



EMPLOYMENT TRIBUNALS

Claimant: Mr P Shuttleworth

Respondents: (1) Cabinet Office
(2) Civil Service Commission

Heard at: London Central

On: 18 August 2025

Before: Employment Judge E Burns (sitting alone)

Representatives

For the claimant: Represented himself

For the respondents: Mr Shellum, Counsel

RESERVED JUDGMENT

The judgment of the Employment Tribunal is as follows:

- (1) None of complaints against R2 can proceed as they are outside the jurisdiction of the tribunal.
- (2) The tribunal does not have any jurisdiction in relation to any complaint made under section 60A Equality Act 2010.
- (3) The only complaints that can proceed are those against R1 as set in the list of issues that is attached to this judgment.
- (4) The remaining complaints either cannot proceed as they are outside the jurisdiction of the tribunal or are struck out as an abuse of process.

REASONS

INTRODUCTION

1. The hearing was listed to consider whether the legal complaints contained in the claim, the fifth claim presented by the Claimant to the employment tribunal, should be struck out as an abuse of process.

2. In addition to the dealing with issue of strike out, I also case managed the case. The parties are referred to the case management order that accompanies this reserved judgment.

THE HEARING

3. I heard no evidence and I am therefore not making, or purporting to make, any findings of fact that are intended to bind the tribunal at the final hearing in this case.
4. The Respondent had prepared a paginated bundle contain 772 digital pages for use at the hearing. It had sent this to the Tribunal and to the Claimant. It also sent a skeleton argument to the Claimant and to the tribunal in advance.
5. The Claimant added documents to the bundle to bring the total pages to 1038. He only did this on the morning of the hearing and because of difficulties with this, he was late arriving for the hearing. He was very apologetic for his lateness.
6. Unfortunately Mr Shellum was not able to access the updated bundle via the on-line portal. The Claimant had however brought hard copies of the documents with him for Mr Shellum and the Tribunal, albeit they were not paginated. Notwithstanding the lack of opportunity read the documents in advance, Mr Shellum agreed that the hearing could proceed.
7. The Claimant had also prepared a witness statement, a track changed version of the particulars of complaint for Claim 5 and a list of issues. He had also prepared a version of the Respondent's skeleton argument with his comments.
8. Although the track changed version of the particulars of Claim 5 appeared to be the basis for an application to amend, the Claimant did not make an application that this version be adopted. He did make an application to amend his claim, but it was of more limited effect. I return to this later.

LITIGATION BACKGROUND

9. The Claimant's claims have been in connection with job applications that he has either made or considered making for seven civil service roles in the Cabinet Office, the Department for Education and the Department for Culture Media and Sport between August 2023 and April 2025. The roles and the Claimant's position in relation to them are summarised in the following table:

Role	Employer	Date of interview	Date of rejection
CO Role 1	Cabinet Office	19.9.23	23.10.23
CO Role 2	Cabinet Office	24.08.23 this is disputed	28.09.23 feedback on 04.04.24

Role	Employer	Date of interview	Date of rejection
DfE Role 1	Department for Education	Did not apply	
DCMS Role	Department for Culture Media and Sport	Not invited to interview	13.02.24, final feedback on 05.03.2024
DfE Role 2	Department for Education	Role withdrawn on 07.08.24	
DfE Role 3	Department for Education	Not invited to interview	20.08.2024
CO Role 3	Cabinet Office	Not invited to interview	16.04.2025

10. In five of the seven roles the advert and or job specification had explicitly sought a candidate who was a “digital native” or “social media native”. The Claimant claims that the same criterion was applied for the other two roles, albeit that the terms were not used expressly.
11. The Claimant says that the application of this criterion constitutes unlawful age discrimination. The Claimant is campaigning against the use of this terminology and has set up a website for this purpose.

Internal Complaints

12. The Claimant made an internal complaint about CO Role 1 to R1. R1 did not make a decision on the complaint. The Claimant knew this as at 27 April 2024 (565). The correspondence was with a person called Shirley Hepple.
13. The Claimant also complained about the DCMS role. The complaint was initially made to someone in the Department for Culture Media and Sport recruitment team, Jack Whitbread, who responded on 29 February 2024. On 1 March 2024, the Claimant sought to escalate the complaint to Joshua Hatten, who according to the Claimant was the Chief of Staff to the Government Chief of People Officer. Mr Whitbread replied to him on 4 March 2024 to say no further action would be taken. The Claimant nevertheless wrote to Mr Hatten again that day and asked that recruitment to the DCMS Role be frozen. He asked Mr Hatten in both of his letters to bring the matter to the attention of Sir Alex Chisholm, then the Cabinet Office Permanent Secretary and Chief Operating Officer of the Civil Service.
14. The Claimant complained to the Civil Service Commission (R2 in his fifth claim) on 15 March 2024.
15. R2 is a body corporate created pursuant to section 2 of Constitutional Reform and Governance Act 2010 (“CRAGA”). According to paragraph 7 of Schedule of 1 of the CRAGA, R2 is independent of the government and of the civil service. One of R2’s statutory functions is to consider complaints made by the public that an appointment has been made in contravention of

the duty under section 10(2) CRAGA to select on merit and on the basis of fair and open competition.

16. On 14 May 2024, R2 wrote to the Claimant to say that it was unable to investigate matters where there was either current or pending litigation and it would therefore be pausing the investigation into his complaint.
17. The Claimant has also made an FOI requests and subject access requests to various bodies in connection with these matters.

Legal Proceedings

18. The Claimant has presented five employment tribunal claims and made one application for judicial review in connection with this issue. The litigation progress has been complex and is explained in some detail below.
19. Claim 1 was allocated claim number 2219620/2024. It was presented on 10 May 2024. It brought against the Paymaster General and the Minister for the Cabinet Office (8-18). The claim was said to be for age discrimination as well as a claim outside the tribunal's jurisdiction. The claim form provided no particulars of claim. The claim was nevertheless accepted in full on 12 June 2024 (19-20)
20. The application for judicial review was made on 22 May 2024. It was made against three defendants: (1) The Prime Minister; (2) The Chief Operating Officer for the Civil Service and (3) the Secretary of State for Culture Media and Support. The case was concluded by way of a consent order dated 14 June 2024 (451 – 454) whereby the Claimant withdrew his claim.
21. The Claimant applied to amend Claim 1 on 19 July 2024 (53 – 102). In the application to amend he sought to amend the name of the Respondent to the Civil Service, referred to CO Role 1, CO Role 2, DfE Role 1 and the DCMS Role. He brought claims for age discrimination (direct and indirect) (para 117 on page 97), and victimisation as well as other claims outside the tribunal's jurisdiction. The victimisation claim concerned comments alleged to have been made in the interview for CO Role 1 and the decision not to invite him to interview for the DCMS role (paras 126-127, 98). The amendment application also made reference to claims under section 111 (para 130, 98) and 112 (para 134, 99) of the Equality Act 2010. It also referred to the internal complaint made to the Cabinet Office and the company made to the Civil Service Commission (paras 103 – 116, 96 – 97).
22. Claim 2 was allocated claim number 6007430/2024. It was presented on 1 August 2024. It was brought against the Secretary of State for Education, the Minister for the Civil Service, and The Chief Operating Officer for the Civil Service(742-768). The claim purported to be for interim relief on the basis of whistleblowing as well as for direct and indirect age discrimination, victimisation. There was also a claim said to be made under section 111 of the Equality Act 2010. The facts pleaded relate to DfE Role 2.
23. Claim 2 was deemed to have been accepted against all the respondents in part (just the discrimination claims) on 1 August 2024 by a letter dated 30

August 2024 (170 – 171). The Claimant withdrew Claim 2 on 3 September 2024. A judgment dismissing the claim on withdrawal was issued by a legal officer on 21 September 2024 and sent to the parties on 4 October 2024.

