



v

EMPLOYMENT TRIBUNALS

Claimant: Mr M Hussain

Respondent: Home Office

Heard at: Leeds by CVP

On: 8 March 2022

Before: Employment Judge Tegerdine

Representation

Claimant: In person

Respondent: Mr Ryan (Counsel)

WRITTEN REASONS

1. After hearing submissions from the claimant and the respondent's representative, the Tribunal delivered its oral judgment. On 14 March 2022 the respondent's representative contacted the Tribunal by email to request written reasons. The Tribunal now gives its reasons for the judgment that was reached.

Background

Case no: 1803596/2020 (the "Original Claim")

2. The respondent provided a bundle of documents for the preliminary hearing (the "Bundle"). In addition, the claimant sent a number of documents to the tribunal by email on 6 March 2022 for the purpose of the preliminary hearing.
3. It was apparent from the tribunal's letter to the parties dated 10 January 2022 and the respondent's ET3 that the claimant had previously brought a claim against the respondent under case number 1803596/2020 (the "Original Claim").
4. The Bundle included a number of documents pertaining to the Original Claim, including a copy of the claimant's ET1 (**page i**), a record of a public preliminary hearing on 14 December 2020 (**page 99**), and the reserved judgment of Employment Judge Maidment dated 20 December 2021 (**page 32**). The claimant submitted documentation relating to his internal grievance and grievance appeal. The summary of the issues which were

raised by the claimant in the Original Claim and the outcome of the Original Claim which are set out at paragraphs 5 - 15 below are based on those documents.

5. The claimant was employed by the respondent as an Immigration Officer. In 2017 the claimant was accused of having carried out unauthorised lookups on the respondent's databases. This potentially amounted to a criminal offence owing to the nature of the claimant's position. Disciplinary action against the claimant was suspended while the criminal investigation was completed. A lengthy criminal investigation ensued and the claimant was charged with criminal offences, however the criminal case against the claimant was eventually dropped.
6. In July 2019 the respondent resumed disciplinary action against the claimant. The claimant lodged a grievance about the manner in which the disciplinary investigation had been conducted on 2 September 2019.
7. On 18 March 2020 the claimant was dismissed for gross misconduct following a disciplinary investigation. The respondent said that the reason for the claimant's dismissal was that he had made subject lookups on the respondent's computer system without having business reasons for doing so.
8. On 29 June 2020 the claimant lodged complaints of unfair dismissal, disability discrimination, race discrimination, and unauthorised deduction from wages.
9. A preliminary hearing took place on 14 December 2020. The claimant withdrew his disability discrimination claim during that hearing. A deposit order was made in respect of the claimant's race discrimination claim, on the basis that it had little reasonable prospect of success. The claimant was told that if he did not pay the deposit by 11 January 2021, his race discrimination claim would be struck out. The claimant did not pay the deposit, and his race discrimination claim was struck out on 8 March 2021.
10. On 14 June 2021 the claimant's internal grievance was partially upheld in relation to a lack of communication with the claimant about the status/progress of the disciplinary investigation. The claimant lodged an appeal against the grievance outcome on 30 July 2021, and received the outcome of his appeal on 13 or 14 August 2021. The claimant's appeal was not upheld.
11. The full merits hearing of the Original Claim took place on 17-21 May 2021 and 13- 15 October 2021.
12. The claimant withdrew his unauthorised deduction from wages claim during the course of the full merits hearing. This meant that the only remaining complaint was the unfair dismissal complaint.
13. Employment Judge Maidment's reserved judgment states that the tribunal found that the claimant had been responsible for a number of lookups for which there was no business reason, and that a number of those lookups involved individuals with whom the claimant had close familial links. The

tribunal found that the claimant's actions amounted to gross misconduct, and that this was the reason for his dismissal.

14. The tribunal found that the claimant had been unfairly dismissed because the respondent had relied too heavily on the results of the separate criminal investigation (which had not resulted in a successful prosecution) and had not carried out an adequate investigation into the gross misconduct allegation. As a result, the respondent's investigation was not within the range of reasonable investigations.
15. However, the tribunal found that the claimant had been well aware of the rules he had to abide by, and that his actions had amounted to a fundamental breach of trust. The tribunal found that the claimant was wholly to blame for his dismissal, and his basic and compensatory awards were reduced by 100%. No compensation was awarded to the claimant.
16. Employment Judge Maidment's reserved judgment in respect of the Original Claim was sent to the parties on 21 October 2021.

