Appeal No. UKEAT/0040/19/JOJ

EMPLOYMENT APPEAL TRIBUNAL

ROLLS BUILDING, 7 ROLLS BUILDINGS, FETTER LANE, LONDON, EC4A 1NL

At the Tribunal
On 4 October 2019

Before

THE HONOURABLE MR JUSTICE LAVENDER

(SITTING ALONE)

MS SUSAN BUTT & OTHERS — APPELLANTS

READING BOROUGH COUNCIL — RESPONDENT

Transcript of Proceedings

JUDGMENT

FULL HEARING -APPEAL AND CROSS-APPEAL

APPEARANCES

For the Appellants	MS DAPHNE ROMNEY QC (One of Her Majesty's Counsel) Instructed by: Paul Doran Law Unit 14B Building 10 Central Park Mallusk Co. Antrim BT36 4FS
For the Respondent	MR RICHARD LEIPER QC (One of Her Majesty's Counsel) Instructed by: Boyes Turner LLP Abbots House Abbey Street Reading Berkshire RG1 3BD

SUMMARY

PRACTICE AND PROCEDURE – Application/claim

PRACTICE AND PROCEDURE – Estoppel or abuse of process

In 2008 the Claimants brought equal pay claims against the Respondent, who introduced a new pay structure with effect from 1 May 2011. In 2011 the Claimants each issued a second equal pay claim, which was primarily concerned with the position after 1 May 2011. The second claims were stayed while the Claimants and others pursued their original claims. In 2018 the Claimants acknowledged that their original claims had been issued a day too early and that the Employment Tribunal had no jurisdiction over them. The Employment Tribunal decided that the second claims did not include claims in respect of the period before 1 May 2011.

Held that:

(1) (allowing the Claimants' appeal) the claim forms in the second claim did include a claim in respect of the period before 1 May 2011; and

(2) (dismissing the Respondent's cross-appeal) it was not an abuse of process for the Claimants to pursue those claims.

THE HONOURABLE MR JUSTICE LAVENDER

1. This is an appeal by seven employees of the Respondent Council against the Decision of an Employment Tribunal sitting in Reading that the Claimants' claims do not include complaints about equal pay which predate 1 May 2011. The Reasons for that Decision are set out in a Judgment which is dated 8 August 2018 and which was sent to the parties on 21 August 2018. If the appeal succeeds, there is a cross-appeal by which the Council contends that the Appellants' claims should have been struck out as an abuse of process.

2. The background is that a large number of the Council's female employees, including the Appellants, brought equal pay claims in 2008 against the Council. Those claims were managed together and they have been referred to as the "James multiple." Although they do not appear to have appreciated it at the time, the Appellants and some of the other Claimants in the James multiple filed their claim forms a day too early, with the result under the provisions then in force that the Employment Tribunal did not have jurisdiction to determine those claims.

3. The point was taken by the Council in its response as early as 2008 or 2009, but there was no application by the Council to strike out those claims and, for their part, the Appellants did nothing in response to this point in order to protect their position. In the event, it was not until 2018 that the Appellants finally accepted that the Employment Tribunal had no jurisdiction over their claims in the James multiple.

4. By 26 October 2011, some issues had been decided in favour of the Claimants in the James multiple. Meanwhile, however, with effect from 1 May 2011, the Council had implemented a new pay and grading structure following a job evaluation exercise. Many of the

A Claimants in the James multiple, including the Appellants, brought new claims against the Council on 26 October 2011. These claims have been referred to as the "Gordon multiple."

B 5. Several of the Claimants in the Gordon multiple had in fact ceased working for the Council before 1 May 2011. However, I do not attach any significance to this fact, which was not relied on before the Employment Tribunal. The claim forms in the Gordon multiple were all in the same terms. Section 6, entitled, "What compensation or remedy are you seeking?" C was left blank. In Section 5.1, the only box ticked was that which reads, "I was discriminated against on the grounds of sex, including equal pay." In Section 5.2, the Claimants each gave the background and details of their claim in 16 numbered paragraphs. Again, however, they did D not specify the remedies which they were seeking. On the whole, the details of claim were couched in very general terms. As a piece of drafting, it was by no means a model of clarity.

