EMPLOYMENT TRIBUNALS

Claimant Respondent

MICHAEL CASSON **v.** **SOLICITORS REGULATION AUTHORITY**

Heard at: **Birmingham Employment Tribunal** by **CVP**

On: **8 & 9 FEBRUARY 2021**

Before	**Employment Judge McCluggage**
Appearances	
For the Claimant	**Mr Goodman (counsel)**
For the Respondent	**Ms Barney (counsel)**

PRELIMINARY HEARING (OPEN)

JUDGMENT

1. All complaints are struck out as barred pursuant to section 120(7) of the Equality Act 2010 save for a complaint that "Between January 2010 and January 2020, pursuing the Detailed Assessment of costs eventually leading to the Judgement of the Senior Courts Office of 08 January 2020, whereby the Claimant was ordered to pay the Respondent the sum of money therein satisfied."

REASONS

1. By an application to the tribunal dated 14 April 2020, the Claimant brings claims of age, race, and religious discrimination against the Respondent.

2. The Respondent has never been the Claimant's employer but is his regulatory body in respect of his profession as a solicitor. The Respondent's ET3 seeks to draw a distinction between its status as an entity and that of the Law Society when performing its regulatory functions.

3. This claim falls against the background of a long-running dispute between the Claimant as a practicing solicitor and his regulatory authorities arising out of what were relatively modest professional conduct adjudications in 2006 and 2007 relating to issues in practice over a period from 2004 to 2006 over property transactions. He has sought to challenge the Respondent's actions and decisions in the Solicitors Disciplinary Tribunal and the High Court and there were later unsuccessful attempts to re-open those decisions. He bears significant costs liabilities through these challenges which are relevant to his claims in the Employment Tribunal.

4. Employment Judge Flood ordered on 23 September 2020 that the issues for the Preliminary Hearing would be:

   (i) Whether the Claimant's claim relating to the reprimand of the Claimant by the Respondent and the ensuing legal proceedings should be dismissed by the Tribunal for want of jurisdiction pursuant to sections 53 and 120 (7) of the Equality Act 2010?
   (ii) Whether all or any of the Claimant's complaints be struck out because they have no reasonable prospects of success?
   (iii) Whether to order the Claimant to pay a deposit (not exceeding £1,000) if it seems that any contentions put forward had little reasonable prospect of success.

5. The parties have sought to refine these issues further as set out below.

The Claim and Procedural Background

6. The Claimant is a white male who was 54 years old in 2006 and who is now 67 years old. He is a probate and property solicitor of long-standing who continues to practice in a firm of solicitors. There is no suggestion that he is other than a competent and well-regarded solicitor despite the historic problems in his practice.

7. The Claimant brought a claim to the Employment Tribunal on 14 April 2020 alleging that the Respondent's treatment of him during the years from 2006 to 2020 amounts to unlawful discrimination on the grounds of race, sex, religion and age.

8. The Respondent's ET3 dated 26 June 2020 challenges the Employment Tribunal's jurisdiction in respect of the claims on the basis of section 120(7) of the Equality Act 2010 (EQA 2010) contending that the Tribunal does not have jurisdiction to hear a claim against a qualification body where there is a statutory right of appeal against the alleged action taken. In addition, the Respondent raised jurisdictional issues and denied responsibility for the acts of the Adjudicators and the Law Society. I consider the latter issue as unsuitable for determination today given a lack of evidence on point. When I refer to the Respondent in the body of this judgement it should be taken to incorporates its predecessors in terms of regulatory and disciplinary function, for example, the Council of the Law Society or the Legal Complaints Service. The Respondent may raise such issues (if relevant) at the final hearing.

9. On 26 August 2020 the Respondent applied to strike out the claim. This was on the basis that the Tribunal had no jurisdiction under s.120 EQA 2010, but also on the grounds that the claims were out of time and further had no reasonable prospect of success because of a lack of vicarious responsibility for the Adjudicators and Law Society but also on their merits as alleged discriminatory acts.

10. On 23 September 2020 Employment Judge Flood case managed the case and ordered this preliminary hearing. Time limit jurisdiction issues were expressly excluded from consideration.

11. On 20 November 2020 the parties by agreement proposed that the following should constitute the more precisely defined issues for preliminary determination:

> 1. Should the Claimant's claims relating to the reprimand of the Claimant and ensuing legal proceedings be dismissed by the Tribunal for want of jurisdiction pursuant to sections 53 and 120(7) of the Equality Act 2010. In particular:
> 1.1 What are the precise parameters of the Claimant's complaints as set out in the pleadings and against whom do they lie?
> 1.2 Does section 49 of the Solicitors Act 1974 provide an appeal or proceedings in the nature of an appeal against the Order of the SDT:
>
> a. Reprimanding the Claimant,
> b. Ordering the payment of costs to be subject to detailed assessment (unless agreed), and,
> c. An enforcement Order.
>
> 1.3 If so, does such an appeal preclude jurisdiction to hear any or all of the complaints of unlawful discrimination set out in the pleadings pursuant to section 120(7) of the Equality Act 2010?
>
> 2. Whether all or any of the Claimant's complaints should be struck out, or a deposit order made, on grounds that they have no, or little reasonable prospect of success, pursuant to Rules 37 and 39 of the Employment Tribunals (Constitution & Rules of Procedure) Regulations 2013, Schedule 1. In particular:

2.1 Is there no or little reasonable prospect of the complaints identified in the pleadings (the Respondent relies in particular on paragraphs 12(i), (iii) and (iv) of the Response Form) amounting to alleged acts of discrimination committed by the Respondent?

