Appeal No. UKEAT/0449/13/JOJ

EMPLOYMENT APPEAL TRIBUNAL

FLEETBANK HOUSE, 2-6 SALISBURY SQUARE, LONDON, EC4Y 8JX

At the Tribunal
on 11 March 2014
Judgment handed down on 25 March 2014

Before

THE HONOURABLE MR JUSTICE LANGSTAFF

SITTING ALONE

P APPELLANT

COMMISSIONER OF POLICE OF THE METROPOLIS RESPONDENT

JUDGMENT

APPEARANCES

For the Appellant	MR E KEMP (of Counsel) Instructed by: Slater and Gordon UK LLP 50-52 Chancery Lane London WC2A 5SS
For the Respondent	MR J CROZIER (of Counsel) Instructed by: Metropolitan Police Service (Legal Services) New Scotland Yard 8-10 Broadway London SW1H 0BG

SUMMARY

JUDICIAL PROCEEDINGS IMMUNITY

A Police Misconduct Board before whom the Claimant Police Officer admitted misconduct decided that she should be dismissed from the force. She had no right to claim for unfair dismissal under the **Employment Rights Act 1996**, and a claim to that effect was struck out. But she also claimed that continuing to conduct proceedings against her, and failing to make appropriate adjustments in the light of her disability (PTSD), and deciding to dismiss her constituted acts of discrimination related to her disability, and harassment of her because of it. The Employment Tribunal upheld a claim that allegations of this sort could not be pursued, since the Board was entitled to judicial immunity. On appeal, this decision was upheld on the basis upon which the Judge had reached it. The principles in **Heath v Commisioner of Police of the Metropolis** applied. Although the decision in **Lake v British Transport Police** did not turn merely on statutory interpretation and the principles expressed were not limited to the very particular facts of that case, this did not have the result that a claim involving allegations of discrimination arising entirely out of the conduct of the Board could proceed.

THE HONOURABLE MR JUSTICE LANGSTAFF (PRESIDENT)

Introduction

1. Judges may not be sued for their judgments, however erroneous; nor may they be sued for what they may say during the course of a hearing. This has long been established as a principle of common law. The rule has the advantage that it prevents the possibility of hearings about hearings, but it does not rest even centrally upon convenience:

> **"…the rule is there, not to protect the person whose conduct in court might prompt such a claim, but to protect the integrity of the judicial process and hence the public interest."**

(per Auld LJ, in **Heath v Commisioner of Police of the Metropolis** [2005] ICR 329). In **Singh v Reading Borough Council** [2013] ICR 1158, Lewison LJ expressed it differently, but to the same effect:

> **"There are two strands of policy underlying the rule. The first is that those engaged in litigation should be able to speak freely without fear of civil liability. The second is a wish to avoid a multiplicity of actions where one court would have to examine the evidence given before another court was true or not."**

The issue before Employment Judge Etherington at London Central Employment Tribunal, which he resolved for reasons promulgated on 8th July 2013, was whether the decision of a Police Misconduct Board which dismissed the claimant police officer for her admitted misconduct was immune from a finding that it discriminated against her on the grounds of her disability, such that the Commissioner of Metropolitan Police was liable under the **Equality Act 2010** to pay compensation to her. He thought it was, and struck out the whole claim.

The Underlying Facts

2. The Claimant, a serving Police Officer, was assaulted in 2010 in consequence of which she suffered post-traumatic stress disorder. She complained in an application to the

Employment Tribunal that she did not have support at work to help her cope with the consequences of that condition, aggravated by the fact that just prior to 12th September 2011 she had worked excessively long hours. On that date, whilst in drink, she was involved in an incident which led to her arrest and dismissal. Her behaviour had bizarre features to it. She asserted that it was heavily affected by her PTSD. After investigation, she was brought on a disciplinary charge before the Police Misconduct Board. There, save for one matter of fact (which the Board resolved in her favour) she accepted that she had been culpably guilty of the misconduct alleged. She had a good record as a Police Officer, and relied on that and her condition in mitigation. The Board nonetheless decided on 12th November 2012 that she should be dismissed from the Force without notice. There was a right of appeal from that Board to an Appeal Board which she has exercised.