E 6. It is clear that the principal thrust of the claim was to set out the Claimants' case in respect of the new pay structure. The question, however, on this appeal is whether it also included a claim in respect of the period before 1 May 2011. Paragraphs 1 to 4 of the details of claim stated as follows:

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> ***"1. The Claimant has already submitted a claim to the Employment Tribunal under the Equal Pay Act 1970 and/or The Equality Act 2010. However, the Respondent implemented a new pay and grading structure on 1st May 2011 for all of its employees and the Claimants' terms and conditions were altered to reflect that.***
>
> ***2. The Claimant has been employed by the Respondent in the post listed on the attached schedule. The claim relates however to all posts held or jobs done by the claimant in the previous 6 years, unless covered by a COT3 or compromise agreement. The Claimant and comparators are all employed by the same employer in the same establishment and/or on common terms and conditions.***
>
> ***3. The Claimant relies on the pleadings, comparators and decision of the Employment Tribunal in the Genuine Material Factor Defence Hearing in the James/Botting and Others v Reading Borough Council (case numbers 2701459/08, 2701466/08 and Others) multiple. The Claimant adopts the finding that the following payments given to the relevant male employees were discriminatory and the failure of the Council's defences regarding those payments….***
>
> ***(a) Refuse workers - productivity bonus, attendance allowance, contractual overtime paid at an enhanced rate, honorarium, Christmas bonus, wheel bin and price work.***
>
> ***(b) Street cleansing workers – attendance allowance***

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> ***(c) Groundsmen – 33% bonus, holiday and sickness cover, skill/responsibility bonus***
>
> ***(d) Security officers – first aid payment***
>
> ***(e) Transfer station foreman - honorarium and fixed bonus***
>
> ***(f) Transfer station operative - fixed bonus***
>
> ***(g) Recycling liaison operative - all pay that was circled, honorarium and WAM ITAB payments***
>
> ***(h) Highways operative - fixed payment of cash over time***
>
> ***(i) Tractor drivers – maintenance payment***
>
> ***4. The Claimant is employed or was employed, in a job where the work is and has at all material times been performed predominantly by women and it is for the Respondent to show that the difference in terms are not tainted with sex and are objectively justified."***

7. The second sentence of paragraph 2 is particularly significant. The Appellants say that this is an express recognition that the claim extended to the period before 1 May 2011 and that the reference to six years chimed with the provisions of Section 132 of the **Equality Act 2010**, to which I will return. The Council says that the words used can be experienced as reflecting the Claimants' case that the new structure after 1 May 2011 involved what is known as implied payment protection, and to some extent, continued a pre-existing discriminatory structure, and that, in some cases, it may be relevant to determine whether a sex equality clause was to be implied with effect from some time before 1 May 2011.

8. Paragraph 5 of the details of claim referred to, but, unhelpfully, did not define, the relevant period. It provided as follows:

> **"5. The Claimant is not paid the same as men employed in posts rated either the same or lower than her post, or who do work of equal value to her (and the claim is pursued in the alternative for the whole of the relevant period) in that the Claimants' hourly rate for all normal hours worked is less than the hourly rate for the men taking into account all monetary payments paid to them for normal hours worked including, but not limited to, basic pay plus attendance payments, "bonus" payments, bonus buyout, pay protection, hardship payments and any other payment made to the comparator which is not received by the Claimant. Full particulars will be provided on production of the comparator's contracts and wage slips."**

9. The Council contends that the relevant period in paragraph 5 meant the period from 1 May 2011, given that the period before that was covered by the claims made in the James

multiple. The Appellants contend that the relevant period here meant the period commencing six years before the issue of the claim form, i.e., the arrears day as defined in Section 132 of the **Equality Act 2010**, which provides as follows:

> **"(1). This section applies to proceedings before a court or employment tribunal on a complaint relating to a breach of an equality clause, other than a breach with respect to membership of or rights under an occupational pension scheme.**
>
> **(2). If the court or tribunal finds that there has been a breach of the equality clause, it may—**
>
> > **(a)make a declaration as to the rights of the parties in relation to the matters to which the proceedings relate;**
> >
> > **(b)order an award by way of arrears of pay or damages in relation to the complainant.**
>
> **(3). The court or tribunal may not order a payment under subsection (2)(b) in respect of a time before the arrears day.**
>
> **(4). In relation to proceedings in England and Wales, the arrears day is, in a case mentioned in the first column of the table, the day mentioned in the second column.**

Case	***Arrears day***
A standard case	**The day falling 6 years before the day on which the proceedings were instituted.**

10. Ms Romney made a further submission in relation to paragraph 5. She submitted that that paragraph referred to types of payment which ceased to apply from 1 May 2011, i.e. attendance payments and bonus payments, or at least performance bonus payments. However, this was not a point taken before the Employment Tribunal, it was not subject to a pleaded ground of appeal and I have no evidence before me to support it. I give no weight to this submission in considering the correct construction of the details of claim.

11. Paragraph 6 of the details of claim stated as follows:

> ***"6. It is the Claimants position that her post remains rated as equivalent to her comparators under the 1987 White Book JES, or falling which she undertakes work of equal value to her comparators. The Respondents have conducted a JES under the Green Book but have failed to provide, and thus concealed, details of the scores of those posts that had been evaluated. The Claimants reserve the right to amend the list of comparators following answers to the equal pay questionnaires and appropriate disclosure. The Claimants also reserve their position as to whether the Respondent have properly implemented the Green Book JES in accordance with section 1(5) of the Equal Pay Act 1970 or alternatively section 65(4) of the Equality Act 2010 until disclosure has been provided."***

12. Paragraph 8 referred to, but, again, did not define, the period of claim. It stated as follows:

> **"The Claimant contends that her post is rated as equivalent or equal value to each of the posts listed above for the duration of their period of claim. The Claimant also contends that they have been and continue to be paid less than this comparator and the difference in pay is not justified."**

13. Again, the Appellant contended that the period of claim commenced on 26 October 2005 and the Council contended that it commenced on 1 May 2011.

14. Paragraph 9 of the details of claim provides as follows:

> **"9. The Claimant has never received the same pay and benefits as men employed in this comparator post. The pay and benefits the Claimants refer to include the following:**
>
> **(A). All monetary payments for normal hours worked inclusive of basic pay, attendance allowances, bonuses (productivity related and otherwise), pay protection, hardship payments, bonus buyouts and any other enhancements an employee in the particular post might possibly receive.**
>
> **…"**

15. The word "never" at the beginning of that paragraph is worth noting. Ms Romney also relied on the reference in this paragraph to attendance allowances and bonuses, productivity related and otherwise, but I have already dealt with that submission.

16. In paragraph 11 of the details of claim it was stated as follows:

> **"The Claimant further reserves the right to allege that the JES carried out by the Council is invalid due to a failure to follow the guidelines contained within Part 4 of the Green Book."**

17. Paragraph 14 states as follows:

> **"14. The Claimant further reserves the right to allege that the Respondent has unlawfully discriminated against her on the grounds of sex, based on the manner in which the single status pay and grading structure, imposing new terms and conditions of employment as of 1st May 2011, and any previous pay and grading structure for the Claimant's jobs or any comparator job was arranged and implemented."**

18. Clearly, the words "and any previous pay and grading structure" in this paragraph are potentially significant, and Ms Romney also drew attention to the reference in the following paragraph, which curiously is number 9, to the **Equal Pay Act 1970**. That paragraph reads, "in addition, the Claimant relies directly upon the following: **Equal Pay Act 1970**...," and Ms Romney points out that the **Equal Pay Act 1970** ceased to have effect on 1 October 2010. A reference to it would therefore be inapposite if the claim only related to the period from 1 May 2011.