24. Claim 3 was allocated claim number 6009745/2024. It was presented on 28 August 2024. It was brought against the Prime Minister, the Minister for the Civil Service (109-145). It said that it superseded Claim 1 and the application to amend. The particulars of claim essentially repeated the contents of the amendment application, but introduced reference to CO Role 2 and some other legal complaints.
25. Claim 4 was allocated claim number 6017487/2024. It was presented on 5 November 2024. It was brought against (1) the Attorney General, (2) the Cabinet Office, (3) the Department for Culture, Media and Sport, (3) the Department for Education, and (4) the Chief Operating Officer for the Civil Service and (5) the Secretary to the Cabinet Office (229-271). It was accepted in full on 12 November 2024 (276 – 278). In the particulars of claim attached to Claim 4, the Claimant repeated all of his previous legal complaints. He introduced reference DfE Role 3 (265). He expanded on his previous complaints including introducing a new claim purported to be made under section 60A of the Equality Act 2010 (247).
26. Claims 1, 3 and 4 were considered at a case management hearing on 17 January 2025. Prior to the hearing the Claimant prepared a document called Further and Better Particulars (355 – 356) in which he withdrew various claims. These were all claims in respect of which the tribunal had no jurisdiction in any event. Claims 1,3 and 4 were consolidated. The Tribunal listed a preliminary hearing in public on 26 and 27 June 2025 in order to determine various applications made by the Respondents for strike out.
27. On 10 March 2025 the Claimant withdraw Claims 1, 3 and 4 In his letter withdrawing the claims he said he wished to reserve his *“right to bring a further claim in relation to this matter pursuant to [Rule] 51(a).”* (412)
28. Claim 5 was allocated case number 6019968/2025. It was presented on 29 May 2025. It was brought against (1) the Cabinet Office, (2) the Department For Culture, Media And Sport, (3) the Department For Education, (4) the Minister For The Civil Service, (5) the Attorney General and (6) the Civil Service Commission. The claim was only accepted as against the Cabinet Office (hereinafter referred to as R1) and the Civil Service Commission (hereinafter referred to as R2). This was due to problems with the Acas early conciliation certificates.
29. The withdrawal of Claims 1, 3 and 4 was referred to EJ Klimov. On 30 May 2025, he issued a judgment as follows (621-623):
 - “1. *The Claimants claims 2219620/2024 [Claim 1], 6009745/2024 [Claim 3] and 6017487/2024 [Claim 4], having been withdrawn by the Claimant, are dismissed pursuant to Rule 51 of the Employment Tribunal Procedure Rules 2024.*

2. *The Claimants claim 6007430/2024 [Claim 2] has been dismissed upon withdrawal by the Tribunals judgment, dated 21 September 2024. The Claimants application to reinstate this claim is dismissed upon withdrawal.*
3. *The preliminary hearing on 26 and 27 June 2025 is vacated (cancelled).”*

In his reasons, EJ Klimov noted:

- “12. *Whilst in withdrawing these Claims the claimant said that he was doing that “while reserving the right to bring a further claim in relation to this matter pursuant to Section 51(a)”, the claimant did not provide any legitimate reasons why these claims should not be dismissed upon withdrawal.*
13. *It appears that the claimant simply seeks to continue his campaign against the use of the terms “digital native” and “social media native” in recruitment by bringing further identical claims against various governmental departments, despite abandoning his earlier claims. This, in my judgment, is an abuse of the Tribunal’s process.*
14. *Accordingly, I believe that it would be in the interests of justice to issue this judgment dismissing Claims 1, 3 and 4 upon withdrawal.”*
30. Having had sight of Claim 5, EJ Klimov also listed this hearing to determine if it should be struck out as an abuse of process, noting that it appeared essentially to be a consolidation of the Claimant’s previous claims (Claims 1 – 4) (619 – 620).
31. On 5 June 2025, EJ Klimov rejected the Claimant’s application for reconsideration of his 30 May 2025 Judgment (627-628). The Claimant presented an appeal to the Employment Appeal Tribunal (EAT) on 11 July 2025. That appeal is live and has been allocated appeal number EA – 2025-000988-JOJ (725).
32. The live appeal should not be confused with an earlier appeal (EA – 2024-001302-JOJ) which concerned Claim 2 and which has failed to get through the EAT sift process (630 – 631). The Claimant has also presented an appeal against the decision to reject Claim 5 against (1) the Department For Culture, Media And Sport, (2) the Department For Education, (3) the Minister For The Civil Service and (4) the Attorney General. That appeal has been allocated appeal number EA-2025-001002-JOJ and is also live (725)

LEGAL COMPLAINTS IN CLAIM 5

33. Before considering whether the legal complaints contained in the particulars of claim for Claim 5 (POC) should be struck out, I sought first to understand precisely what legal complaints were contained within in the Claim through reading the pleaded claim and discussion with the Claimant.

34. Based on that discussion, the legal complaints which I identified were as follows.
- (a) Complaints of direct discrimination in relation to all seven roles outlined above (see POC para 24, 562). The Claimant accepted that these complaints had been included in his earlier claims with the exception of CO Role 3. I have checked and the legal complaints are in Claim 4.
 - (b) Complaints of indirect age in relation to all 7 roles outlined above (see POC, para 25, 563). The Claimant accepted that these complaints had been included in his earlier claims with the exception of CO Role 3. I have checked and the legal complaints are in Claim 4.
 - (c) Claims of victimisation relying on the protected acts set out at paragraph 26 (563 – 564). This included the following:
 - (i) A complaint that he was not shortlisted of interview for the DfE role 2, DCMS Role and CO Role 3 because of the protected acts (para 26.1, 564) The Claimant accepted that these complaints had been included in his earlier claims with the exception of CO Role 3.
 - (ii) A complaint about the Respondent's unwillingness to provide feedback and destroying, losing or not keeping interview records which was said to arise because of his protected acts (para 26.2) The Claimant clarified this was largely in connection with the DCMS role and did not arise in connection with CO Role 3. He also confirmed that he had raised this in his earlier claims.
 - (iii) A complaint about the absence of a meaningful investigation, internally by the Civil Service, after I raised concerns about age discrimination is itself a detriment. (para 26.3, 564). The Claimant clarified this was the internal investigation by the Cabinet Office. He accepted that he had raised this in his earlier claims.
 - (iv) A complaint that R2 had paused its complaints process because he had made a protected act (para 26.4, 564). The Claimant did not accept that he had raised this complaint in his earlier claims.
 - (v) A complaint that the respondents were limiting the likelihood of a future career in the Civil Service; a monopoly employer, because he had made a protected act (para 26.5, 564). The Claimant did not accept that he had raised this complaint in his earlier claims.