3. Although she initially claimed to have been unfairly dismissed, that claim was struck out without complaint on her part by REJ Potter at an early stage. That is because a police officer is an office holder, and not an employee. Save only in respect of dismissal where the reason (or if more than one, the principal reason) for that dismissal is that the officer made a protected disclosure (Section 103A **Employment Rights Act 1996**) police officers have no right to claim unfair dismissal. Their entitlement to claim under Section 103A was specifically provided for by Section 37 of the **Police Reform Act 2002**, which inserted Section 43KA into the **Employment Rights Act 1996**. As far as material to what follows, that Section reads:

> **"43KA**
> **Application of this part and related provisions to Police**
>
> **(i) For the purposes of –**
> **(a) this Part**
> **(b) Section 47B and Sections 48 and 49 so far as relating to that Section, and**

> **(c) Section 103A and the other provisions of Part 10 so far as relating to the right not to be unfairly dismissed in a case where the dismissal is unfair by virtue of Section 103 A,**
>
> **(a) a person who holds, otherwise than under a contract of employment, the office of Constable or an appointment as a Police Cadet shall be treated as an employee employed by the relevant officer under a contract of employment; and any reference to a worker being "employed" and to his "employer" shall be construed accordingly."**

The Metropolitan Police Commissioner is a "relevant officer" for these purposes.

4. The Claimant also claimed to have been discriminated against on the ground of disability. During the proceedings before the Employment Tribunal, the Claimant gave further and better particulars of this claim. At the hearing before Judge Etherington the only matters reflected in those further particulars which were pursued were those set out in paragraph 25 of those particulars: that in subjecting her to disciplinary proceedings for gross misconduct and in determining to dismiss her, in particular notwithstanding the medical evidence available to the Respondent concerning her disability, she had suffered continuing discrimination in employment contrary to Section 39 (2) (c) and (d) of the **Equality Act 2010**, and detriment and dismissal in the form of –

> **"(a) Discrimination arising from disability arising from Section 15 (1) of the Equality Act 2010, in that the Claimant was treated unfavourably by being disciplined and dismissed because of something i.e. her behaviour on 12 September 2011 arising in consequence of her disability. The disciplinary proceedings and dismissal were not a proportionate means of achieving a legitimate aim.**
>
> **(b) Failure to make reasonable adjustments contrary to Sections 20 and 21 of the Equality Act 2010 in that:**
>
> **"i The Claimant has been subject to a provision criterion or practice in that the Respondent has applied the Police Standards of Professional Conduct to her behaviour**
>
> **ii Owing to the effects of her disability upon her in September 2011, the Claimant was placed at a substantial disadvantage compared to non-disabled officers in terms of complying with the above standards. The Claimant**

committed an error of judgment in consuming alcohol on 20 September 2011, consequently behaving as she did.

iii The Respondent ought reasonably have given more weight to the factors in the Claimant's case and ought to have obtained medical evidence promptly as to the effects of the Claimant's PTSD upon her in September 2011 and consequently ought not to have commenced the disciplinary proceedings or ought to have discontinued the disciplinary proceedings or ought not to have dismissed the Claimant for gross misconduct.

(c) Harassment related to disability, contrary to Section 26 of the Equality Act 2010 in that the bringing of, continuing of and resolution of the disciplinary proceedings constituted unwanted conduct related to the Claimant's disability which has had the effect of creating an intimidating, hostile, degrading, humiliating and/or offensive environment for the Claimant"

5. Although that formulation accused senior Officers of discrimination before the Board ever sat, by failing to support her, and thereby failing to make reasonable adjustments for her, given her condition prior to September 2011, and of discriminating against her by calling her to a hearing of a misconduct charge, notwithstanding her illness, it was not articulated with any emphasis, if at all, before the Employment Tribunal that these matters stood apart from, and were independent of, the claim so far as it concerned the Board. Nor was there any ground of appeal to the effect that the Judge ought not to have struck out the entirety of the claim, because it might have had a separate life in those respects. The appeal has been concerned only with the question whether the claims made against the Metropolitan Police Commissioner, for the actions and inactions of the Board alone, were barred by the principle of judicial immunity and in particular by the decision in **Heath** to which I have already referred. If they were then no part of the claim survives.