Case no: 1805185/2021 (the "New Claim")

17. The claimant lodged case number 1805185/2021 (the "New Claim") against the respondent on 13 November 2021. The claimant brought complaints of direct race discrimination and victimisation. The basis for these complaints was set out by the claimant in his ET1, and were clarified by the claimant at the preliminary hearing.
18. The claimant is of Asian/Pakistani background, and relied on the protected characteristic of race. During the preliminary hearing, the claimant confirmed that there were two elements to his direct race discrimination claim, which were:
 - (1) The way in which the investigation into the allegation of gross misconduct was handled by the respondent, in particular, the fact that the respondent refused to pause the investigation while the respondent dealt with his grievance, and the biased way the claimant says Stephen Heaton handled the investigation, which the claimant says affected the way everyone else viewed the allegations against the claimant. The claimant's complaint was about the way the respondent's investigation was handled from start to finish, up to and including the outcome of the claimant's appeal against dismissal in 2020.
 - (2) The way in which the grievance the claimant lodged in 2019 was handled by the respondent, in particular, that fact that according to the claimant, the respondent failed to follow its own procedures, and issues the claimant raised in his grievance have never been properly considered or responded to. The claimant's complaint was about the way his grievance was handled from start to finish, up to and including the date on which he received the outcome of his appeal against the grievance outcome, which the claimant says was either 13 or 14 August 2021.

Victimisation

19. The claimant sought to rely on the protected act of lodging the grievance in 2019 in which he says he raised an allegation of race discrimination.
20. The claimant sought to rely on two alleged incidents of detrimental treatment, which were:
 - (1) The way the investigation into the allegation of gross misconduct was handled, in that the respondent refused to pause the disciplinary investigation while the claimant's grievance was investigated.
 - (2) Concerns the claimant raised during the disciplinary investigation and in his grievance about the way the investigation into gross misconduct was being handled were never addressed by the respondent.

Response

21. The respondent submitted its ET3 on 23 December 2021 (**page 18 of the Bundle**). The respondent resisted the claim on a number of grounds, including the fact that, according to the respondent, the claimant's race discrimination claim was the same claim that the claimant had made in his previous claim, and/or even if the race discrimination claim was a new claim, it could and should have been raised in the Original Claim.
22. The Tribunal wrote to the parties on 10 January 2022 (**page 123 of the Bundle**) to inform them that Employment Judge Cox had reviewed the claim form and response form, and determined that there should be a public preliminary hearing in order to:
 - (1) Clarify the allegations.
 - (2) Decide whether all or any of the allegations should be struck out as a vexatious claim and/or as an abuse of process, on the ground that they were included in the race discrimination claim in case no. 1803596/2020, which was dismissed on withdrawal by the claimant, or could have should have been included in that earlier claim but were not.
 - (3) Decide whether all or any aspect of the claim should be the subject of a deposit order on the ground that it has little reasonable prospect of success, or should be struck out on the ground that it has no reasonable prospect of success.
23. The purpose of the preliminary hearing was to consider the issues which were set out in the Tribunal's letter of 10 January 2022.

The law

24. Rule 37(1)(a) of the Employment Tribunals Rules of Procedure 2013 (contained in Schedule 1 of the Employment Tribunals (Constitution and

Rules of Procedure) Regulations 2013 No.1237 (as amended)) states that all or any part of a claim may be struck out if it is “scandalous or vexatious or has no reasonable prospect of success”. The term “vexatious” includes anything that is an abuse of process.