- (vi) A complaint that the respondents were causing damage to his reputation, specifically building a defence that regardless of age discrimination, he would not have got a job anyway (para 26.6, 564). The Claimant did not accept that he had raised this complaint in his earlier claims.
- (vii) A complaint that R2 had not responded to his letter before action in the judicial review protocol. (Table Row 1, page 564). The Claimant did not accept that he had raised this complaint in his earlier claims.
- (viii) A complaint that the Government Legal Department had not conducted a proper search to fulfil their duty of candour in the judicial review protocol which included incorrect information about the Civil Service Equal Opportunities Policy. He gave a date of 26.04.2024 for this (Table Row 2, page 565). The Claimant did not accept that he had raised this complaint in his earlier claims.

I have treated this as a complaint against an undefined respondent This is because the Government Legal Department is not a separate legal entity, but a department made of up of in-house lawyers that represents government entities.

- (ix) A complaint about R1 that it had informed R2 that he had presented legal claims in order to bring a halt to his complaint process with R2. (Table Row 3, page 565). The Claimant did not accept that he had raised this complaint in his earlier claims. He had discovered this more recently as a result of further enquiries. This was in or around January 2025.
 - (x) A complaint made against the Department of Education that staff had referred to him as having a bee in his bonnet in correspondence dating back to July 2024 (table Row 4, 565). The Claimant did not accept that he had raised this complaint in his earlier claims. He had discovered this more recently as a result of further enquiries. This was in or around January 2025.
- (d) A complaint said to be made under section 111 of the Equality Act 2010 that Shirley Hepple, who I understand to be an employee of R1, instructed, caused or induced someone to commit a contravention of the Equality Act 2010 against the Claimant. namely that *“Without taking legal advice, [she told] a hiring manager that age discrimination did not occur and [restricted] the hiring manager from obtaining a legal opinion.”* She also stated no review will take place. The date given by the Claimant for this is 27 February 2024. (Table Row 5, 565). He accepted this complaint was included in his earlier claims.

- (e) A complaint said to be made under section 60A of the Equality Act and/or section 13 of the Equality Act in connections with comments made during his interview on 19 September 2023 for CO Role 1 (Table Row 6, 565).
- (f) In the alternative, a complaint that the respondents have breached section 60A of the Equality Act 2010 by making discriminatory statements. The Claimant argued that this should be read in conjunction with the Human Rights Act 1998 and specifically his Article 10 Convention Rights (particulars of claim 5, paras 28 – 33) It was not entirely clear to me whether this was a duplicate of the above complaint. The Claimant did not initially accept that he had made the section 60A complaints previously but conceded that it was Claim 4.
- (g) A complaint said to be made under section 112 of the Equality Act 2010 against Josh Hatton (and possibly Sir Alex Chisolm) that they proceed to appoint someone to the DCMS role even after the Claimant had contacted them to tell them the appointment would be ultra vires (Table Row 7, 565). The Claimant did not accept that he had raised this complaint in his earlier claims

35. The Claimant also made an application to amend his claim to include an argument that R1 was an agent of R2 and should be held liable under section 110 (1) of the Equality Act 2010 for breaches by R2.

THE LAW

36. I decided that it was open to me to consider whether the Claimant's complaints could proceed on two broad grounds:
- Whether they fell within the tribunal's jurisdiction, which I could decide on my own initiative; and
 - Whether they were an abuse of process as argued by the respondent.

I have therefore summarised the law relevant to these grounds.

The Tribunal's Jurisdiction

37. The jurisdiction of employment tribunals is determined by legislation.

Equality Act 2010

38. Section 120(1) of the Equality Act 2010 confirms that employment tribunals have jurisdiction to determine complaints relating to a contravention of Part 5 (work) and a contravention of section 108, 111 or 112 that relates to Part 5. Section 120(8) provides for some exceptions to this. One of the exceptions is section 60A (1).
39. Section 39(1) of the Equality Act 2010 prohibits an employer (A) from discriminating against an applicant (B) for employment:-

- (a) in the arrangements A makes for deciding to whom to offer employment;
 - (b) as to the terms on which A offers B employment;
 - (c) by not offering B employment.
40. The reference to discrimination includes to direct and indirect age discrimination as defined in sections 13 and 19 of the Equality Act 2010.
41. Section 39(3) of the Equality Act 2010 prohibits an employer (A) from victimising an applicant (B) for employment:-
- (a) in the arrangements A makes for deciding to whom to offer employment;
 - (b) as to the terms on which A offers B employment;
 - (c) by not offering B employment.

What constitutes victimisation is found in section 27 of the Equality Act 2010.

42. Under section 109(1) of the Equality Act 2010, an employer is liable for the contraventions of the Equality Act 2010 by its employees (also known as vicarious liability). A similar provision applies as between principals and agents in sub-section 109(2). Where the relationship is one of employment a defence can arise known as the statutory defence. It is set out in sub-section 109(4).
43. Individuals can also be personally liable for such contraventions. This can be in their capacity as employees or agents (section 110 (1) of the Equality Act 2010).
44. Section 111 of the Equality Act 2010 makes it unlawful for a person to instruct, cause or induce someone to discriminate, harass or victimise another person on any of the grounds covered by Equality Act 2010. It begins as follows:
- “(1) A person (A) must not instruct another (B) to do in relation to a third person (C) anything which contravenes Part 3, 4, 5, 6 or 7 or section 108(1) or (2) or 112(1) (a basic contravention).*
 - (2) A person (A) must not cause another (B) to do in relation to a third person (C) anything which is a basic contravention.*
 - (3) A person (A) must not induce another (B) to do in relation to a third person (C) anything which is a basic contravention.”*
45. Section 112 of the Equality Act 2010 makes it unlawful for a person knowingly help another to do anything which is in breach of the Equality Act 2010. It begins as follows:

“A person (A) must not knowingly help another (B) to do anything which contravenes Part 3, 4, 5, 6 or 7 or section 108(1) or (2) or 111 (a basic contravention).”

