

IN THE MANCHESTER EMPLOYMENT TRIBUNAL ('ET')

CLAIM NO: 2407553/2021

BETWEEN:

MR. R. WAGENER

Claimant

and

THE RIGHT HONOURABLE MICHAEL GOVE, MP

Respondent

POST PHR REQUESTS

OF THE CLAIMANT

Introduction

1. Judge Bryan Doyle heard the parties to the above claim on 16 November 2022 and delivered his reserved judgement on 17 November 2022.
2. The Claimant requests that the Tribunal clarifies the written reasons in the judgement by providing the further information requested below, in accordance with point 62(5) of *The Employment Tribunals Rules of Procedure 2013*, so the Claimant has a clear understanding of the reasoning behind the judgement
3. The Claimant requests that the Tribunal also reconsiders the judgement in the light of these further questions and points, in accordance with Point 71 of *The Employment Tribunals Rules of Procedure 2013*.
4. Finally, as the matter is in the public domain, the Claimant would ask the Tribunal to rectify the inaccuracies relating to the Claimant that are mentioned below, in accordance with section 46(1) of the *Data Protection Act 1998*.

General Concerns

5. The judgement does not provide an accurate record of what was said at the meeting. Instead, the witness statements and written submissions appear to have been largely cut and pasted, albeit with some changes, presumably to reduce their length.

6. The Claimant's speaking notes below provide a more reliable guide to what was said by the Claimant.



7. As a result, there are a number of errors and omissions in the judgement. As regards the former, for example:

- (a) the Claimant did not work for HMRC from 1983 (5); HMRC did not exist then;
- (b) the Claimant is not unemployed (56); he has been a piano teacher since 1 June 2022; and
- (c) the words at 74 were not said by the Claimant, who modified his arguments about section 112.

8. More significantly several key conclusions in the judgment are simply asserted without any reasoning being provided, in particular at point 106.

Specific Issues

9. Section 1(2) of the Superannuation Act was cited several times. However, this only tells us that the minister 'may' delegate his powers. No finding of fact was made that he 'had' in fact delegated any these powers. Furthermore, item 110 of the bundle indicated he had not made any kind of delegations, as the ET3 was filed on the assumption that *Carltona* gave the Cabinet Office the authority to act. It is unclear, therefore, why it was concluded that Michael Gove had delegated all or even any of his discretionary powers.

10. Counsel for the Respondent argued that the references to the 'scheme administrator' in the PCSPS rules indicated that the minister had delegated his discretionary powers. However, these rules still refer to the minister's discretionary powers in addition to those of the scheme administrator. It is unclear, therefore, why it was apparently concluded that Michael Gove irrevocably delegated all of his discretionary powers to the scheme administrator.

11. Michael Gove's witness statement says that this was completed at the end of 'a process'. This does not tell us what that 'process' was or, crucially, when it began. It could, therefore, have begun before he ceased to be Minister for the Civil Service. So why has it been apparently assumed that he did not see the ET1 before he ceased to be the Minister of the Civil Service? His statement says that he had not seen either of the Claimant's letters before making the witness statement. However, it does not say that he had not seen the ET1 before then.

12. The Guidance on Handling Ministerial Correspondence indicates that civil servants can handle 'letters' from members of the public. However, it does not give them the authority to handle legal notices, such as the ET1, that are personally addressed to a minister. On the balance of probability, therefore, the Claimant believes that it is more likely than not that Michael Gove would have seen the ET1 and therefore been personally involved, if only to 'authorise' others to act on his behalf. It is unclear why the Tribunal appears to have concluded otherwise.

13. The case of *M v Home Office* says at page 408 D that a minister can be personally responsible if he 'authorises' wrongdoing. The witness statement shows that Michael Gove endorsed the actions of the Cabinet Office, who regarded itself before, during and after this statement as being 'authorised' by him to act in the way they did.

14. The Cabinet Office argued in correspondence that *Carltona* was the sole basis for its belief that they were entitled to respond to the ET1. However, it was held in *Adams v R* that *Carltona* did not apply automatically, and a case-by-case assessment was therefore needed to determine if and when the minister had to be personally involved.

15. Perhaps realising the difficulties *Adams* presented, counsel for the Respondent decided to say that *Carltona* was in fact a 'bad argument'. If it was wrong for the Cabinet Office to assume that they were authorised to act by *Carltona*, it is unclear how the ET3 was not *ultra vires* and therefore invalidly made? If so, should it not be struck out?

16. Counsel for the Respondent argued that Michael Gove was ignorant of what had transpired under his watch and was therefore blameless of any responsibility. The Claimant pointed out, however, that section 109(2) EA says that ignorance is no excuse here. It is unclear how the Tribunal concluded otherwise or why the Tribunal concluded that Michael Gove was not a 'principal' in relation to the Cabinet Office, when he was the Minister of the Cabinet Office at the relevant time.

17. Paragraph 113 contains what appear to be *obiter dicta* in which the Tribunal concluded that the claim to HMRC appeared to be weak. As HMRC proposes to put this judgement before the CMD on 5 December 2022, the Claimant asks the judge to reconsider, withdraw or explain these prejudicial comments.

Robert Wagener
Claimant

25 November 2022