25. Where a cause of action or an issue has already come before a court or tribunal and has been decided, or an issue could have brought before a court or tribunal in previous proceedings but was not, a party who seeks to reopen or raise such an issue in subsequent proceedings before a different court or tribunal may be barred or “estopped” from doing so. The basis for such estoppel lies in two overlapping principles that have the common underlying purpose of limiting abusive litigation and avoiding duplication. The principle of *res judicata* prevents parties from re-litigating a cause of action where a court has already reached a decision related to that cause of action.
26. Cause of action estoppel prevents a party from pursuing a cause of action that has been dealt with in earlier proceedings involving the same parties. With cause of action estoppel, the court or tribunal must determine whether both sets of proceedings rely on the same cause of action. If there are sufficient differences, cause of action estoppel will not apply, however, the claims do not have to be identical to each other in order for cause of action estoppel to apply; the issue is whether “in all material respects, both claims are the same” (**British Association for Shooting and Conservation v Cokayne [2008] ICR 185**). The tribunal must determine whether the claims are *fundamentally the same*.
27. Cause of action estoppel is absolute in relation to all points which had to be and were decided in order to establish the existence of non-existence of a cause of action: “Where the existence of 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 re-litigation of identical claims” (Lord Sumption in **Virgin Atlantic Airways Ltd v Zodiac Seats UK Ltd (formerly Contour Aerospace Ltd) 2014 AC 160 SC**).
28. As cause of action estoppel presents the most rigid obstacle to relitigation, courts and tribunals must 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.
29. Issue estoppel prevents parties from re-opening an issue that has been decided in earlier proceedings involving the same parties. 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.
30. 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 in **Arnold v National Westminster Bank plc (No.1) 1991 2 AC 93, HL**).

31. In certain situations, where new evidence has come to light, the general rule that a party is not permitted to re-open an issue that has already been decided in earlier proceedings between the same parties may not apply: “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 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” (Lord Keith in **Arnold v National Westminster Bank**).
32. In cases where neither cause of action estoppel or issue estoppel apply, a party may nonetheless argue that the cause of action or issue should be barred by application of the rule in **Henderson v Henderson 1843 3 Hare 100, ChD** which requires the parties to litigation to bring forward their whole case, and will not permit the parties to open the same subject of litigation in respect of a matter which could have been brought forward, but was not: “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” (Sir James Wigram VC).
33. The rule in **Henderson v Henderson** can apply in the context of cause of action estoppel and issue estoppel, where parties may be estopped from raising causes of action or issues that could and should have been dealt with in earlier proceedings to which they were also party. This rule is now regarded as forming part of the doctrine of res judicata, but it is also rooted in the concept of abuse of process, and stretches beyond the rigid confines of cause of action estoppel and issue estoppel.
34. When tribunals are considering whether there has been a **Henderson v Henderson** abuse of process, they must adopt a “broad, merits-based judgement, which takes account of the public and private interests involved and also takes account of all the facts of the case, focussing 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” (Lord Bingham in **Johnson v Gore Wood and Co 2002 2 AC 1, HL**). A claim will not be barred simply because it could have been brought in earlier proceedings; the court or tribunal must be satisfied that it *should* have been brought earlier.

Application of the law to the facts of this case

Direct race discrimination claim

- (1) The way in which the investigation into the allegation of gross misconduct was handled by the respondent, in particular, the fact

that the respondent refused to pause the investigation while the respondent dealt with his grievance, and the biased way Stephen Heaton dealt with the investigation.

35. The first question for the tribunal to determine was whether cause of action estoppel applies to this complaint; was this complaint the same as a complaint which had been raised in the Original Claim?
36. The ET1 relating to the Original Claim was at **page i of the Bundle**. The claimant ticked the race discrimination box in the "Type and details of claim" section at page 6 of the ET1 (**page vi of the Bundle**). In the "Details of your claim" section at page 7 of the ET1 (**page vii of the Bundle**) the claimant says, "Grievance lodged with the manner the investigation has been conducted. The process followed goes against Home Office cores values, being open, transparent and fair. Requested my grievances to be heard in the first instance, as I have concern on the investigation conduct."
37. In the "additional information" section at page 12 of the ET1 (**page xii of the Bundle**) the claimant says, "I am extremely disappointed on the manner I have been investigated with in the Home Office. I feel I have treated unfairly... I believe and have evidence to show, in order for the Home Office to justify their decision of dismissing me, they have been heavily influenced by the original investigation officer. He has painted a very biased report, whoever is involved with the investigation, after reading the report, will automatically come to conclusion I am guilty of the alleged offences committed."
38. An order was made on 4 September 2020 requiring the claimant to provide further and better particulars of the Original Claim. The claimant's further and better particulars were at **page 69 of the Bundle**. The claimant's further and better particulars are extensive (running to 81 paragraphs) and contain considerable detail about the basis of the claimant's unfair dismissal and race discrimination complaints, and the process the respondent followed in relation to the disciplinary investigation and grievance.
39. Paragraph 59 of the claimant's further and better particulars (**page 89 of the Bundle**) states, "the Claimant requested that his grievance be heard in the first instance in line with the ACAS Code of Practice, however in breach of the same this was not the case as detailed below". Paragraph 70 (**page 94 of the Bundle**) states, "Again, the claimant expressed his concerns on the manner his grievance and disciplinary had been handled, and felt he was being discriminated against."
40. Paragraph 78 of the further and better particulars (**page 96 of the Bundle**) states, "the claimant submits that the investigation into him for the "look ups" and following alleged failure to keep a record of conflicts of interest is direct discrimination on the grounds of race. In that the claimant asserts that he has been treated less favourably than a hypothetical white immigration officer who conducted searches and failed to record as alleged. The claimant submits that a white comparator would not have been investigated and therefore would not have been dismissed".