Time Limits under the Equality Act 2010

46. The relevant time-limit is at section 123 Equality Act 2010. According to section 123(1)(a) the tribunal has jurisdiction where a claim is presented within three months of the act to which the complaint relates.
47. The normal three-month time limit needs to be adjusted to take into account the early conciliation process and any extensions provided for in section 140B Equality Act.
48. By subsection 123(3)(b), a failure to do something is treated as occurring when the person in question decided on it. In the absence of evidence to the contrary. A person is taken to decide on a failure to do something when that person does an act which is inconsistent with doing it or, in the absence of such an inconsistent act, on the expiry of the period on which that person might reasonably have been expected to do it.
49. By subsection 123(3)(a), conduct extending over a period is to be treated as done at the end of the period.
50. In *Hendricks v Metropolitan Police Commissioner* [2002] EWCA Civ 1686, the Court of Appeal stated that the test to determine whether a complaint was part of an act extending over a period was whether there was an ongoing situation or a continuing state of affairs in which the claimant was treated less favourably. An example is found in the case of *Hale v Brighton and Sussex University Hospitals NHS Trust* UKEAT/0342/17 where it was determined that the respondent's decision to instigate disciplinary proceedings against the claimant created a state of affairs that continued until the conclusion of the disciplinary process.
51. It is not necessary to take an all-or-nothing approach to continuing acts. The tribunal can decide that some acts should be grouped into a continuing act, while others remain unconnected (*Lyfar v Brighton and Sussex University Hospitals Trust* [2006] EWCA Civ 1548; The tribunal in *Lyfar* grouped the 17 alleged individual acts of discrimination into four continuing acts, only one of which was in time.
52. A distinction needs to be drawn between a continuing act and a one-off act that has continuing consequences (*Barclays Bank plc v Kapur and others* [1992] ICR 208;). This distinction will depend on the facts in each case. (*Sougrin v Haringey Health Authority* [1992] IRLR 416, CA)
53. In the case of *Tyagi v BBC World Service* 2001 IRLR 465, the Court of Appeal endorsed the decision of the Employment Appeal Tribunal which had held that a refusal of a job application amounted to a one-off act.

54. Alternatively, the tribunal may still have jurisdiction if the claim was brought within such other period as the employment tribunal thinks just and equitable as provided for in section 123(1)(b).

Human Rights Act 1998

55. The Human Rights Act 1998 incorporates into UK domestic law parts of the Convention for the Protection of Human Rights and Fundamental Freedoms agreed by the Council of Europe on 4 November 1950 as it has effect for the time being in relation to the United Kingdom (the “Convention”).
56. Employment tribunals do not have the jurisdiction to consider discrete claims brought under the Human Rights Act 1998 (*Copsey v WWB Devon Clays Ltd [2005] IRLR 811; Mba v Merton London Borough Council [2014] ICR 357*). Nor do employment tribunals have the ability to declare legislation to be incompatible with the Human Rights Act 1998. However, by virtue of sections 3 and 6 of the Human Rights Act 1998, employment tribunals are required to read and give effect to statutory provisions in a way which is, so far as possible, compatible with the Convention Rights.
57. By Article 10 it is provided:

“1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.”

Abuse of Process

58. The Respondent’s abuse of process application was pursued on the basis that, with the exception of the legal complaints concerning CO Role 3, the remaining legal complaints in Claim 5 were either:
- (a) a repeat of earlier legal complaints the Claimant had already made and that had been dismissed by EJ Klimov and therefore covered by cause of action estoppel or issue estoppel; or
 - (b) legal complaints that could have been brought and so should have been struck out based on the principle established in *Henderson v Henderson ([1983] 3 Hare 100, ChD)*
59. The most well known, and clearest judicial guidance in this area is found in para 17 of the judgment of Lord Sumption in *Virgin Atlantic Airways Ltd v*

Zodia Seats UK Ltd (formerly known as Contour Aerospace Ltd) [2013] UKSC 47 where he said:

“Res judicata: general principles

Res judicata is a portmanteau term which is used to describe a number of different legal principles with different juridical origins. As with other such expressions, the label tends to distract attention from the contents of the bottle.

- 1. The first principle is that once a cause of action has been held to exist or not to exist, that outcome may not be challenged by either party in subsequent proceedings. This is “**cause of action estoppel**”. It is properly described as a form of estoppel precluding a party from challenging the same cause of action in subsequent proceedings.*
- 2. Secondly, there is the principle, which is not easily described as a species of estoppel, that where the claimant succeeded in the first action and does not challenge the outcome, he may not bring a second action on the same cause of action, for example to recover further damages: see *Conquer v Boot* [1928] 2 KB 336 .*
- 3. Third, there is the doctrine of merger, which treats a cause of action as extinguished once judgment has been given upon it, and the claimant's sole right as being a right upon the judgment. Although this produces the same effect as the second principle, it is in reality a substantive rule about the legal effect of an English judgment, which is regarded as “of a higher nature” and therefore as superseding the underlying cause of action: see *King v Hoare* (1844) 13 M & W 494 , 504 (Parke B). At common law, it did not apply to foreign judgments, although every other principle of *res judicata* does. However, a corresponding rule has applied by statute to foreign judgments since 1982: see *Civil Jurisdiction and Judgments Act 1982*, section 34 .*
- 4. Fourth, there is the principle that even where the cause of action is not the same in the later action as it was in the earlier one, some issue which is necessarily common to both was decided on the earlier occasion and is binding on the parties: *Duchess of Kingston's Case* (1776) 20 St Tr 355 . “**Issue estoppel**” was the expression devised to describe this principle by Higgins J in *Hoysted v Federal Commissioner of Taxation* (1921) 29 CLR 537 , 561 and adopted by Diplock LJ in *Thoday v Thoday* [1964] P 181 , 197–198.*
- 5. Fifth, there is the principle first formulated by Wigram V-C in **Henderson v Henderson** (1843) 3 Hare 100 , 115, which precludes a party from raising in subsequent proceedings matters which were not, but could and should have been raised in the earlier ones.*
- 6. Finally, there is the more general procedural rule against abusive proceedings, which may be regarded as the policy underlying all of the*

*above principles with the possible exception of the doctrine of merger.”
(reformatted and emphasis added)*

60. In order for cause of action or issue estoppel to arise in an employment tribunal claim, there must have been a judicial decision of an employment judge. That includes a judgment dismissing a claim on withdrawal.
61. Rules 50 and 51 of the Employment Tribunal Procedure Rules 2024 deal with the dismissal of claims on withdrawal. They replace Rules 51 and 52 of the Employment Tribunal procedure Rules 2013 and are understood to have the same effect. They are set out in full:

“Rule 50 End of claim

Where a party advancing a claim informs the Tribunal, either in writing or in the course of a hearing, that their claim, or part of it, is withdrawn, the claim, or part, comes to an end, subject to any application that the party responding or replying to the claim may make for a costs order, preparation time order or wasted costs order.”