2.2 Does the Claimant have no, or little reasonable prospect of success in establishing that there are facts from which the Tribunal could decide in the absence of any other explanation that there was a causal connection between the alleged acts of discrimination and the protected characteristics of race, age, sex or religion?

2.3 Does the Claimant have no, or little reasonable prospect of success in establishing that there are facts from which the Tribunal could decide in the absence of any other explanation that the Respondent:

2.3.1 engaged in unwanted conduct of commenting that it did not expect "solicitors like the Claimant" to disobey its rulings;

2.3.2 that such conduct had the purpose or effect of violating the Claimant's dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment;

and

2.3.3 such conduct was related to the protected characteristics of race, age, sex or religion.

12. I take this as a starting point, but as the hearing progressed it was apparent that this list did not encompass all arguments made or the issues of substance between the parties. I also did not think that the particularisation of the issues concerning the strike out/deposit was helpful and preferred EJ Flood's more straightforward definition.

The Factual Background to the Claim

13. For the jurisdictional issues to be understood, it is helpful to set out the background of who decided what and when. There is involvement of Adjudicators, the Solicitors Disciplinary Tribunal, the High Court and the Respondent itself.

14. I set out below the factual background/history of the claim, restricting this to uncontentious facts, some of which are derived from the Claimant's own chronology sent to the tribunal on 14 April 2020 but prepared for the purposes of an appeal to the Court of Appeal in 2009.

15. On 16 February 2005 the Claimant was made bankrupt, being discharged on 16 February 2006. The circumstances of the bankruptcy have no relevance to my decisions.

16. Two clients (Client A and Client B) raised complaints to the Law Society against the Claimant's firm (Lee Davies LLP) in 2004/2005 making allegations of *inadequate professional services* in respect of actions and advice provided by the Claimant and his then partner in practice in relation to property transactions. The legal services were provided prior to the Claimant's bankruptcy.

17. The Law Society referred these complaints to its disciplinary arm, the Legal Complaints Service, which was in effect the Respondent's predecessor in terms of regulatory function. This process was governed by section 37A of the Solicitors Act 1973 and Schedule 1A to that Act and so had a statutory footing. The Legal Complaints Service at the material time delegated its decision-making to "Adjudicators" to determine such complaints under the procedure by way. I was, upon request, provided with copies of the adjudications.

18. On 20 October 2006 an Adjudicator ordered the Claimant to pay £1,945.56 to Client A within 7 days.

19. On 22 May 2007 a different Adjudicator ordered the Claimant to pay a sum of £3,587.56 to Client B within 7 days.

20. The Claimant viewed the Adjudicators' decisions as unfair. He did not comply with the direction to pay the compensation monies to the two former clients as ordered.

21. On 26 October 2007, the Respondent brought charges before the Solicitors Disciplinary Tribunal (SDT) in respect of allegations that the Claimant was guilty of conduct unbefitting a solicitor and professional misconduct because of his failure to comply with the Adjudicators' directions.

22. A technical issue arose before the SDT as to whether the adjudication awards constituted bankruptcy debts and were therefore no longer payable. On 1 May 2008 the SDT determined as a preliminary issue that the awards did not fall into the bankruptcy.

23. On 21 October 2008 the SDT was asked to review its earlier preliminary decision as to the bankruptcy issue following further higher court decisions bearing on that subject handed down in the interim. The SDT did not alter its decision. It also decided that the allegations of conduct unbefitting a solicitor and professional misconduct were proved. I was provided with the full written reasons of the SDT (chaired by Mr K W Duncan) which were prepared on 7 January 2009 which ran to 200 paragraphs over 35 pages. It was a full and careful decision which dealt with the Claimant's submissions in detail. Of note, on the face of this decision there had been no allegation raised by the Claimant that the Adjudicators had made their decision influenced by the Claimant's characteristics of race, sex or age, or that the Respondent had made its application to the SDT influenced by such factors.

24. As to outcome, the Claimant was Reprimanded by the SDT and ordered to pay the costs of the proceedings.

25. On 20 October 2009, the Administrative Court in the Queen's Bench Division of the High Court (Richards LJ and Maddison J) heard an appeal against the SDT's decision. This decision was reported as Casson & Wales v. Law Society [2009] EWHC 1943

(Admin). The main judgement was given by Maddison J. The grounds of appeal related to the issue of bankruptcy law (dealt with at paragraphs 10 to 38), as to the Claimant's means (paragraph 40), as to the human rights implication of the SDT's decision (paragraph 41), as to the unfairness of the 'accidental timing' of the adjudication post-bankruptcy (paragraph 42) and as to an allegation that the SDT should have advised the clients to claim against the Claimant's professional indemnity policy (paragraph 43). The grounds of appeal other than the bankruptcy point were roundly dismissed as having no merit at all, but the more nuanced bankruptcy ground was dismissed in addition. Permission to appeal to the Court of Appeal was refused. Costs were awarded against the Claimant in respect of the High Court hearing.

26. On 26 September 2012, the Respondent served Notices of Detailed Assessment in respect of the costs orders following unsuccessful negotiation between the parties. There was significant delay before the detailed assessment proceedings were commenced.