41. At paragraph 112 of Employment Judge Maidment's judgment (**page 61 of the Bundle**) says, "The claimant maintains a lack of honesty and integrity on the part, in particular, of Mr Heaton who was involved in that criminal investigation. There is no basis upon which the tribunal could conclude however that the information he provided was fabricated or inaccurate."
42. In both cases the claimant was alleging that the way the disciplinary investigation had been carried out was unfair, that the investigating officer had presented a biased report, that the respondent should have paused the disciplinary process while the claimants' grievance was investigated, and that the way the disciplinary investigation was handled amounted to race discrimination.
43. The tribunal was unable to find anything in the documents which had been provided by the claimant to show that the claimant's "new" complaint about the way in which the disciplinary investigation had been conducted was different to his original complaint. There was also nothing in the claimant's oral submissions to suggest that the "new" complaint was a different complaint.
44. On the basis of the documents referred to at paragraphs 36 - 41 the tribunal was satisfied that the "new" complaint of direct race discrimination in relation to the disciplinary investigation arose out of essentially the same facts that the complaint in the Original Claim was based on. The claimant's complaint about the way the disciplinary investigation was conducted was fundamentally the same as the complaint the claimant raised in his original claim.
45. The claimant's original race discrimination complaint was struck out after the claimant failed to pay a deposit. The tribunal found that as the claimant's original race discrimination complaint, which included a complaint about the way the disciplinary investigation had been conducted, had been struck out, that complaint had already been determined by the tribunal. The tribunal found that cause of action estoppel applied to this complaint, and the claimant was not entitled to re-litigate it.
 - (2) The way in which the grievance the claimant lodged in 2019 was handled by the respondent, in particular, that fact that according to the claimant, the respondent failed to follow its own procedures, and issues the claimant raised in his grievance have never been properly considered or responded to.
46. The claimant raised the manner in which his grievance had been handled in the "Details of your claim" section at page 7 of his original ET1 (**page vii of the Bundle**): "1/08/2019 – Grievance lodged with the manner the investigation has been conducted. The process followed goes against Home Office core values, being open, transparent, and fair. Requested my grievances to be heard in the first instance, as I have a concern on the investigation conduct... Grievances not considered. Decision made in my absences.... Emails back and forth with Home Office, requesting my grievances to be heard."