Rule 51 Dismissal following withdrawal

Where a claim, or part of it, has been withdrawn under rule 50 (end of claim), the Tribunal must issue a judgment dismissing it (which means that the party advancing it may not commence a further claim against the party responding or replying to it raising the same, or substantially the same, complaint) unless—

- (a) *the party advancing the claim has expressed at the time of withdrawal a wish to reserve the right to bring such a further claim and the Tribunal is satisfied that there would be legitimate reason for doing so, or*
- (b) *the Tribunal believes that to issue such a judgment would not be in the interests of justice.”*

62. The rules operates such that the usual position is for a claim to be dismissed upon withdrawal. However, this is not always the case. Judicial discretion not to issue a dismissal judgment is preserved.
63. In *Barber v Staffordshire County Council 1996 ICR 379, CA*, a decision taken before Rule 51 or its predecessor rule, Rule 52 of the 2013 Tribunal Rules, was enacted, the Court of Appeal confirmed that a judicial decision to dismiss a claim on withdrawal could rise to cause of action or issue estoppel even though there has been no reasoned decision on the merits of the claim.
64. In *Manda v USB AG 2016 6 WLUK 375, Central London County Court* (a case considering rule 52 of the Tribunal Rules 2013) His Honour Judge Hand QC stated:

'What rule 52 does is make the position in the employment tribunal analogous to that in the civil courts where it has always been recognised that the discontinuance of proceedings does not operate as a bar to the bringing of further proceedings based on the same facts and/or cause of action. Rule 52 creates an exception to the previous situation in which withdrawal of a claim made to the employment tribunal operated as a dismissal of the claim and it does so by giving the... tribunal a limited discretion to either accept a reservation of right to bring further proceedings in the... tribunal on the basis that there is a "legitimate reason for doing so" or state a belief that it is not "in the interests of justice" to prevent such further proceedings.'

65. The impact of these decisions are that where a judge has decided to issue a judgment dismissing a claim this is a judicial decision will give rise to could rise to cause of action or issue estoppel.
66. Where a judgment has been made an employment judge, it can only be revoked if that same employment judge (or a different judgment nominated by the Regional Employment Judge in exceptional circumstances) reconsiders it under Rule 70 or on appeal to the Employment Appeal Tribunal.
67. Turning to the rule in *Henderson v Henderson*, the relevant principles were reviewed and restated by the House of Lords in *Johnson v Gore Wood* 2002 2 AC 1, HL, by Lord Bingham. There he commented (22C-F) that:

*"The rule of law depends upon the existence and availability of courts and tribunals to which citizens may resort for the determination of differences between them which they cannot otherwise resolve. Litigants are not without scrupulous examination of all the circumstances to be denied the right to bring a genuine subject of litigation before the court: *Yat Tung Investment Co Ltd v Dao Heng Bank Ltd* [1975] AC 581, 590 per Lord Kilbrandon, giving the advice of the Judicial Committee; *Brisbane c City Council v Attorney General for Queensland* [1979] AC 411, 425 per D Lord Wilberforce, giving the advice of the Judicial Committee). This does not however mean that the court must hear in full and rule on the merits of any claim or defence which a party to litigation may choose to put forward. For there is, as Lord Diplock said at the outset of his speech in *Hunter v Chief Constable of the West Midlands Police* [1982] AC 529, 536, an*

"inherent power which any court of justice must possess to prevent misuse of its procedure in a way which, although not inconsistent with the literal application of its procedural rules, would nevertheless be manifestly unfair to a party to litigation before it, or would otherwise bring the administration of justice into disrepute among right-thinking people. The circumstances in which abuse of process can arise are very varied; those which give rise to the instant appeal must surely be unique. It would, in my view, be most unwise if this House were to use this occasion to say anything that might be taken as limiting to fixed categories the kinds of circumstances in

which the court has a duty (I disavow the word discretion) to exercise this salutary power."

And went on to say at paragraph 31:

"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. ... 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. Properly applied, and whatever the legitimacy of its descent, the rule has in my view a valuable part to play in protecting the interests of justice."

68. For the *Henderson v Henderson* rule to apply, the parties do not have to be the same in the two actions. There must, however, be:

"a sufficient degree of identification between the two to make it just to hold that the decision to which one was party should be binding in proceedings to which the other is party. It is in that sense that I would regard the phrase "privity of interest".' (Gleeson v J Wippell & Co Lt [1977] 1 WLR 510 at 515, per Sir Robert Megarry V-C, cited with approval in Johnson v Gore Wood).'

69. As confirmed recently in the case of *Szucs v Greensquareaccord Ltd [2025] EAT 110 (applying LB of Haringey v Mrs C A O'Brien [2016] UKEAT/00004/16/LA)* it is permissible for a tribunal to strike out a claimant's subsequent claim as an abuse of process on the *Henderson v Henderson* principle where the claimant had known about the second claim two months prior to the final conclusion of the earlier claim. This was because the Claimant could have sought to amend his earlier claim, but did not do so.
70. When determining whether a second claim is a misuse or abusive, the Tribunal must examine the claimant's reason for not bringing the claim

earlier (*James v Public Health Wales NHS Trust (EAT/0170/14)*, per Langstaff P at [25-26]).

71. The burden of proving an abuse of process is on the party seeing to argue it *Agbenowossi-Koffi v Donvand Ltd [2014] ICR D27*.

Judicial Proceedings Immunity

72. There is a well-established legal principle that, with certain exceptions, there is absolute immunity from suit in respect of things said or done in the course of judicial proceedings. The rationale for this is the need to protect those involved in litigation from the fear of civil liability for things said or done in the course of that litigation and the need to protect the integrity of the judicial process and hence the public interest.
73. In *Heath v Commissioner of Police of the Metropolis* 2005 ICR 329, CA, the Court of Appeal held that the immunity applied not only to common law claims such as defamation and negligence, but also to the statutory torts created by discrimination legislation.

ANALYSIS AND CONCLUSIONS

74. I first considered whether the tribunal had jurisdiction over the legal complaints contained in Claim 5, regardless of the abuse of process position. I then considered the abuse of process position.

Jurisdiction

Claims Against the Second Respondent – the Civil Service Commission

75. The tribunal has no jurisdiction to consider any of the complaints the Claimant wishes to pursue against R2. For the avoidance of doubt this includes:
- the two complaints said to be solely against R2 which are identified in paragraphs 34(c) (iv) and (viii)
 - all of the other complaints where the Claimant has not defined the respondent with precision and so there is a chance he intended the complaint to be against R2. This includes the legal complaints identified in paragraphs 34 (a), (b), ((c)) (i), (ii), (v), (vi) and (viii).
76. The Claimant sought to argue that he could get round this jurisdictional bar by making an application to amend his claim to pursue the complaints the against R1 as R2s agent.
77. The tribunal's jurisdiction over a complaint depends on whether the complaint is within our jurisdiction. As the Claimant has never worked for or applied for a role with R2 there is no jurisdiction to pursue a complaint against R2 as a principal. This also means that there is no jurisdiction to pursue a complaint against an agent of R2.

78. Even if an agency relationship existed between R1 and R2, which I note was not accepted by the respondents' representative, this would not overcome the jurisdictional bar. I therefore did not grant the amendment. There would be no point. It simply would not achieve what the Claimant wanted to achieve. Any claims against R2 need to be pursued in a different court or tribunal.
79. The same legal principle would also have applied to the legal complaints the Claimant was trying to pursue against the Minister For The Civil Service and the Attorney General had they been accepted.