27. On 17 December 2013 Master Campbell refused a challenge to the costs orders by the Claimant relying (again) upon his bankruptcy. An attempt to appeal was refused. Further costs orders arose.

28. On 13 September 2018 the detailed assessment procedure recommenced. The Respondent has candidly acknowledged significant further delay on its part as to the progress of this procedure. To an educated onlooker, though delays in costs proceedings are commonplace, this appears to be unusually long. However, I did not hear evidence giving context to the period of delays.

29. On 4 April 2019 the Claimant applied to re-open the 2009 Administrative Court appeal based upon what he contended to be a relevant change in bankruptcy law through a Supreme Court decision In re Nortel [2013] UKSC 52. As part of that appeal, the Claimant argued that the Law Society was aware that the SDT decision was wrong but was trying to cover it up. On 17 October 2019, Mrs Justice Foster refused permission to re-open the appeal both on the basis of her discretion under CPR Part 52.30 but also that the Claimant's contentions as to law and the effect of the Nortel case were wrong.

30. On 18 December 2019 the Claimant unsuccessfully asked the SCCO Costs Judge to reconsider the judgements of the High Court.

31. On 8 January 2020, Deputy Master Campbell undertook the detailed assessment of costs but with the enforcement stayed until 7 April 2020. Evidently, while the detailed assessment of costs took a considerable time to come to a conclusion, this did not negate the jurisdiction of the specialist costs judge.

32. The employment tribunal claim was received on 14 April 2020.

Jurisdiction under the Equality Act 2010?

33. The relevant part of section 53 of the Equality Act 2010 ("EQA") reads:

> ***53. Qualifications bodies***
> ……
> *(2) A qualifications body (A) must not discriminate against a person (B) upon whom A has conferred a relevant qualification—*
>
> *(a) by withdrawing the qualification from B;*
>
> *(b) by varying the terms on which B holds the qualification;*
>
> *(c) by subjecting B to any other detriment.*
>
> *(3) A qualifications body must not, in relation to conferment by it of a relevant qualification, harass—*
>
> *(a) a person who holds the qualification, or*
>
> *(b) a person who applies for it.*

34. The relevant part of section 54 EQA reads:

> ***54. Interpretation***
>
> *(1) This section applies for the purposes of section 53.*
>
> *(2) A qualifications body is an authority or body which can confer a relevant qualification.*
>
> *(3) A relevant qualification is an authorisation, qualification, recognition, registration, enrolment, approval or certification which is needed for, or facilitates engagement in, a particular trade or profession.*

35. On the basis of these provisions, I accept that the Respondent is a qualification body within the meaning of the EQA and must not unlawfully discriminate against a solicitor in the ways stated. This was not disputed by the parties.

36. Section 120 EQA grants the following jurisdiction to the Employment Tribunal:

> ***120. Jurisdiction***
>
> *(1) An employment tribunal has, subject to section 121, jurisdiction to determine a complaint relating to—*
>
> *(a) a contravention of Part 5 (work);*
>
> *(b) a contravention of section 108, 111 or 112 that relates to Part 5.*
>
> …..
>
> *(7) Subsection (1)(a)* ***does not apply to a contravention of section 53 in so far as the act complained of may, by virtue of an enactment, be subject to an appeal or proceedings in the nature of an appeal.***

37. I am satisfied that subjecting a solicitor to a professional disciplinary or regulatory sanction is apt to constitute a 'detriment' in breach of section 53 EQA 2010.

38. The question then becomes whether the acts complained of by the Claimant are, by virtue of an enactment, subject to an appeal or proceedings in the nature of an appeal. It may be important to identify "the act" for purposes of this question.

Issue 1.1 Parameters of complaints

39. Paragraph 1.1 of the parties' list of issues asks: "What are the precise parameters of the Claimant's complaints as set out in the pleadings and against whom do they lie?". I agree that this is an important question for the Preliminary Hearing, though one not initially straightforward to answer because of the infelicitous manner in which the ET1 was drafted.

40. The Claimant's ET1 at box 8.2 states:

> "I am attaching a copy of the complaint made to the respondent on 13 February 220 which sets out the background to this claim. No acknowledgement or response has been received to this complaint.
> By making a regulatory order for the payment of money by me to persons who had no claim under the Civil Procedure Rules at the time the order was made the respondent demonstrated two adverse behaviours. Firstly, that it considered it was above the law; and secondly that it was entitled to adopt bullying behaviours by seeking to deny me the choice as to how I might disperse monies that were earned by me. The reason that the respondent chose to behave in this manner has never been explained to me in the fourteen years since the orders were made. However, the respondent discriminated against me because of my choice to continue to pursue my profession. No person or organisation is entitled to visit financial sanctions against me unless I transgress the civil or criminal law which I did not do. It would not have made similar orders to anyone younger than me, or female, or of a different race or religion because my knowledge there were no persons against whom the respondent made similar orders at the same time or subsequently.
> The fact that the litigation to enforce its order brought by the respondent against me was only completed on 8 January 2020 very simply demonstrates the respondent's total disregard of the standards by which a regulatory body should deal with those it regulates."