19. The Council initially filed a holding response and then, on 14 December 2011, filed a more substantive response. I will refer to these as the interim response and the response. Paragraph 2 of the interim response stated as follows:

> **"To the extent that the Claimants' rely on the same arguments as they make in the earlier claims of James/Botting and Others v Reading Borough Council consolidated under case numbers 2701459/2008, the Respondent will seek to rely on the arguments in its responses to those claims."**

20. Paragraph 4 of the interim response states as follows:

> **"The Respondent is in the process of preparing a full response to the Claimants' complaints and anticipates making an application to amend this response so as to give further details of grounds of resistance within a further period of two weeks."**

21. In paragraph 1 of the response, the Council noted that each of the Claimants in the Gordon multiple had filed a claim in the James multiple except for a Ms Kamara, who had filed two claims, one of which was subsequently consolidated with the James multiple while the other remained with the Gordon multiple. However, the position of Ms Kamara was not relied on before the Employment Tribunal as an aid to construing the details of claim and accordingly I place no weight on it.

22. Paragraph 2 of the response referred to the "other claims", i.e., the claims other than that of Ms Kamara which was subsequently consolidated with the James multiple, and stated as follows:

> **"2. Insofar as the other claims relate to the period from the date of their last claim up to 1 May 2011, subject to individual defences arising in relation to the circumstances of each claimant's employment and/or the circumstances of their comparators' employment since the date of the claim, the Respondent accepts that these claims will fall to be determined under the principles established (and to be established) in James."**

In addition, paragraph 4 of the response was in the following terms:

> ***"It is admitted that the Respondent implemented a new pay and grading structure on 1 May 2011. This was implemented with respect to employees who historically have been categorised as manual workers and APT & C staff; it does not encompass those categorised as craft workers or those at senior management level. It provided a robust pay system which ensures that the pay of men and women who have been rated as equivalent under the respondent's JES are paid the same. In relation to the new structure the Claimants have failed to offer a single instance of a difference in pay between themselves and a main engaged in equal work. Instead, they seek to undermine the new pay and grading structure or the JES upon which it is based. There is no proper basis for them to do so."***

23. In the remainder of the response the Council complained, understandably, of a lack of particularity in the details of claim. The Council did not in the response contend that any of the claim forms in the Gordon multiple were, in any respect, an abuse of process or should be struck out, whether in part or in whole. There was a case management Hearing in the Gordon multiple on 28 March 2012. On the day before, 27 March 2012, the solicitors for the Claimants wrote a letter to the Employment Tribunal in which they said:

> **"The claims in the above multiple were presented in 2011 in relation to Claimants represented by us already pursuing earlier claims for the following reasons:**
>
> > **(1) The Claimants may seek to challenge the Council's job evaluation study as valid under s.65 of Equality Act 2010 if the discriminatory pay practices of the Council continued after its implementation.**
> >
> > **(2) The Claimants' claims are to include any pay protection given to the comparators, which is also discriminatory unless a material factor can be made out.**
> >
> > **(3) Claimants that did not agree to the changes may have been dismissed and re-engaged immediately from 1 May 2011 and the claims are to ensure no time issues arise."**

24. In the event, the Hearing on 28 March 2012 resulted in an Order which contained the following recital:

> **"1. These claims arise as a result of the Respondent introducing a single status system of pay from 1 May 2011. The Claimants are almost all employees who have already pursued claims for Equal Pay against the Respondent in previous litigation, which is not expected to be concluded until 2014."**

25. There was a further case-management Hearing on 7 August 2012, and paragraph 1.1 of the Order made on that occasion stated:

> **"The Claimants having received the disclosure previously under discussion, the Claimants are no later than Friday 28 September 2012 to submit to the Tribunal and to the Respondent, an application to amend, with a full draft amended text of a claim."**

26. On 18 October 2012, the solicitor for the Claimants in the Gordon multiple wrote to the Employment Tribunal to request permission to amend their claim and enclosed draft amended particulars of claim. In the event, the application for permission to amend was never determined. However, it is relevant to note paragraphs 1 and 2 of the draft amended particulars of claim, which state as follows:

> **"1. The Claimants have previously issued claims against the Respondent under the Equal Pay Act 1970. Those claims are proceeding in *James and others* multiple. In that multiple, the Tribunal has previously held that a number of bonus payments made to comparators up to 30 April 2011 were discriminatory….**
>
> **2. On 1 May 2011, the Respondent ceased paying bonuses to the comparator groups and implemented a new pay and grading structure which, for the first time, amalgamated former manual grade and APT & C employees onto a single pay spine. …"**

27. The remainder of the draft amended particulars of claim addressed the new pay and grading structure introduced by the Council on 1 May 2011.

28. Paragraph 20 dealt with those Claimants in the Gordon multiple who had ceased working for the Council before 1 May 2011, but, as I have already indicated, I place no reliance on their position for present purposes. The draft amended particulars of claim included a paragraph which addressed the relief sought by the Claimants, i.e., the deeming of an equality clause, damages and interest, but this did not specify the period in respect of which damages were sought. As I have said, the application for permission to amend was not determined. That

is because the parties agreed that the Gordon multiple should be stayed to await the outcome of the James multiple, and an Order to that effect was made on 16 January 2013. No further steps were taken in the Gordon multiple until 2018. Meanwhile, the James multiple proceeded and at least some of the claims made in the James Multiple were upheld, with judgments on remedy being given in some respects on 23 March 2018 and in others in June 2018.

29. But for the facts that their claims had been issued too early, it is likely that the Appellants would have succeeded to some extent in the James multiple. The remedies awarded in the James multiple covered the period to 30 April 2011. However, by 9 May 2018 the Appellants, who by then had new solicitors, had come to realise that their claims in the James multiple had been issued too early, with the result that the Employment Tribunal did not have jurisdiction to determine those claims. On that date, the Appellants' solicitors wrote to the Employment Tribunal to withdraw their claims. Those claims were subsequently dismissed by Order dated 21 August 2018. In the same letter of 9 May 2018, the solicitors applied for a lifting of the stay in the Appellants' claims in the Gordon multiple. The basis for this application was the contention that the Appellants' claims in the Gordon multiple included claims which covered the period before 1 May 2011 and in respect of which relief could therefore be sought on the same basis as had been determined in the James multiple.

30. There was a Preliminary Hearing in the Gordon multiple on 22 May 2018. An Order was made that the stay in the Appellants' cases was lifted to determine the following preliminary issues: (1), whether the said Claimants' claims presented as part of the Gordon multiple and including complaints about equal pay which predate 1 May 2011, and if they do, (2), whether the said Claimants' claims presented as part of the Gordon multiple should be

struck out because they are an abuse of process. It is the consideration and determination of those preliminary issues which is the subject of the judgment now under appeal.

31. In that Judgment the Employment Tribunal recited various aspects of the background. This included citing paragraphs 1, 2, 3 and 6 of the details of claim and paragraph 4, but not paragraph 2 of the response, the passage from the letter of 27 March 2012 which I have quoted, the recital to the Order of 28 March 2012 which I have quoted and the letter seeking permission to amend, and paragraphs 1 and 2 of the draft amended particulars of claim. The Employment Tribunal also set out the terms of paragraph 4 of the Claimants' submissions to the Employment Tribunal on that occasion which provided as follows:

> "***The Gordon claims were issued in October 2011. As reflected in paragraph 5.2 those claims were issued within six months of the new Job Evaluation Study and arrangements (the JES), which took effect on 1 May 2011. The reason for the claims being issued was to make provision for the Council's argument which it subsequently advanced, that the JES operated as a break in the employment relationship between the claimants and the Council."***

32. The Employment Tribunal noted that it had fully considered one of the points which were made by the Claimants' representatives in submissions and also the contents of the skeleton argument.