Claims Against the Department of Education and the Department of Culture Media and Sport

80. Pursuant to sections 39(1) and (3) of the Equality Act 2010, an applicant for employment can only bring claims against of discrimination and victimisation against their prospective employer. This is the legal entity that would have employed them.
81. It was not in dispute that the prospective employer for the CO roles was the Cabinet Office (R1). For the DfE roles it was the Department of Education and for the DCMS role it was the Department of Culture Media and Sport.
82. Although the Claimant purported to bring Claim 5 against the Department of Education and the Department of Culture Media and Sport, the Claim was only accepted against R1 and R2. This decision is subject to an appeal to the Employment Appeal Tribunal.
83. The impact of the decision not to accept the claim to proceed against the Department of Education and the Department of Culture Media and Sport is that, regardless of the abuse of process position, the following claims cannot proceed:
- (a) Any complaints of direct discrimination in respect of the DfE roles and the DCMS role.
 - (b) Any complaints of indirect discrimination in respect of the DfE roles and the DCMS role.
84. In addition, the Claimant can only potentially pursue the victimisation claims set out in paragraph 34 (c) to the extent they consist of complaints against the Cabinet Office as the respondent. This leaves only the following complaints: 34(c) (i) to the extent it concerns CO Role 3, (ii) to the extent it concerns the CO roles, (iii), (v) (vi), (viii) and (ix). I say potentially, because there is a need to consider these complaints further which I do below.
85. I note that it appeared at one point that the Claimant wished to apply to amend his claim to argue that R1 acted as agent for the Departments of Media, Culture and Sport and Education and therefore the above complaints could be brought against R1. He did not, however, proceed with an amendment application of this nature and therefore I did not consider it.

Claims against R1 outside of the scope of section 39(3) of the Equality Act 2010

86. As noted above, applicants for employment can only bring complaints of victimisation that fall under section 39(3) of the Equality Act 2010. Section 39(3) describes three scenarios and so is of limited scope. There is no ability to bring a claim for a general detriment. The detrimental treatment must be of the type that falls into section 39(3)(a), (b) or (c).
87. I consider the complaints identified at paragraph 31 (c) (ii), (iii) (viii) and (ix) cannot proceed against R1. The reason why I say this is because the complaints fall outside the scope of section 39(3)(a) (b) and (c).
88. The complaints the Claimant is making at paragraph 31 (c) (ii), (iii) and (ix) are complaints about a lack of feedback and the way the Cabinet Office dealt with the Claimant's complaint post employment decision.
89. I do not think any further explanation is required in relation to sections 39(3)(b) and (c). It is clear that the complaints are not about the terms on which the Cabinet Office offered the Claimant a role because he was not offered any roles. The Claimant has separately brought a complaint about the fact that the Cabinet Office did not offer the Claimant employment as this is contained in 31(c) (i).
90. The only option left is 39(3) (a), which enables "complaints relating to the arrangements [the Cabinet Office] makes for deciding to whom to offer employment" to be pursued. I interpret this as encompassing the ability to make a complaint about all aspects of the recruitment process up to the point that a decision is taken to make a firm (rather than conditional) offer.
91. In my interpretation complaints about what the respondent does post the decision by way of feedback and complaint handling are excluded. Although evidence deriving from this part of the process would be relevant for a tribunal to hear when considering complaints under the other parts of section 39(3), I do not consider there is any jurisdiction under section 39(3) to treat them as acts of victimisation of themselves.
92. I note that the EHRC Code says:

"What are arrangements?"

10.8 Arrangements refer to the policies, criteria and practices used in the recruitment process including the decision making process. 'Arrangements' for the purposes of the Act are not confined to those which an employer makes in deciding who should be offered a specific job. They also include arrangements for deciding who should be offered employment more generally. Arrangements include such things as advertisements for jobs, the application process and the interview stage."

This reinforces my view. I have not found any case law authorities that suggest otherwise. I consider the same interpretation holds for claims brought under section 39(1).

The Section 60A Equality Act 2010 Complaints

93. The two complaints (which may well be just a single duplicate complaint) identified above at paragraphs 34 (e) and 34(f) which refer to section 60A also cannot proceed, regard less of the abuse of process position. There is an express provision in the Equality Act 2010 which excludes the tribunal's jurisdiction over section 60A,
94. The Claimant argued that he ought to be permitted to bring a claim under section 60A because of his Article 10 Convention Rights. I was not persuaded by this argument.
95. The Claimant told me that he wants the opportunity to complain about each and every time a role in the Civil Service is advertised asking for a digital native or a social media native. He recognises that he is restricted from doing this through the employment tribunal because he can only validly claims in this jurisdiction for roles for which he is qualified to apply. His argument is that he needs to be able to rely on section 60A to get around this restriction.
96. The Claimant added that the Equality and Human Rights Commission were not taking enforcement action in connection with section 60A and so allowing him to bring the claim directly was necessary. He provided no evidence of this, however.
97. The difficulty with the Claimant's argument and his reliance on his Article 10 Convention Right is that his freedom of expression under Article 10 is not being limited at all by the current way that section 60A is enforced. The Claimant is currently able to freely express whatever opinions he wishes about the adverts to which he objects. Nothing is stopping him. His website is an example of this. What he is stopped from doing, however, is pursuing legal claims. That is an entirely different matter.

Section 111/112 Equality Act 2010 claims

98. I turn now to the claims identified at paragraph 34 (d) and (g) said to be made under section 111 and 112 of the Equality Act 2010.
99. The background facts associated with the claim at 34 (d) are set out at paragraphs 126 to 128 of the particulars of claim to Claim 4 (257 – 258) as well as what is contained in Claim 5.
100. I understand that in relation to the claim at paragraph 34 (d) the Claimant says that after he had been rejected for CO Role 1, he sought to complain about discrimination. The hiring manager sought advice from Ms Hepple who told him that there had been no discrimination and according to the Claimant discouraged him from seeking legal advice.

101. I interpret the claim at paragraph 31 (d) as a claim that Ms Hepple instructed, cause or induced someone to commit a basic contravention of the Equality Act 2010 against the Claimant.
102. Ms Hepple is not named as a respondent, but as she appears to be an employee of R1, the claim can theoretically proceed against R1, which may be vicariously liable for Ms Hepple's conduct.
103. The difficulty here though is in relation to the basic contravention of the Equality Act 2010 that Ms Hepple is said to have instructed, caused or induced. The basic contravention has to be one that the Claimant is able to make a claim about in order to proceed.
104. In my judgment, the act that Ms Hepple is said to have induced or caused is not an that falls within section 39(1) or (3) of the Equality Act 2010. All that the relevant hiring manager was apparently induced to do was not to seek legal advice when dealing with the Claimant's complaint. It seems to me that it is common sense that a decision simply not to get legal advice amount to act of discrimination or victimisation, but this is all the more so when, as explained above, applicants to employment cannot bring complaints of general detriments under section 39(1) and (3) of the Equality Act 2010.
105. The complaint at 34(d) cannot therefore proceed as it is outside the scope of the tribunal's jurisdiction.
106. Turning now to the complaint at paragraph 34(g), the background facts about this are set out at paragraphs 113 – 120 of the particulars of claim to Claim 4 (256 - 257) as well as what is contained in Claim 5. I have summarised my understanding in paragraph 13 above.
107. I interpret the complaint being made is that Mr Hatton and possibly Sir Alex Chisholm knowingly aided the Department for Culture, Media and Sport to discriminate against the Claimant by not intervening to freeze recruitment to the DCMS role.
108. Neither Mr Hatton nor Sir Alex Chisholm are named as respondents. It is not clear to me whether they are employees or agents of the Cabinet Office, such that the Cabinet Office can be held vicariously liable for their actions. It is also not clear to me whether either of them had the authority to intervene in the DCMS recruitment process. I have not had to resolve these factual matters. This is because like the complaint involving Ms Hepple, I consider the basic contravention in this case also falls outside the scope of section 39(1) and section 39(3) of the Equality Act 2010 for the same reasons as given above.
109. The Claimant is wishing to complain about the way in which a complaint of his was handled. This is outside the scope of section 39(1) and section 39(3). This complaint cannot therefore proceed as it is outside the scope of the tribunal's jurisdiction.