41. The complaint to the Respondent was indeed annexed to the ET1 and was on the pro forma "Form for making complaints about SRA service" and is dated 13 February 2020. That complaint raised numerous issues involving the Respondent's jurisdiction and technical issues of law concerning bankruptcy and the *Third Party (Rights Against Insurers) Act* together with complaints in relation to the detailed assessment of costs procedure then still progressing in the civil courts. Notably, allegations of unlawful discrimination were entirely absent from this complaint.

42. Some aspects of the complaints (both in the ET1 but particularly in the direct complaint to the Respondent) lie well outside of the jurisdiction of an Employment Tribunal. Whether the regulatory system for solicitors is permitted in law to apply financial sanctions outside of infringements of civil or criminal law is not an issue this tribunal can decide. However, ultimately the allegation in the ET1 is that the "orders" made and their enforcement arose from protected characteristics of sex, race and religion. The Claimant sought to argue that this was not an allegation of conduct on the part of the SDT (see §16.2 of Skeleton Argument) but in my judgement it was just such an allegation. Thus, it was apparent from his ET1 that the Claimant was at least in part initially seeking to use the Employment Tribunal as a court of appeal from the SDT and indeed also from the High Court. As the SDT is independent of the Law Society (and the Respondent) it would be hopeless to seek to challenge the Respondent in the Employment Tribunal on the basis of the SDT's decisions.

43. On 1 June 2020 Employment Judge Flood ordered that the Claimant by 19 June 2020 provide to the Tribunal and Respondent a list of acts of the respondent he says are acts of unlawful discrimination, setting out the dates, what was done, what form of prohibited conduct they amount to and how each act relates to the protected characteristics he relies upon.

44. On 26 June 2020 the Claimant accordingly provided a 3 page document on 26 June 2020 setting out the acts upon which he relies titled, "Claimant's Response to the Order of Employment Judge Flood dated 1 June 2020". This restricted the claim to seven specific acts said to constitute age, race and sex discrimination which I paraphrase as follows (ignoring the generalised and unhelpful complaint that "the entire conduct of the Respondent from 2006 until 2020 has been discriminatory):

    a. The Adjudicators' decisions;
    b. The Respondent's requirement for the Claimant to pay the Adjudicators' decisions or face proceedings before the Solicitors' Disciplinary Tribunal;
    c. The prosecution before the Solicitors' Disciplinary Tribunal;
    d. Opposing the Claimant's appeal against the Solicitors' Disciplinary Tribunal to the Administrative Court.
    e. Pursuing the costs order arising out of that appeal.
    f. Failing to advise the Claimant's disgruntled clients to pursue his professional indemnity insurers under the *Third Parties (Rights Against Insurers) Act*.
    g. This has two parts in the Further and Better Particulars:

        (i) "The requirement to pay money to persons who could bring no Civil claim is clearly discriminatory as the Respondent would make no Order against anybody else". *My view is that this is in effect a complaint about the Adjudicators' decisions and so duplicates allegation (a). The Claimant cannot bring a claim against the SDT who in fact enforced the "requirement to pay money".*
        (ii) A representation by "one of the Respondent's operatives" that the Respondent did not expect solicitors like the Claimant to disobey orders.

45. I concluded that the Further Particulars document have specifically defined the Claimant's complaints from the diffuse and illegitimate (so far as it sought to challenge the Respondent for decisions made by the SDT and courts) allegations within the ET1. All specific allegations of discrimination were required to appear in the Further Particulars document and so I should not have to look beyond that document for discrete allegations of discrimination. Importantly, the Claimant was in that document not complaining specifically about the orders of independent bodies such as the SDT or judicial bodies. The document does not particularise the nature of discrimination complained of, but the Respondent has treated it as allegations of direct discrimination and harassment on the grounds of the protected characteristics alleged. I do not accept that there are residual grounds of complain to be deciphered, for example, from the pro forma complaint to the Respondent dated 13 February 2020, in which no allegations of discrimination are made.

Issue 1.2: the effect of section 49 of the Solicitors Act 1974 (SA 1974)

46. Section 49 of the SA 1974 reads:

> ***49 Appeals from Tribunal***
>
> *(1) An appeal from the Tribunal shall [lie to the High Court].*
>
> *(2) Subject to subsection (3) and to section 43(5) of the Administration of Justice Act 1985, an appeal shall lie at the instance of the applicant or complainant or of the person with respect to whom the application or complaint was made.*
> *…..*
> *(4) The High Court . . . shall have power to make such order on an appeal under this section as [it] may think fit.*
> *(5) Subject to any rules of court, on an appeal against an order made by virtue of rules under section 46(10)(c) without hearing the applicant or complainant, the court—*
>
> *(a) shall not be obliged to hear the appellant, and*
> *(b) may remit the matter to the Tribunal instead of dismissing the appeal.*
> *(6) Any decision of the High Court—*
> *(a) on an application under section 43(3) or 47(1)(d), (e), (ea) or (f), or*
> *(b) against an order under section 43(3A), shall be final.*

47. Paragraph 1.2 of the parties' list of issues stated:

> Does section 49 of the Solicitors Act 1974 provide an appeal or proceedings in the nature of an appeal against the Order of the SDT:
> a. Reprimanding the Claimant,

> b. Ordering the payment of costs to be subject to detailed assessment (unless agreed), and,
> c. An enforcement Order.

48. In my view, the issue as drafted is not progressive of the dispute between the parties. It was unsurprisingly not disputed by the Claimant that section 49 of SA 1974 allowed an appeal *from the decision of the SDT.* Thus, the issue as drafted would obviously be answered in the affirmative.