33. The Employment Tribunal's Decision on the first preliminary issue was set out in paragraphs 13 to 15 of the Judgment as follows:

> **"13. The conclusion of the tribunal is that the claimants' claims presented as part of the Gordon multiple do not include complaints about equal pay which predate 1 May 2011.**
>
> **14. We consider that the claims presented as part of the Gordon multiple were presented to deal with different issues from those in the James multiple. They were not intended to cover the same ground and did not cover the same ground. The claims in the Gordon multiple take up events from 1 May 2011.**
>
> **15. We consider that on a proper reading of the complaints in that case, read on their face and also taken in context of what was happening at the time and in the light of the existence of the James multiple, the answer to the first question in our view must be no."**

34. Then in relation to the second preliminary issue, the Employment Tribunal, having noted that it did not arise given its decision on the first preliminary issue, stated as follows in paragraph 17 of its Judgment:

> **"17. If we are wrong in respect of the answer to the first question then to the extent that there are complaints in the Gordon multiple which should have been considered as part of the James multiple, we consider that that is something which should or would have been considered as part of case management of those two cases. That did not take place because the Gordon multiple was stayed. In our view it is clear that there is a proper claim within the jurisdiction of the tribunal presented in respect of the Gordon multiple which has a number of different elements. To the extent that there are elements which would have crossed over into what can properly be considered as the James multiple, it would have been appropriate not to strike out the claim but go through the process of case management in order to decide how and where the cases should be heard by the tribunal avoiding duplication."**

35. I turn now to the appeal. There are a number of grounds of appeal, but the central question is simply one of construction of the claim forms. It was common ground that this was a question of law, or at least mixed fact and law, and suitable to be dealt with on appeal. One ground of appeal was that the Decision of the Employment Tribunal was perverse, but the issue of perversity does not appear to me to be relevant in this context.

36. I was referred to a number of familiar authorities about the approach to the interpretation of contracts. Mr Leiper submitted that account needs to be taken of the fact that a contract expresses the common intention of two parties, whereas a statement of case is the product of one party. However, it remains the case that the words used are to be looked at objectively and in context. Mr Leiper went on to submit that a Court or Tribunal should be more willing than it would be in the case of a contract to admit evidence of subsequent statements made by the party who drafted the statement of case. I doubt this, but I do not have to decide the point, since the key passage in the Employment Tribunal's Judgment, i.e., paragraphs 13 to 15, contains no reference to any reliance on documents which postdate the claim forms.

37. Another ground of appeal was that the Employment Tribunal failed to consider a relevant matter, or an allegedly relevant matter, namely the Appellants' submissions as to the alleged significance of the timing of the issue of the claim forms, which was within six months of the introduction of the new pay structure. However, it is plain from its citation of paragraph 4 of the Appellants' skeleton argument that the Employment Tribunal did take this into account. It does not, in any event, appear to me to be a factor which carries any weight.

38. Understandably, the parties point to different features of the background to the claims forms. The Appellants pointed in particular to Section 132 of the **Equality Act 2010**. Their submission was that a Tribunal, or anyone else reading an equal pay claim form, will usually assume that the Claimant will want to claim all monies due for as far back as possible, i.e., up to six years. On the other hand, the Council placed particular emphasis on the fact that the Claimants in the Gordon multiple had all issued claims in the James multiple, with the exception of Ms Kamara, who issued a claim which, as I have said, was consolidated with the James multiple. It was plain that there would be an overlap in issues as between the two sets of claims. For example, insofar as the Claimants alleged that the new pay structure did not adequately address an existing discriminatory situation, it was clearly necessary for the Claimants to establish that there was an existing discriminatory situation, which would give rise to issues concerning events before 1 May 2011.

39. However, the Council submitted there was no reason to expect the Appellants to issue a claim which merely duplicated an existing claim and, indeed, a Court or anyone else reading the claim form would do so in the knowledge that it is usually an abuse of process to issue a claim which merely duplicates an earlier claim.

40. Ms Romney submitted that this was not a case of a duplicative claim, because the claim forms in the Gordon multiple covered a different period, starting in 2005, from the claim forms in the James multiple, which covered the period from 2002. However, all relief sought in respect of the period to 30 April 2011 could be obtained in the James multiple.