Judicial Proceedings Immunity

110. Finally from a jurisdictional perspective, I consider the complaint identified at paragraph 31(c) (vi) is covered by judicial proceedings immunity. The Respondent is entitled to argue, in defence to the allegation that it discriminated against the Claimant in a job application process, that the Claimant would not have succeeded. I therefore find that this complaint cannot proceed as a complaint of victimisation in its own right. Instead the validity of the Respondent's argument could be considered at the remedy stage.

Abuse of Process

111. I find that EJ Klimov's judgment issued under Rule 51 represents a judicial determination in respect of all causes of action included in Claims 1, 3 and 4. When issuing the judgment he was aware that the Claimant wanted to reserve his rights to bring a further claim, but decided it was in the interest of justice to proceed. He also rejected the Claimant's application for reconsideration of the judgment.

112. I am bound by the decision that EJ Klimov made.

113. The Claimant argued that his legal complaints should be treated as a continuing act of discrimination and that this somehow avoided the doctrine of *res judicata* applying to his claims. I do not agree that this is correct. Even if the separate complaints did combine to create a continuing act of discrimination, which I have not decided, this cannot overcome the res judicate principle.

114. I am not bound by the decision that was made by the legal officer who issued the judgment dismissing Claim 2 on withdrawal. This does not change the overall position, however, as all of the causes of action in Claim 2 which could have proceeded were repeated in Claim 4.

115. I have gone through the complaints in the Claimant's five claims in order to identify first which are subject to cause of action estoppel. I have then considered whether any other claims should be struck out because of the broader application of the res judicata principles.

Cause of Action Estoppel

116. The Claimant's earlier claims were brought against a range of respondents. In order for cause of action estoppel to arise, the precise legal complaint that he made including the identity of respondent against whom the claim was brought must have been the subject of a prior judicial decision.

117. The Claimant's early claims in relation to the roles were brought against the wrong respondents, with the exception of the claims relating to DfE Role 2 in Claim 2. However, in Claim 4 he presented claims against the correct three respondents, namely the Cabinet Office, the Department of Culture, Media and Sport and the Department for Education for all of the roles with the exception of CO Role 3. The effect of EJ Klimov's judgment is to create

a cause of action estoppel for all the claims of direct and indirect age discrimination identified in paragraphs 34 (a) and (b), except those relating to CO Role 3.

118. The Claimant brought only a limited number of complaints of victimisation in Claim 4. The complaints were about the failure to short list him for DfE role 3 and the DCMS role. Cause of action estoppel therefore applies to the claim of victimisation identified in paragraph 34(c) (i) except as it relates to CO Role 3.
119. I also find that cause of action estoppel also applies to the complaint identified in paragraph 34 (d) above. This is the claim said to be made under section 111 of the Equality Act 2010 about the way R1 dealt with the Claimant's complaint, specifically Shirley Hepple. In paragraph 123 of the particulars of claim to Claim 4 the Claimant states that the causes of action arising from the facts are Claims A and B as against the Cabinet Office. Cross referencing to paragraph 27 of the same document tells me that Claim A is a claim brought under section 111 of the Equality Act 2010. The claim appears to me to be identical.
120. The Claimant included a complaint under section 60A of the Equality Act 2010 in Claim 4. It is referenced as Claim F in para 12 of his particulars of claim. Cause of action estoppel therefore applies to the claims identified in paragraphs 34 (e) and (f) .

Issue Estoppel / The Rule in Henderosn v Henderson

121. I have dealt with these two forms of res judicata together because of the difficulty that some times arises in identifying which applies. In this case where there has been no substantive finding, drawing that precise distinction is particularly challenging although it is clear that one of them applies.
122. I deal with each of the remaining complaints in turn where I consider there has been an abuse of process. Before I do, I note that, in the alternative to my decision above, if I am wrong that the complaints included in the cause of action estoppel section are in fact not covered by cause of action estoppel, all of those complaints should also not proceed on the basis of issue estoppel and/or the rule in Henderson v Henderson.
123. With regard to the complaint in paragraph 34(c) (ii), I am satisfied that, even if I am wrong about this falling outside of the scope of section 39(3) of the Equality Act 2010, this cannot proceed as a complaint of victimisation against the Cabinet Office. Although the Claimant does not expressly make a complaint of victimisation under section 27 of the Equality Act 2010 relating to lack of feedback in his earlier claims, he refers to this as an issue of concern repeatedly. This leads me to be satisfied that the Claimant is estopped from raising the feedback issue in his current claim. If this is wrong, however, the rule in *Henderson v Henderson* applies to prevent this claim proceeding.

124. This is because the Claimant was clearly aware of the relevant facts and could have brought a claim of victimisation in Claim 4 about feedback. Claim 4 includes claims of victimisation demonstrating he was aware of his rights under section 27 of the Equality Act 2010. In fact, from reading what he says in paragraph 27 of the particulars of claim for Claim 4, I find that the reason he did not was because he recognised precisely the limitations contained in section 39(3) of the Equality Act 2010 that apply to an applicant for employment wanting to bring a claim of victimisation.
125. I make the same finding in respect of the claim of victimisation at paragraph 34 (c) (iii) above. The circumstances of his complaint to the R1 are, as noted above, described in full. He does not expressly say these give rise to a complaint of victimisation against R1, but nevertheless my decision is that he is estopped from pursuing such a complaint either as a result of the doctrine of issue estoppel or because of the operation of the rule in *Henderson v Henderson*.
126. I make the same finding in respect of the claim of victimisation at paragraph 34 (c) (iv) above. The circumstances of his complaint to the R2 are set out in detail in paragraphs 133 to 142 of the particulars of claim to Claim 4. He does not expressly say these give rise to a complaint of victimisation against R1, but nevertheless my decision is that he is estopped from pursuing such a complaint either as a result of the doctrine of issue estoppel or because of the operation of the rule in *Henderson v Henderson*.
127. The Respondent also argued that the complaint identified at paragraph 34 (ix) was implicit in the earlier claim and therefore covered by cause of action estoppel. I do not consider this was the case. The Claimant did not know that the Cabinet Office was responsible for telling R2 that he had issued legal proceedings until he received the outcome of his further enquiries which was in around January 2025.
128. The complaint is, however in my judgment, covered by the rule in *Henderson v Henderson*. The Claimant knew the information before he withdraw his claim in March 2025. He could have sought to amend Claim 4 to add this complaint. The amendment would have been discussed at the preliminary hearing planned for June 2025. This complaint cannot therefore proceed.
129. I have reached the same conclusion in respect of the complaint identified at paragraph 34 (x). Although the Claimant did not know the information at the time of presenting his Claim 4, he learned about it at a time when he could have made an amendment application to add it to Claim 4. He did not do so but instead withdraw the complaint, meaning it is covered by the rule in *Henderson v Henderson* and cannot proceed.
130. The final complaint, I consider is an abuse of process is the complaint identified at paragraph 34 (g). I say this because the Claimant set out the facts of this complaint in Claim 4 in some detail as noted above. In paragraphs 113 – 120 of the particulars of claim for Claim 4 he identified that those facts gave rise to a Claim A and B, which when cross referenced to paragraph 27 confirm that he had in mind complaints pursuant to sections

111 and 112 of the Equality Act 2010. He identified the respondent to those complaints as the Department of Culture, Media and Sport, however, rather than the Cabinet Office.