49. However, the parameters of the complaints as I find them (issue 1.1 above) do not include a complaint about the substantive decision of the SDT. Such a complaint would plainly fall foul of section 120 of EQA.

50. The distinction is articulated in Mr Goodwin's Skeleton Argument as follows (§12/13/15):

> "….C's complaint, as R seems to recognise at the end of para. 7 of its Grounds of Resistance, is broader and concerns R's manner, conduct and motive in pursuing C – both in the lead-up to the SDT proceedings and in the wake of those proceedings.
> Furthermore, s49(1) SA 1974 *only* provides a statutory mechanism for appeals from decisions of the SDT, which is not the relevant qualifications body. It does not provide a mechanism (and there is no such mechanism) for appeals from decisions of *the qualification body*, which is R. …
> …..Accordingly, whilst it is accepted that the effect of s120(7) EqA 2010 is that any element of C's claim which were or could have been the subject of an appeal to the High Court under s49(1) SA 1974 cannot be heard as part of this claim, it is *only* those parts of C's claim (if any, which is denied) that fall foul of s120(7) that are debarred. Any elements of the claim that could *not* form the basis of an appeal from a decision of the SDT to the High Court are firmly within the jurisdiction of the Tribunal.

51. The Respondent's argument from Ms Barney of counsel was that all (or most) of the Claimant's current complaints could have been raised within the statutory appeal process through section 49 SA 1974 even if they relate to the Respondent's motivations in pursuing or contesting issues before the SDT and/or High Court.

52. I am satisfied that the issue I must address as regards jurisdiction concerns the Respondent's alleged conduct around the SDT and High Court decisions rather than the decisions themselves as the List of Issues suggested. As will be seen below, the issue in fact in my judgement needs to be refined further into two parts:

    a. The Respondent's alleged conduct bearing on the Adjudication;

    b. The Respondent's alleged conduct bearing on the SDT hearing.

53. This is because section 49 SA 1974 applies only to an appeal *from* the SDT; it does not govern a solicitor's dissatisfaction with an Adjudication in respect of inadequate professional services.

54. The parties referred me to a number of authorities which are pertinent to whether s.120(7) EQA 2010 applies to the Adjudication and/or SDT hearing.

55. Both parties cited Michalak v. General Medical Council [2018] ICR 49, a decision of the Supreme Court. A doctor was subject to fitness to practice proceedings under Part V of the Medical Act 1983. She claimed that the GMC discriminated against her in the way in which it pursued those proceedings and also in respect of a failure to investigate complaints she had made against other doctors. The doctor presented a claim to the Employment Tribunal in relation to these complaints. The issue for the Supreme Court was whether a judicial review was "in the nature of an appeal" for the purposes of s120(7) EA 2010. Lord Kerr stated as to the meaning of s.120(7) at paragraph 13:

> "the case, therefore, is whether the availability of judicial review animates the exemption contained in section 120(7). This in turn depends on whether that remedy can properly be described as "a proceeding in the nature of the appeal" and whether it is available to the respondent "by virtue of an enactment". It is important to note that both these conditions must be satisfied before section 120(7) comes into play. Both issues will have to be examined separately but, first, one must look at the context in which they require to be decided and that is provided principally by the Equality Act itself."

56. Lord Kerr then reviewed the nature of the EQA 2010 and went on to say at paragraph 17:

> These considerations provide the backdrop to the proper interpretation of section 120(7). Part of the context, of course, is that appeals from decisions by qualification bodies other than to the Employment Tribunal are frequently available. It would obviously be undesirable that a parallel procedure in the Employment Tribunal should exist alongside such an appeal route or for there to be a proliferation of satellite litigation incurring unnecessary cost and delay. Where a statutory appeal is available, employment tribunals should be robust in striking out proceedings before them which are launched instead of those for which specific provision has been made. Employment tribunals should also be prepared to examine critically, at an early stage, whether statutory appeals are available.

57. I am not assisted by the judicial review point in Michalak but do think that Lord Kerr's observation on the undesirability of parallel procedures is of importance.

58. Ms Barney submitted that Ali v. Office of the Immigration Services Commissioner [2021] IRLR 84 is authority for the proposition that complaints about discrimination could form part of a regulatory appeal and so the section 49 SA 1974 appeal facility encompassed the nature of the Claimant's complaints. Ali was a case about

registration as a qualified person entitled to provide immigration advice or services. Companies controlled by Mr Ali had renewal of their registration refused. Mr Ali's companies appealed the decision of the Immigration Services Commissioner to the First Tier tribunal. The appeal against the renewal of registration was dismissed. Mr Ali then brought a claim in the Employment Tribunal against the Commissioner alleging race discrimination, victimisation and harassment stating that the Commission was systematically racially biased against him and his companies. The Commissioner relied upon s.120(7) of EQA 2010. The Employment Tribunal found that it did not have jurisdiction. The EAT (HHJ Auerbach) concluded that while the statutory footing of the First Tier Tribunal did not expressly provide a right to complain about discrimination, section 120(7) of EQA 2010 only requires that "the act complained of" be subject to an appeal. As HHJ Auerbach put it at §34:

> 'The "act complained of" means the substantive conduct complained of – here the refusal to re-register the companies and the removal of them from the register. Nor is there anything in Michalak (or any other authority) to suggest that a right of appeal must have this feature, in order to fall within the scope of section 120(7)."