6. In **Heath** the Claimant alleged sex discrimination in respect of the conduct of a hearing before a Disciplinary Board established under the Police Discipline Regulations 1985, a forerunner of the Police (Conduct) Regulations 2008 which were the Regulations relevant to the

current claim[1] A civilian employee of the Police Force complained that a Police Inspector sexually assaulted her at work. The Metropolitan Police Commissioner appointed an all-male Disciplinary Board to hear her allegations. She claimed to an Employment Tribunal that she felt intimidated by the fact that the Board was all-male; that her Union representative (a woman) had had to plead with the Board to allow her to sit in on the hearing to offer female support; and that the Inspector's barrister had humiliated her by asking her, without complaint from the Board, to demonstrate how the Inspector had assaulted her. The Employment Tribunal held as a preliminary issue that it had no jurisdiction to hear the complaint since it concerned judicial or quasi-judicial proceedings which were immune from suit, and rejected contentions that there had been a breach of the right to privacy conferred by Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms. Appeals first to the Appeal Tribunal and then to the Court of Appeal were dismissed. The judgment of Lord Justice Auld in paragraph 17 reads:

> **"Mr Hand submitted, and I agree, that there is no basis for the proposition that the absolute immunity rule only attaches to defamatory statements. As the Employment Tribunal well described in…its extended reasons, and as the Employment Appeal Tribunal also found, it attaches to anything said or done by anybody in the course of judicial proceedings whatever the nature of the claim made in respect to such behaviour or statement, except for suits of malicious prosecution and prosecution for perjury and proceedings for contempt of court. …there can be no logical basis for differentiating between different types of claim in its application. The width of its application in this respect has been judicially stated many times, most notably in Munster v Lamb (1883) 11 QBD 588, per Fry LJ at pp 607-608, and Marrinan v Vibart [1963] 1QB 508 per Sellers LJ at p 535 and per Diplock LJ at pp 538- 539."**

Auld LJ held that that Rule applied to a Police Disciplinary Tribunal as it applied to a court. He went on to describe (paragraph 52) the absolute immunity from suit as being a core immunity in our judicial system, critical to its integrity and effectiveness, observing that save for a few well defined exceptions it:

[1] They have now been replaced by the Police (Conduct) Regulations 2012 with effect from 22 November 2012

> **"…applies to all forms of collateral action however worthy the claim and however much it may be in the public interest to ventilate it. Claims of unlawful discrimination are clearly of that importance, but no more than many others, such as the citizen's right to protect his own good name or good character or to claim for conspiracy to injure or for misfeasance in public office, say, in giving evidence in a criminal trial resulting in the Claimant's loss of liberty."**

He described (paragraph 54) the formulation which the Employment Tribunal had adopted at paragraph 9 of its extended reasons as being a sound and simple expression of the law which could not be bettered: -

> **"…we are satisfied that there is an absolute immunity attaching to the proceedings in a Police Disciplinary Hearing in the same manner which would attach in a court of justice. In this regard we see no distinction between statements made in the course of proceedings not being actionable for defamation as a matter of public policy and a principle based equally on public policy that a complaint of discrimination should not be permissible in respect of the conduct of such proceedings, whether in respect of the composition of the disciplinary panel itself or anything done or said in the performance or the functions by those taking part in such proceedings, where it can properly be said that the alleged acts or omissions are within their particular function."**

European Directives did not affect the position.

7. The other members of the Court (Neuberger LJ and Holman J) agreed, save that Neuberger LJ regarded the allegation as to the composition of the Tribunal as being made not directly against the Board but against the Police Commissioner, being determined by him prior to the Board being set up. As I have observed, no issue is now taken in the present case that there was any relevant act of discrimination prior to the Board sitting.

8. As Mr Crozier, appearing for the Police, submitted **Heath** is and remains the authority which binds the Appeal Tribunal. The width of the principle stated by Auld LJ at paragraph 17 set out was considered by the Court of Appeal (Maurice Kay, Lewison, Gloster LJJ) in **Singh v Reading Borough Council and Anr** [2013] EWCA Civ 909, ICR 1158, particularly at