131. Because the Claimant did not identify the same respondent that he wishes the complaint to be brought against now, the complaint is not covered by cause of action estoppel. It is, in my judgment, covered by either issue estoppel or the rule in *Henderson v Henderson*. The Claimant could have sought to amend Claim 4 so that the complaint was against the Cabinet Office, which was already a party to the claim. He did not do so and in fact, appears to have indicated an intention to withdraw the claim at the January 2025 case management hearing. This certainly seems to have been the understanding of everyone at the case management hearing. I find that the legal complaint was dismissed by EJ Klimov and that the same complaint albeit against a different respondent cannot proceed.

Claims which are not an Abuse of Process

132. I am satisfied that the claims identified in paragraph 34 (a), (b) and c(i) as they relate to CO Role 3 are not an abuse of process and can proceed
133. I am also satisfied that the claims identified in paragraph 34 (c)(v) and (vi) are also new and not claims which were included or could have been included in the Claimant's early claims.
134. The Respondent argued that the claim at paragraph 31 c(v) and (vi) were implicit in the earlier claims. The problem with that argument is that both are broad claims that arise equally for CO Role 3 as the other roles. I have decided that the complaint at c(vi) cannot proceed for another reason, but this does not apply to the complaint at c(v). Although c(v) is a broad, somewhat nebulous complaint, I consider it does fall into section 39(3) of the Equality Act and therefore can proceed.

Employment Judge E Burns
4 October 2025

Sent to the parties on: 15 October 2025

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For the Tribunals Office

**Appendix
Draft List of Issues
(Questions for the Tribunal)**

The Claimant

1. The Claimant is 54. The Claimant also describes himself in terms of his age as someone who was born after 1980 - TBC

Direct Age Discrimination - section 13 and section 39(1) Equality Act 2010

2. It is not in dispute that the Respondent did not offer the Claimant the role of Senior Digital Communications Officer. It confirmed that his application for the role was not successful on 16 April 2025.
3. Was that treatment “less favourable treatment”, i.e. did the Respondent treat the Claimant as alleged less favourably than it treated or would have treated others (“comparators”) in not materially different circumstances? The Claimant relies on the following comparators [TBC] and/or hypothetical comparators.
4. If so, was this because of the Claimant’s age and/or because of the protected characteristic of age more generally?
5. If so, has the Respondent shown that the treatment was a proportionate means of achieving a legitimate aim? The Respondent relies on the following as its legitimate aim(s):

[TBC]

Indirect Age Discrimination - section 19 and section 39(1) Equality Act 2010

6. A “PCP” is a provision, criterion or practice. Did the Respondent have the following PCPs:
 - (a) The use of the phrase ‘Social Media Native’; and/or
 - (b) The use of the phrase ‘Digital Native’in job adverts/specifications?
7. Did the Respondent apply the PCPs to the Claimant at any relevant time?
8. Did the Respondent apply or would the Respondent have applied the PCPs to persons with whom the Claimant does not share the characteristic, namely persons born after 1980?
9. Did the PCPs put persons born before 1980 at one or more particular disadvantages when compared with persons who were born after 1980?
10. Did the PCPs put the Claimant at that/those disadvantages at any relevant time?

11. If so, has the Respondent shown the PCPs to be a proportionate means of achieving a legitimate aim? The Respondent relies on the following as its legitimate aims:
- (a) set out that applicants should be comfortable using digital and social media;
 - (b) attract appropriately qualified candidates for employment;
 - (c) ensure the correct and proper delivery of public services; and
 - (d) conduct a fair consistent and effective recruitment campaign.

Victimisation: section 27 and section 39(3) Equality Act 2010

12. Did the Claimant do a protected act? The Claimant relies upon the following: [the Claimant may want to revisit this list]

	Protected Act	Date
(a)	Statement in application for CO Role 1	29.8.23
(b)	Comment during interview for CO role 1	19.9.23
(c)	Letter to CO before 22.1.24	22.1.24
(d)	Email to Ms Monro, DCMS	22.1.24
(e)	Statement in application for DCMS Role	28.1.24
(f)	Letter to DCMS	13.2.24
(g)	Email/letter to Mr Whitbread/Mr Hatten	1.3.24
(h)	letter on notice to Mr Hatten, Sir Alex Chisholm	4.3.24
(i)	Letter before claim to COO for the Civil Service, Paymaster General, Minister of State for Veteran Affairs, Secretary of State for Culture, Media and Sport, First Civil Service Commissioner.	25.3.24
(j)	Claim for judicial review to the Prime Minister, Chief Operating Officer for the Civil Service, Secretary of State for Culture, Media and Sport.	25.3.24
(k)	ET Claim 1	10.5.24
(l)	Comments on social media and my website including the page https://www.paulshuttleworth.com/digital-native-home with articles on parallel case law in Germany	various
(m)	Email to DfE	26.7.24
(n)	JR 2 - Letter before claim to DfE, and Minister for Civil Service	26.7.24
(o)	Statement in application for DfE Role 2,	28.7.24
(p)	ET Claim 2	1.8.24
(q)	ET Claim 3	9.8.24
(r)	ET Claim 4	4.11.24
(s)	Quoted in a report on the 'row' in the Daily Telegraph newspaper	02.01.25
(t)	Repeated quotes in a syndication of the same article on Yahoo News https://www.yahoo.com/news/civil-ageism-row-advertising-job-10000022.html	02.01.25
(u)	Statement in application for Cabinet Office Role 3	

13. Did the Respondent subject the Claimant to any detriments as follows:

- (a) Failing to invite the Claimant to interview for the role of Senior Digital Communications Officer
- (b) Limited the likelihood of a future career in the Civil Service: a monopoly employer

14. If so, was this because the Claimant did a protected act?

Remedy

15. If the Claimant succeeds, in whole or part, the Tribunal will be concerned with issues of remedy and in particular, if the Claimant is awarded compensation, will decide how much should be awarded, including considering:

- 15.1 What, if any, award should be made for injury to feelings?
- 15.2 What are the Claimant's financial losses?

NB how should the Claimant's complaint that the respondent is causing damage to his reputation by building a defence that he would not have got the job anyway be treated?