41. Against that background, I look at the words of the claim forms. The key part is the second sentence of paragraph 2, although the Appellants also rely on the other passages which I have cited. On its face, the statement in that sentence that the claim relates to all posts held or jobs done by the Claimants in the previous six years, unless covered by a COT3 or compromise agreement, suggests that each Claimant is claiming the sums allegedly due to her in respect of any post held or job done by her in the last six years. The reference to six years appears to invoke the six-year period referred to in Section 132 of the **Equality Act 2010**. Moreover, it can be read as giving substance to the otherwise undefined references to the relevant period and the period of claim elsewhere in the details of claim.

42. The rival interpretation proposed by Mr Leiper, and it appears, accepted by the Employment Tribunal is that this sentence was intended to indicate that the Claimants might, in support of their claim that the new pay structure did not adequately address existing discrimination, rely on circumstances which had given rise to the implication of an equality clause at a much earlier date. That interpretation, however, requires a somewhat strained reading of the words used and, in particular, the reference to six years does not sit well in the context of that proposed interpretation.

43. Given the background of the James multiple, anyone reading the claim form might not be expecting to find a claim covering the period before 1 May 2011, but that appears to be what

it contains, perhaps, as was suggested in the argument, because the draftsmen of the claim form sought at that early stage to cast the net as wide as possible. On balance, I conclude that the correct interpretation of the claim forms is that they did include a claim in respect of the period before 1 May 2011.

44. I add this. One of the grounds of appeal was that the Employment Tribunal ought to have had regard to paragraph 2 of the response, which they did not cite in their Judgment. Mr Leiper accepted that it was appropriate for them to have regard to that paragraph and, to my mind, the claim forms and the response both form part of the process of defining the issues in the case. Mr Leiper also accepted that paragraph 2 constituted a recognition by the Council that the claim form might, and I stress the word might, contain a claim for the period before 1 May 2011. He emphasised that the words "insofar as" at the beginning of paragraph 2 meant that that paragraph did not go so far as to constitute an admission that the claim form did contain a claim for the period before 1 May 2011, and he submitted that the paragraph as a whole reflected the difficulty which the Council was having in understanding a badly-drafted claim form and in seeking to identify potential claims which might or might not be intended. All in all, paragraph 2 of the response provides some support for the Appellants' case, but I reach my conclusion without relying on it.

45. I turn now to the cross appeal, the grounds for which are as follows: (a) a litigant should run all related points in one action and not allow a multiplicity of proceedings, (b) the case management envisaged by paragraph 17 of the Tribunal's Judgment was prevented by the representations made by the Appellants' solicitor as to the scope of the Gordon claim forms. Dealing with this second point, in my judgment, there was no abuse of process in this respect. The letter which I have cited which was written by the Appellants' solicitor indicated the reason

why the claims in the Gordon multiple had been issued, in other words, the motive for issuing those claims, but it did not expressly address the scope of the those claims.

46. As for the first of the two grounds of appeal, I was referred to many authorities on the issue of abuse of process, but the facts of this case are unique, and little purpose would be served by an extensive citation from familiar authorities. Ordinarily, of course, a claim which merely duplicates an existing claim would be an abuse of process and would be amenable to being struck out. However, there may be good reason for issuing a second claim form which duplicates an earlier one. In this case, there was such a reason, although the Appellants appear not to have appreciated that in 2011. The reason was that their claims in the James multiple were defective. It would no doubt have been preferable if the Appellants had gone about things differently. Mr Leiper submitted that they should have withdrawn their claims in the James multiple and then commenced fresh claims for the same relief, albeit for a shorter period. They could have done that and that might have been a more satisfactory procedure than what has in fact been done.

47. However, by the time that the issue of abuse of process came before the Employment Tribunal, the Appellants were not seeking to pursue a duplicative claim. It was accepted that their claims in the James multiple were defective, and the only claims which they wished to pursue were their claims in the Gordon multiple. I do not consider that that can properly be characterised as an abuse of process.

48. For all of these reasons, I allow the appeal and dismiss the cross appeal.