paragraphs 43 to 46. **Singh** was concerned with whether a claim in contract, relying upon the implied term of trust and confidence, could be brought by the Claimant in respect of undue pressure being placed upon a fellow employee of hers to make a statement containing false allegations against her. Lewison LJ (with the agreement of the other members of the court) thought that in principle no wrong should be without a remedy. Any exception to that basic tenet, such as that created by the rule as to judicial immunity, should be necessary, strict and cogent (paragraph 20). In line with that principle, in-roads had been made to the width of the immunity (see paragraphs 43-46) such that advocates are no longer immune from liability in negligence when conducting and preparing for court proceedings, expert witnesses no longer enjoy immunity from suit for negligence in relation to expert reports prepared for the purposes of litigation, or in relation to evidence given in it, and allegations of deceit and negligence in the handling and preparation of exhibits for use in a criminal trial have been permitted to proceed to trial. The rule was thus not as absolute as stated in **Heath**. He thought that the core immunity (paragraph 66) related to the giving of evidence, and that its rationale was to ensure that persons who might be witnesses in other cases in the future would not be deterred from giving evidence by fear of being sued for what they said in court. In **Singh** itself the claim was not based on anything that the Claimant might or might not say to the Employment Tribunal, but on what had gone on outside the Tribunal, and in particular the means by which the Council procured the fellow employee to make the allegedly untrue statement. Lewison LJ accepted the submissions of Counsel for the Claimant (paragraph 67) that "judicial proceedings immunity does not retrospectively immunise an antecedent act if that act is not itself within the immunity".

9. Though this case recognises that the principle adopted by the members of the Court in **Heath** was not as absolute a rule as a literal reading of paragraph 17 of Auld LJ's judgment

might suggest, nothing was said to cast doubt upon the applicability of that principle to the conduct of the members of a Tribunal itself in the course of reaching their decision.

10. Nor was anything said to cast doubt upon the principle in **Heath** in the subsequent Court of Appeal case of **Lake v British Transport Police** [2007] ICR 1293, C.A. where it was expressly recognised (at paragraph 27) that the customary immunity which judges, advocates and witnesses enjoyed "as confirmed in **Heath v Commissioner of Police of the Metropolis** … is not challenged in the Appeal…"

11. Nonetheless, the decision in **Lake** was relied upon by Mr Kemp, on behalf of the Claimant, on appeal. A Transport Police Officer was found guilty by a Police Disciplinary Board of failing to take action in respect of the unprofessional behaviour of two other officers. It directed his dismissal, and the Chief Constable upheld that decision. He claimed he had been dismissed for making a protected disclosure. He thus claimed that he had been automatically unfairly dismissed and was entitled by Section 183A of the **Employments Rights Act 1996** to compensation. The Claimant did not accept the facts found by the Police Disciplinary Board.

12. Although the Employment Tribunal and Appeal Tribunal rejected his claim, since both considered that the assertion of judicial immunity precluded it, a further appeal to the Court of Appeal was allowed. The Court considered he was not seeking to challenge the principle of judicial immunity from suit, but what he was seeking to do was to put to the Employment Tribunal the case which he had unsuccessfully put to the Disciplinary Board, which the Employment Tribunal had jurisdiction to hear since it was not bound by the decision of the Board. Pill LJ said that an Employment Tribunal could in law reach a decision different from that reached by the Board. Judicial immunity might be impugned if an attempt were to be made

to call as a witness the Chairman of the Panel constituting the Board, to justify or to explain his decision or to impugn remarks he made in the course of proceedings. Nor could the manner in which a Board conducted itself be challenged. But its decision could be, where the challenge was that the Board had reached a wrong view. At paragraph 40 Maurice Kay LJ said, succinctly: -

> **"I agree with both judgments. Immunity from suit protects those to whom it applies from being sued or otherwise subjected to mandatory process – for example, by way of a witness order. There is no question of the board or its members being sued or so subjected in the present proceedings in the Employment Tribunal."**

The Tribunal Decision

13. Before the Tribunal, the Metropolitan Police Commissioner argued that the facts fell on the **Heath** side of the dividing line (if there is one) between **Heath** and **Lake**; the Claimant that it fell on the **Lake** side. She asserted that all she wished to do was simply to put the same case to the Tribunal as she had unsuccessfully put to the Police Misconduct Hearing. Though initially attracted to that case, the Judge concluded in the following terms:

> **"23. Initially I found the Claimant's contentions attractive. But the Respondent also advanced a strong case. Both parties accepted the basic premise that a judicial body has immunity from suit. That means that in general the utterances, decisions and actions of a Tribunal properly exercising its lawful function cannot be questioned or challenged for the manner and content of that in the absence of CASE CASE (sic). But decisions of such bodies generally can be challenged – as found in Lake; and probably the most well known example of this is found in the exercise of a right of appeal."**

14. Though the words "in the absence of CASE CASE" are unclear, and suggest missing text, the tenor of the reasoning is plain – the conduct of the Board itself is not open to challenge but its decision (as such) is. I should add that no question arises of issue estoppel since it was plainly the view of the Court of Appeal in **Lake** that the decision of a Police Misconduct Board did not bind the Employment Tribunal.