59. HHJ Auerbach went onto hold that Mr Ali could have advanced as part of his appeal to the First Tier Tribunal that the decisions of the Commissioner amounted to acts of discrimination. He held that the Triunal would have been bound to engage with allegations of discrimination against the Commissioner.

60. This decision requires me to address whether the SDT and/or the High Court could have engaged with a complaint by the Claimant that the Respondent's conduct (or that of the Law Society) was discriminatory.

61. I was also referred to Khan v. GMC [1994] IRLR 646, a decision of the Court of Appeal, which I also found instructive on this issue, as well of course as being of even higher authority. The Court of Appeal was concerned with registration of an overseas qualified medical practitioner. The General Medical Council had refused Dr Khan's registration twice. He applied for a review of these decisions to the Review Board for Overseas Qualified Practitioners under section 29 of the Medical Act 1983. The review was unsuccessful. Dr Khan then brought industrial tribunal proceedings alleging indirect discrimination. Section 54(2) of the Race Relations Act 1976 contained a near identical provision to section 120(7) EQA 2010. The review was found to comprise a two-stage form of review initially by a committee and then a Review Board. The President of the GMC would take a decision based upon the Review Board's decision. The Court of Appeal was primarily concerned with whether the 'review' was "in the nature of an appeal". However, Hoffman LJ (as he then was) also dealt with a submission as to whether the review provided an effective remedy under the Equal Treatment Directive. His judgement was that (§34) while the industrial tribunal was a specialist tribunal its advantages in providing an effective remedy were outweighed by a specialist trade body such as the Review Board which was entitled if not required to take into account arguments as to discrimination.

62. Though not cited to me, I have also read R v. Dept of Health ex.p. Gandhi [1991] IRLR 431 which Hoffman LJ referred to in the course of stating the latter proposition in Khan. The Divisional Court was considering a judicial review against a refusal of an appeal by the Secretary of State against a refusal by a Medical Practices Committee to include the applicant on a medical list. The applicant alleged the decision of the Committee was motivated by his race. The court stated that while the Secretary of State did not have to discretely deal with a race discrimination complaint, he was required to apply the provisions of the Race Relations Act 1976 in exercising his appellate power. It seems to me that Ghandhi helpfully illustrates that discrimination legislation permeates statutory appeals generally even if the appellate body is not a specialist discrimination tribunal.

Section 49 and appeal from the SDT

63. Pursuant to s.53 EQA 2010, the qualifications body (the Respondent) is forbidden to expose an individual to a detriment on prohibited grounds. Under section 40(4) SA 1974, the High Court could make any such order on an appeal "as it thinks fit" and so has a wide-ranging discretion on appeal. I conclude that a solicitor is entitled to argue before the High Court that the Respondent has subjected him to a detriment in breach of discrimination legislation in pursuing the disciplinary charges. In Khan, the Review Board was held capable of bringing into account allegations of discrimination. In Gandhi, the Secretary of State was held so capable. Following the reasoning in Khan and Gandhi the High Court would be obliged to take any such unlawful discriminatory conduct into account when exercising its appellate powers under section 49 SA 1974. The High Court is indeed better equipped to consider the impact of discrimination than the bodies/officers of state in those authorities. The High Court would plainly treat it as a highly material factor influencing its wide discretion as to the appropriate order on appeal (whether as to guilt or sanction) if it were alleged and established that the Respondent had pursued disciplinary charges on discriminatory grounds. How it would bring such discriminatory conduct into account would obviously depend on the circumstances of the individual case and in particular the nature of the disciplinary charges.

64. My conclusion is therefore that a solicitor appealing from the SDT to the High Court under s49 SA 1974 is entitled to raise as part of his appeal that the Respondent's motivation or grounds for bringing the complaint to the SDT and/or resisting an appeal to the High Court was discriminatory. The High Court can and is obliged to take account of such a complaint. This is apt to cover some of the Claimant's complaints which I analyse when applying this law to the facts on issue 1.3.

Section 49 and appeal from the Adjudicators' Decisions

65. While the parties dealt in detail with section 49 of the SA 1974, they had omitted to deal with the statutory basis of the Adjudication decisions and whether a challenge to an Adjudicator's decision could be made, and if so, whether it was an appeal or in the nature of an appeal within the meaning of s.120(7) EQA 2010.

66. This mattered because the Claimant's first allegation within these proceedings directly attacked the Adjudicators' decision on grounds of discrimination. I asked counsel to research the issue for day 2 of the hearing (albeit I afterwards noticed that the matter was explored to some extent by the High Court in the Claimant's 2009 appeal). As the material process of dealing with inadequate professional services is no longer a live procedure (and has not been for over 10 years), this research was not straightforward at short notice and in a pandemic induced lockdown where the materials were not all online, but by the endeavours of counsel I was enabled to consult photographed pages of the Solicitor's Handbook 2008 and had further instructive authorities cited to me. As noted below there were unfortunately some deficiencies in the research.

67. Section 37A of SA 1974 at the material time gave effect to Schedule 1A of the Act. These provisions were inserted by the Courts and Legal Services Act 1990, s.93(3) and Sch 15. Under s37A, the Law Society's Council was granted powers to take steps with respect to a solicitor where "it appears to them that the professional services provided by him in connection with any matter in which he or his firm have been instructed by a client have, in any respect, not been of the quality which it is reasonable to expect of him as a solicitor". The Council was empowered to take a wide variety of "steps" in such a case of inadequate professional services, which could include limiting the solicitor's entitlement to costs, to rectify deficiencies at his own expense and to pay compensation.