47. As set out at paragraph 39, the claimant also highlighted concerns about the way his grievance had been handled in the further and better particulars which he lodged in connection with the Original Claim.
48. The claimant's grievance is mentioned in Employment Judge Maidment's reserved judgment. Paragraph 70 of the reserved judgment (**page 50 of the Bundle**), refers to the claimant raising a concern with the respondent that his grievance should be heard before the disciplinary hearing took place.
49. The claimant does not appear to have alleged that the way his grievance was handled amounted to race discrimination in the Original Claim. However, he did raise concerns about the unfair way he felt his grievance had been dealt with, and he did allege that the respondent had discriminated against him on the grounds of race.
50. The hearing of the Original Claim went part-heard after five days on 21 May 2021. The final part of the hearing did not take place until 13 & 14 October 2021. The claimant received the outcome of his grievance appeal on 13 or 14 August 2021, which was two months before the final two days of the hearing.
51. The claimant was notified of the outcome of his grievance appeal before the hearing of the Original Claim had concluded. If the claimant wanted to raise a complaint of race discrimination in respect of the outcome of the grievance appeal, he had the opportunity to do either by writing to the tribunal before the final part of the hearing on 13 October 2021, or during the hearing itself on 13 & 14 October 2021.
52. The claimant did not produce any documents or make any oral submissions at the preliminary hearing to show that new information had come to light after the hearing of the Original Claim which suggested that the grievance investigation had been tainted by race discrimination.
53. The claimant's unfair dismissal claim which was considered at the hearing of the Original Claim included consideration of the circumstances surrounding the disciplinary investigation and the claimant's grievance about that investigation. If the claimant believed that his grievance had been handled in an inappropriate way because of his race, that is something he could have raised at the time he submitted his Original Claim.
54. The claimant lodged his grievance in July 2019, and had not received the outcome of his grievance when he lodged the Original Claim on 29 June 2020. The claimant still hadn't received the grievance outcome when the hearing of the Original Claim commenced on 17 May 2021, which was nearly two years after he lodged his grievance.
55. The claimant was aware of the issues with the grievance investigation which formed the basis of his new complaint before the hearing of the Original Claim started, and he could have raised these issues with the tribunal then (if not before), as they were closely related to the other issues which the tribunal was considering.

56. The claimant did not produce any documents or make any submissions at the preliminary hearing to suggest that significant new information had come to light when the claimant received the outcome of his grievance appeal in August 2021. However, even if this had happened, it was open to the claimant to raise this with the tribunal before or during the final two days of the full merits hearing.
57. The claimant says he raised the issue of his grievance appeal outcome with the tribunal during the hearing of the Original Claim, however Employment Judge Maidment didn't want to hear about it. If the claimant was dissatisfied with the way the hearing was conducted, or with the outcome of the Original Claim, it was open to him to submit a complaint or reconsideration request.
58. The tribunal found that it was a **Henderson v Henderson** abuse of process for the claimant to seek to raise a complaint of race discrimination in relation to the way the grievance had been investigated in the context of a "new" claim based on facts which were the same as, or very closely related to, the facts that were the subject of the Original Claim, where no new significant information has come to light, the complaint could have been raised in the Original Claim, and there was no reason why it could not have been raised sooner.

Victimisation

- (1) The way the investigation into the allegation of gross misconduct was handled, in that the respondent refused to pause the disciplinary investigation while the claimant's grievance was investigated.
59. As set out at paragraphs 36 – 44, the claimant's Original Claim was largely based on the premise that the respondent's disciplinary investigation was unsatisfactory. The reserved judgment shows that the tribunal spent a considerable amount of time considering evidence about the disciplinary investigation. The tribunal also made findings of fact about the disciplinary investigation which led to a finding that the claimant had been unfairly dismissed.
60. The claimant had not previously raised a complaint of victimisation, however the tribunal was satisfied that the victimisation complaint relating to the manner in which the disciplinary investigation was conducted was based on the same facts the Original Claim was based on.
61. The claimant was legally represented at the hearing of the Original Claim, and this would have been the appropriate time for the claimant to raise this victimisation complaint, which arose out of the same facts.
62. No significant new information had come to light after the Original Hearing, and the tribunal found that the claimant's victimisation complaint was a complaint which the claimant could and should have raised either when he lodged the Original Claim in June 2020, or prior to or during the hearing of the Original Claim. The tribunal was satisfied that as the victimisation

complaint arose out of the same facts as the Original Claim, it should not be allowed to proceed on the basis of issue estoppel.

(2) Concerns the claimant raised during the disciplinary investigation and in his grievance about the way the investigation into gross misconduct was being handled were never addressed by the respondent.

63. The claimant did not claim as part of his Original Claim that concerns he raised during the disciplinary investigation and grievance about the way the disciplinary investigation was being handled were never addressed by the respondent, and that this amounted to victimisation. However, the claimant did raise concerns about the fairness of the disciplinary investigation and grievance in the Original Claim, and the tribunal was required to hear detailed evidence about these matters, including the disciplinary investigation in particular, and to make findings of fact about them, in order to determine the Original Claim.
64. The tribunal found that if the claimant believed that the way in which these concerns had been handled amounted to an act of victimisation, this is something he knew about and could have raised in the context of the Original Claim, as this issue was very closely related to the matters which were the subject the Original Claim.
65. The tribunal found that it was a **Henderson v Henderson** abuse of process for the claimant to raise a complaint of victimisation in relation to the way complaints he'd raised about the disciplinary investigation had been dealt with in the context of a "new" claim, where no new significant information had come to light, and where there was no reason why this complaint could not have been raised sooner.

