to her vegan beliefs. For example, on p75 of the final hearing bundle, the Claimant wrote in a document, "Sexual discrimination, vegan beliefs (unvaccinated status due to vegan beliefs) - victimisation, ..." and on p78 she had written, "Unvaccinated due to vegan beliefs and history of heart conditions in immediate family – father deceased from heart failure", and "She was annoyed with me for having 'excluded' her and also was annoyed that I was not agreeing to be vaccinated - due to my vegan beliefs." The Claimant's vegan beliefs may not have been the only reason she chose not to get vaccinated, but she repeatedly suggested previously to the Tribunal it was a significant part of the explanation. As a result, I rejected the suggestion the Respondent had mistakenly thought she was rejecting the vaccine due to her vegan beliefs.
77. Secondly, even if the Claimant is correct in what she is asserting now, and the reason she refused the vaccine was due to her mental health related concerns about a family history of heart failure, what the Claimant is describing is a personal choice not to be vaccinated due to a specific concern about whether heart problems may run in her family. That is not a philosophical belief, but a personal decision based on personal circumstances.
78. Thirdly, the Claimant said in the hearing on 21 May 2026 that the less favourable treatment she was complaining about was the fact that in two emails CM Henderson had described the Claimant as refusing to be vaccinated. She wrote in the document attached to her ET1, "I was incorrectly characterised as refusing vaccination without reasonable grounds". However, this is a repetition of what the Claimant set out in her first claim. The Claimant set out extensively in the further and better particulars document she provided for the first claim that she considered she had been treated poorly due to her unvaccinated status, yet this was not a matter that was listed in the extensive List of Issues which followed her first application to amend that was permitted by Employment Judge Manley.
79. During the course of the final hearing for her first claim in March 2025, the Claimant was provided with one additional document from the Respondent in which CM Henderson had written:
- "Today I was informed by detail that she had contacted them and she is still self-isolating. I called to ask if she lived with the person as per Hayden's handy flowchart and she said no, it was on the app. She refuses to be vaccinated however, I see that she should take an LFT test and providing this is negative

she should be coming back to work. I offered to take her some LFT tests on my way home, alternatively she should be coming in for her early shift and can take one before coming into the prison. She confirmed she had some in the car and will contact me back. I then receive the below email. Please can you let me know where we stand with this because this so I can give the correct advice and have her detail reflect correctly as I don't believe she should not be down as special leave."

80. There is nothing in this email which says the Claimant refused to be vaccinated without reasonable grounds. In any event, once the Claimant received this email, if she believed it gave rise to a claim she wished to pursue, she could have made an application to amend her claim during the final hearing in March 2025. This would have allowed the Tribunal to have dealt with the matter as a part of the final hearing. By waiting and putting in a separate claim about the same factual matters under consideration, the Tribunal has been denied the opportunity to deal with this in a cost effective and proportionate manner. The Claimant's failure to make the application at the time cannot be explained as being due to the fact that she was unrepresented. The Claimant had by that time made two applications to amend, and was appealing one refusal to the Employment Appeal Tribunal. As per *Henderson v Henderson*, this is a matter which could and should have been raised in the earlier proceedings, but which was not.
81. Further, regrettably, I accept the Respondent's argument that this proposed new claim has been included in the Claimant's second claim in an attempt to make her second claim look different and distinct from her application to amend her first claim. I consider this to be an abuse of the Tribunal's process.
82. The adjudication of the Claimant's first claim involved a far greater number of hearings than are usual. The Claimant is unrepresented and has suffered a lengthy period of very poor mental health. The Tribunal has sought to accommodate her for these reasons as much as it reasonably can. However, the Tribunal has limited resources, and there are a very considerable number of other claimants whose claims need to be considered.
83. The Claimant has repeatedly told the Tribunal that the proceedings have had a very detrimental impact on her mental health and that her health takes a turn for the worse whenever she receives correspondence from the Tribunal or has a hearing to attend. Despite this, the Claimant seeks now to bring an additional claim, covering the same period of employment as her previous claim, which would put her back to the start of the entire process again. A process which would again take several years to complete.
84. The Claimant was employed by the Respondent for a relatively short period of time, 13 months, and her employment ended in December 2021. Her first claim has taken a period of 4 years to reach a conclusion, and it may not yet be concluded if she pursues a further appeal. Regrettably I am inclined to agree with the Respondent that the Claimant appears to be struggling to accept that her fight with the Respondent has been determined and is now at an end

(subject to any further appeal). The Claimant may not have achieved all that she wanted, but she has been given a fair hearing. A considerable amount of the Tribunal's resources has been allocated to ensuring her claims have been considered fairly and ensuring she has not been disadvantaged by virtue of being unrepresented.

85. For the reasons given above, I have concluded that the principle of cause of action estoppel applies in respect of the Claimant's new claims of failure to make reasonable adjustments and discrimination arising from disability in respect of her claims relating to her dismissal. An issue necessary to the presentation of those claims had been finally determined by Employment Judge Shastri-Hurst and the Employment Appeal Tribunal. The Claimant is estopped from bringing these claims again. I also find it was an abuse of the court's process to attempt to circumvent those decisions by bringing the same claims again in a new claim.
86. In respect of the Claimant's other claims in her second claim form (failure to make reasonable adjustments regarding the August 2021 Occupational Health report recommendations, the other alleged acts of unfavourable treatment, and the Claimant's claim for discrimination on grounds of belief), the principle in *Henderson v Henderson* applies. The Claimant's second claim is an abuse of the Tribunal's process, and her second claim is struck out in its entirety.

Approved by

Employment Judge Annand

15 June 2026

JUDGMENT SENT TO THE PARTIES ON

5 July 2026

FOR THE TRIBUNAL OFFICE