15. This distinction – the conduct of the Board on the one hand, or appealing the decision on the other - had been described by the Claimant herself as a distinction between "decisions" and "outcomes" on the one hand, and process on the other. The Respondent's view was that what was in issue was the process and not simply the decision: the decision itself was said to be an act of discrimination. The Judge resolved that dispute in paragraph 25 as follows:-

> **"I am persuaded by the Respondent's argument. These proceedings are no mere action in the nature of an appeal. The Claimant is not simply saying to the panel "you got this wrong", which is within the normal and accepted experience of those exercising judicial functions, but asserts that decision and the process whereby that decision was reached constitutes the statutory tort of unlawful discrimination. How can that be said not to impugn the integrity of the Panel? Were this matter to continue to a Hearing at a Tribunal to find in favour of the Claimant the members of the Panel would stand guilty of discrimination for merely exercising their judicial function in an appropriate way. There is here no suggestion that the outcome of the case before the Panel was tainted by malice. This action is no mere challenge to the correctness of the decision but indicts the Board as perpetrators of discrimination."**

16. Counsel for both parties before me argued their respective cases, with little dispute as to the applicable principles – though Mr Kemp for the Appellant sought to restrict the scope of **Heath** and treat the principles in **Lake** as of general application, and Mr Crozier for the Metropolitan Police Commissioner sought to emphasise the applicability of **Heath**, and to argue that **Lake** turned entirely on a question of statutory construction which does not arise in the present proceedings. Since both **Lake** and **Singh** approved **Heath**, he would suggest that the short answer to the appeal was that **Heath** was binding: it could not be distinguished on the facts so must be followed.

17. A central and distinguishing feature of **Lake** was that the claim was a 'whistle-blowing' one. Statue provided for that alone to be the subject of action by a Police Officer if he wished to claim unfair dismissal, in such a case making a claim under section 103A of the **Employment Rights Act 1996**, specifically provided for by section 37(1) of the **Police Reform**

Act 2002 which had introduced section 43KA. That this section made a difference is apparent from paragraph 31 in the judgment of Pill LJ:

> **"It may be unusual that a statutory appeals procedure, which has sole jurisdiction (subject to judicial review) in most cases where disciplinary action is taken against Police Officers, can in a section 47 B(1)/Section 103A case be followed by a claim to an Employment Tribunal but that, in my judgment, is the effect of the insertion of section 43KA into the 1996 Act. The right is conferred by statute and notions of judicial immunity do not defeat it. The Court is concerned with an issue of jurisdiction and I express no views upon the merits of the Claimant's claim."**

Consideration and Conclusions

18. The Judge did not view the decision of the Court of Appeal in **Lake** restrictively, as being a case relevant to protected disclosure alone. He appears to have accepted the Claimant's argument that it stood for a more general proposition, namely that a Claimant was entitled to question before an Employment Tribunal a decision of the Police Misconduct Board.

19. To determine whether on this approach the Judge was entitled to take the view he did requires focus on the way in which the Claimant put her claim. At paragraph 25 of her further and better particulars she complained that the Police were guilty of discrimination against her. The allegations assert that the Board itself discriminated, for it was that body alone which decided to dismiss the Claimant, and it was that decision which was said to constitute discrimination. Though the members of the Board were not themselves sued as Respondents, it is their conduct which is impugned as being discriminatory, for the Police could act through no other agent in respect of this type of dismissal.

20. At paragraph 25(B)(iii) of the particulars it is asserted that the Respondent ought not to have commenced the disciplinary proceedings. Thus far, this might be referring only to a

decision to constitute the Board, which on the basis which appealed to Lord Justice Neuberger in **Heath** (though he was on his own in this respect) would have been an antecedent act and not one of the Board itself: however, the sub-paragraph continues to allege "…or ought to have discontinued the disciplinary proceedings or ought not to have dismissed the Claimant for gross misconduct". These allegations relate to the conduct of the Board as such (see paragraphs 5 and 7 above). So too do the allegations that the Police were guilty (again, in a way which can only have been because of the actions of the Board) of harassment related to disability "…in that the bringing of, continuing of and resolution of the disciplinary proceedings constituted unwanted conduct relating to the Claimant's disability…".