68. Pursuant to para 5 of Schedule 1A to SA 1974, if a solicitor failed to comply with a direction/steps given under the Schedule: "any person may make a complaint in respect of that failure to the Tribunal; but no other proceedings whatsoever shall be brought in respect of it."

69. The history of these provisions is helpfully set out by the Court of Appeal in In R (Thompson) v. Law Society [2004] EWCA Civ 167 at paragraphs 14 to 25. However, there do appear to be some differences in the procedure adopted by the Law Society in 2001/2002 at the early stages of the Thompson case and the time of the Claimant's adjudication. Mr Goodwin pointed this out to me and noted that the Law Society's General Regulations 1997 (amended in 2001) seemed publicly unavailable, with only the 2013 General Regulations present on the Law Society website. The Respondent could provide no greater assistance.

70. In broad terms at the material time it appears that the Council of the Law Society would delegate its power as to inadequate professional services to caseworkers and Adjudicators. Practitioners will recall that the Law Society's disciplinary powers were in a state of flux over a period of time. The Law Society had at various times delegated its disciplinary powers to the Solicitors' Complaints Bureau, then the Office for the Supervision of Solicitors, then the Legal Complaints Service.

71. The Court of Appeal in R (Thompson) describes how a caseworker would write a report, that report would then be submitted to an Adjudicator who would hear representations and make a decision, *and then that the solicitor could appeal to or*

obtain review by an "adjudication panel" (§21). However, it appears from the decision in R (White) v. OSS [2001] EWHC Admin 1149 that the internal procedures of the Law Society in this period were not clearly documented. In R (White), an internal procedure of case worker review, adjudicator decision *and "Appeals Committee"* is described, similar to but with different terminology as to the third stage described in R (Thompson). Bring the case before the SDT was described as the fourth stage. I suppose the appeal to the High Court could be called the fifth stage.

72. My difficulty in the present case is that there has been no material produced to me whether in terms of internal Law Society documentation or within legislation demonstrating that the Claimant would have had a right to review/appeal the Adjudicator's decision to a panel or appeals committee at the material time. In other words, the only material before me indicates only 3 rather than 4 stages.

73. I am forced to assume for present purposes that the Claimant by the time of his adjudications did not have a right to bring his case to an adjudication panel. I am not prepared to assume that such a procedure applied to the Claimant simply because there was such described (differently in each case) in R(White) and R(Thompson). This is important because it might otherwise have made the case closely analogous to Khan v. GMC. This paucity of material is an unsatisfactory position, but the parties had not applied their minds to the question before the hearing. The practical burden to adduce the relevant material would have lain on the Respondent.

74. This is not an abstract question because of the way in which Mr Goodwin presented his arguments on day 2 of the hearing including in his supplemental skeleton argument. On his skilful presentation of the Claimant's case, there is a live issue as to whether a solicitor in the Claimant's position could take advantage of raising a complaint about an Adjudication to the SDT under para 5 of Schedule 1A of SA 1974 and if so whether that constitutes a procedure in the nature of an appeal. The parties disagreed on this issue and there is conflicting guidance/authority.

75. In short, Ms Barney supported by the Solicitors Handbook 2008 argued that under para 5(1) of Sch 1A "any person" could make a complaint to the SDT about failing to comply with a direction of the Adjudicator and this person could include the solicitor concerned. Thus the Respondent argued that there was a procedure analogous to an appeal open to the solicitor from the Adjudication and so s.170 EQA excluded all complaints bearing on discrimination around the Adjudication itself prior to the SDT stage.

76. To the contrary, Mr Goodwin submitted that R (White) was authority for the proposition that a solicitor cannot take advantage of para 5 of Schedule 1A given it was stated in trenchant terms by Mr Justice Lightman as follows:

> 21. The question arises as to the nature of the jurisdiction of the Tribunal and as to who is entitled to invoke that jurisdiction. The Law Society take the view that paragraph 5 confers on all parties (including the solicitor) a right of appeal against the Appeals Committee's decision. Mr Peacock for the Law Society explained its

> reasoning: paragraph 5 confers a right to invoke the jurisdiction of the Tribunal on "any person", and the term "any person" includes the solicitor. In my view two things are clear: (1) paragraph 5 cannot be invoked by the solicitor. Whilst the term "any person" might otherwise be apt to include the solicitor, in this context the term must be confined to the client or the Law Society, for it is not sensible to read paragraph 5 as conferring on a solicitor a right to complain to the Tribunal in respect of his own failure to comply with a direction; and (2) paragraph 5 confers no right of appeal. It is designed to afford, not a further level of appeal, but to the client a sanction if the solicitor does not willingly comply with a direction. The language does not admit of allowing the client to appeal against a decision to refuse to make a direction or to refuse to make a direction in the terms sought. Recourse is only available to the Tribunal to give to a direction made by the Adjudicator or Appeals Committee the legal status of an obligation enforceable in court proceedings. On no basis can paragraph 5 confer any right of appeal against a direction on the solicitor.

77. In my judgement Lightman J's views on this point were *obiter.* The substance of the judicial review related to procedural defects in the process and unreasonableness of the decision. However, a close examination of R (Thompson) takes the matter further.