Conclusions

66. It was clear to the tribunal that the claimant still feels that the investigation into the gross misconduct allegation was unfair, and that the respondent did not deal with his grievance in a reasonable way.
67. The tribunal which heard the Original Claim found that there were significant shortcomings in the reasonableness of the disciplinary investigation, and it is understandable that the claimant still harbours real frustration about that. However, the fact that there were flaws in the way the disciplinary investigation was conducted does not mean the claimant is entitled to bring a new claim about issues which already have been, or should have been considered by the tribunal in relation to his previous claim, purely because the claimant was dissatisfied with the outcome of that claim (possibly because although he was found to have been unfairly dismissed, his compensation was reduced to nil because of his own misconduct).
68. The claimant had already brought a race discrimination and unfair dismissal claim which was largely based on the fact that respondent failed to follow procedure, and did not carry out a proper disciplinary investigation.

69. The outcome of the claimant's unfair dismissal claim was that the disciplinary investigation was unfair, and this was why the Original Claim succeeded. The reason the claimant was not awarded any compensation is because the claimant himself was found to have behaved wholly improperly, and the tribunal decided that his compensation should be reduced by 100% accordingly.
70. The claimant was required to pay a deposit in order to pursue his race discrimination complaint in the Original Claim because the tribunal found that it had little reasonable prospect of success. As the claimant failed to pay the deposit, that complaint was struck out, so the issues that were raised in the original race discrimination claim, which included a complaint about the way the disciplinary investigation had been conducted, had already been determined, and could not be resurrected.
71. Although the claimant did not claim that the way his grievance was handled amounted to direct race discrimination or victimisation in the Original Claim, no new information had come to light since the hearing of the Original Claim to substantiate any such complaints. The claimant was legally represented at the hearing of the Original Claim, and the claimant did not provide any explanation as to why these matters could not have been raised and dealt with in the context of the Original Claim.
72. The claimant had already raised many of the issues raised in the New Claim in the Original Claim, and the tribunal was satisfied that to the extent that he did not do so, he could and should have done. The claimant was essentially trying to have a second "bite of the cherry", and it was an abuse of process for the claimant to bring a new claim in respect of matters which the claimant himself acknowledged (during the course of his oral submissions) overlapped with issues which had already been determined in the Original Claim.
73. In determining whether the new claim was an abuse of process, the tribunal had regard to all the circumstances. The tribunal took into account the fact that the claimant had already had the opportunity to pursue his complaints in the context of the Original Claim, the fact that the claimant had been legally represented at the hearing of the Original Claim, the fact that the New Claim was based on the same or closely related facts as those facts which had been relied on in the Original Claim, the fact that the claimant had had a deposit order made against him in relation to his original race discrimination claim and had then had that claim struck out because he failed to pay the deposit, and the fact that no new evidence had come to light to suggest that the claimant had been discriminated against or victimised. The tribunal also had regard to the fact that the respondent would have to bear the cost of defending a second set of proceedings which were very closely related to the first, in respect of matters which were alleged to have happened several years ago, if the New Claim was allowed to proceed.
74. The tribunal also had regard the public interest. There would have been a substantial cost to the public purse in hearing a second claim about matters which were very closely related to the first claim, and which could have been disposed of at the same time as the first claim. In addition, if the New

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Claim had been allowed to proceed, it would have required the tribunal to make findings of fact in relation to matters which have already been considered in the Original Claim, and in relation to which findings of fact had already been made.

75. For the reasons set out at paragraphs 67 - 74, the tribunal found that the claimant's race discrimination and victimisation complaints were an abuse of process. Accordingly, the claimant's claim was struck out.
76. As the claimant's claim had been struck out as an abuse of process, it was unnecessary for the tribunal to consider whether the claim should be struck out on any other grounds, or to consider whether a deposit order should be made.

Employment Judge Tegerdine
Date 15 May 2022

JUDGMENT SENT TO THE PARTIES ON
Date 17 May 2022

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