21. With those allegations in mind the Employment Judge was plainly right to conclude as to he did in paragraph 25. The very basis for arguing that the decision was wrong was that it was an act of discrimination, and of harassment by the Board. The allegation is centred on its conduct, when exercising its judicial functions. So viewed, the case falls four-square within the core principles established in **Heath,** and is unaffected by the subsequent recognition in **Singh** that the extent of the jurisdiction may not extend as far from the centre as it once was thought to do. Its actual decision - as such - was first as to whether misconduct was established (which was not in dispute), and then as to sanction (which was). Statute does not permit its decision, as such, to be challenged (which is why REJ Potter struck out that claim): it was not a decision that there had or had not been discrimination. The allegation of discrimination is thus based not on the decision itself, since it could not be, but on the way in which that decision was arrived at. That falls within the scope of judicial proceedings immunity.

22. Accordingly, the appeal fails, since the Judge was not in error in determining the case on the basis he did.

23. It is unnecessary for this decision to consider whether Mr. Kemp or Mr. Crozier is right as to the scope of **Lake v British Transport Police**, and to what extent that impacts upon the principles otherwise stated in **Heath**. In case it should be necessary hereafter, and because it has been argued before me, I shall briefly state my views notwithstanding.

24. The critical reasoning in **Lake** in the judgment of Pill LJ, with which Wall LJ was "in complete agreement" and with which Maurice Kay LJ agreed, began at paragraph 12. In that paragraph Pill LJ recognised that the effect of the reasoning of the Employment Judge was that a decision of a Police Disciplinary Board as to unfair dismissal "…cannot in a protected disclosure case, be challenged at an Employment Tribunal". The Employment Tribunal in that case itself had recognised that in reality a decision to dismiss a Police Officer would always be taken by a Police Disciplinary Board. To recognise immunity from suit for all decisions which the Board made would therefore be to erode the rights provided by section 43 KA, despite their introduction by the **Police Reform Act 2002**, for the very claim for which statute specifically made provision would then be excluded by the common law principle of immunity.

25. It was accepted in argument in **Lake** (see paragraphs 27, 28) (i) that the jurisdiction of an Employment Tribunal was not excluded by the fact that the Police Officer had appealed to the Police Appeals Tribunal from the decision of the Disciplinary Board (nor was it any longer suggested that the Tribunal was bound by the decision of the Board), and (ii) he could place evidence before a Tribunal to support a case that Section 103A applied.

26. The Court of Appeal decided that section 43KA and Section 103A provided that an Employment Tribunal had jurisdiction where a "whistle-blowing" case was asserted by a Police

Officer. If the Tribunal was entitled to hear evidence as to such a case, and was not precluded from reaching a decision contrary to that reached by the Disciplinary Board itself, no aspect of the proceedings before the Disciplinary Board would come into question. The only issue would be whether, in the event, the law provided a remedy for the dismissal of the Police Officer. The fact that the dismissal was caused by a decision of the Board could not affect the jurisdiction of the Tribunal to hear it.

27. The rationale in **Heath** falls short of conferring immunity upon the decision itself. Accordingly, I would have accepted that the effect of **Heath** is to protect acts of, and things said by, a Misconduct Board in the course of making its decision: but that the decision itself may (where statute permits it) be open to action. I would not have accepted that **Lake** has the restricted effect for which Mr Crozier contends, nor that it turns purely on the enactment of s. 37(1) of the **Police Reform Act 2002**. I would have been inclined, on this part of the case, to favour the arguments of Mr. Kemp over those of Mr Crozier.

28. I return, though, to the principal reason for dismissing the appeal. The difficulty in the path of the Claimant here is that critically she does not seek simply to say that the decision as to dismissal was wrong, but that it was made in such a way or for such reasons as to amount to an act of discrimination and/or harassment against her. This, as I have observed, and as the Judge recognised, is an attack upon the integrity of the panel, in respect of which the Disciplinary Board is immune from suit.

29. Accordingly, in my view, the Employment Judge was right to come to the conclusion he did, which he reached essentially for the correct reasons.