78. In R (Thompson) the Court of Appeal was primarily determining whether the process prior to a case reaching the SDT was compliant with a solicitor's article 6 convention rights in terms of whether a solicitor's right to practice was affected. The court considered the "somewhat curious" (§97) provisions of Schedule 1A of SA 1974. The court had to expressly consider whether a solicitor's civil rights and obligations were effected by an adjudication and this required consideration of para 5(1) of Sch 1A. The court held (at §99) that the SDT has jurisdiction to review the direction made by the adjudicator in full both as to law and facts. Of interest, it was held that an adjudication had no legal effect until confirmed by the SDT on a complaint. At §108, Clarke LJ stated that he agreed with Lightman J's views in White as to whether a solicitor could invoke para 5(1) but then ambiguously stated, "although I am bound to say that it is difficult to see why not…". It was stated that a judicial review could be used to challenge the adjudication panel. Because of Michalak we know that this does not assist in the present case. Finally, at §112 the court requested that the Law Society consider whether solicitors should be given rights of appeal to the SDT. My view is that the Court of Appeal's view on para 5(1) probably does form part of the *ratio* of the decision given the court stated it had to consider the process as a whole to determine whether there was an infringement of the claimant's article 6 rights.

79. Contrary to these judicial views, the Solicitors' Handbook 2008 states that "if a solicitor is made the subject of an IPS award, and genuinely believes that the award should not have been made, he can ask the SRA to refer the matter to the [SDT] for the matter to be reviewed on its merits".

80. While I might have taken the same view as the Solicitors' Handbook absent authority, I consider myself bound by R (Thompson). Even if I was wrong about whether this para

5(1) point forms part of the *ratio* I would not diverge from the persuasive views given by Lightman J (as he then was) and an unanimous Court of Appeal.

81. That is not the end of the matter because in R (Thompson) at §99 the Court of Appeal accepted that the SDT could overrule the Adjudicator's decision if a complaint was made to it. Though the parties' submissions did not get to this stage of analysis, I have to ask myself how the reference to the SDT can constitute an appeal if the solicitor himself cannot instigate it. In my judgement, inherent in the nature of an appeal or something analogous to it, is that the dissatisfied party is able invoke the procedure, rather than be dependent upon the action of the other (successful) party who wants to enforce the original decision.

Issue 1.3: Are any of the Claimant's complaints precluded by s.120(7) EQA?

82. From the analysis above, conclusions can be drawn as to whether each of the Claimant's complaints were subject to an appeal or proceedings in the nature of an appeal.

83. Unfortunately, there arises a further knotty question from my conclusion that there is no appeal from the Adjudication to the SDT within the meaning of s.120(7), but there is such a right of appeal from the SDT to the High Court. How does the inability of a solicitor to appeal from an Adjudication decision interact with the solicitor's ability to appeal from the SDT for purposes of s.120(7)? Put another way, if the solicitor cannot appeal from the Adjudicator to the SDT, but the Respondent decided to bring the matter there to obtain an order enforcing the Adjudicator's decision, does the solicitor's ability to appeal the SDT to the High Court decision envelop all complaints around the Adjudication process within s.120(7)? A disgruntled solicitor well might argue that his ability to bring a complaint before the Employment Tribunal about a discriminatory Adjudication should not hinge upon the chance of whether the Respondent (or client) chooses to bring the matter before the SDT.

84. On this point, while there may be an asymmetry, my view is that whether s.120(7) EQA applies turns on what has actually happened. In this case, the Respondent did bring the matter to the SDT. While that hearing itself could not be an appeal for purposes of s.120(7) EQA (though was a *de facto* appeal in practice), the Claimant was able to appeal under s.49 SA 1974 to the High Court and at that stage all points were open to him over the entire process from the start, as discussed above. While on one hand I am troubled by the fact that an employment tribunal jurisdiction may depend on whether the issue reaches on the SDT, on the other I recognise that the Adjudication has no legal effect unless the SDT makes an enforcement order and so it would be rare (though possible) for a non-legally enforceable decision to constitute a "detriment" for the purposes of s.53 EQA. In short, the asymmetry is fairly theoretical. Of course, if there was some sort of internal review from an Adjudicator's decision which was not been found by the time of the hearing in the present case, all such concerns fall away. I also heed the warning of Lord Kerr in Michalak that a parallel procedure in the

Employment Tribunal is undesirable for professional disciplinary proceedings and it seems to me that this thinking must resolve any remaining doubts on the matter.

85. My decision on the individual complaints is as follows:

a. *The Adjudicators' decisions.* I conclude that the Claimant was able to challenge these before the High Court and so a challenge was available and in the nature of an appeal. In fact, the Claimant did as a matter of fact seek to challenge the correctness of the Adjudications: see §85 and 86 of the SDT decision, and all such arguments were capable of renewal before the High Court. Thus, this complaint is barred by s.120(7) EQA.

b. *The Respondent's requirement for the Claimant to pay the Adjudicators' decisions or face proceedings before the Solicitors' Disciplinary Tribunal.* This is in effect a complaint that the Respondent exercised its right under para 5 of Schedule 1A of SA 1974 to bring the Adjudicator's decision before the SDT. In my judgement, the relevant aspects of the decisions in Ali, Khan and Gandhi discussed above bite here. The Claimant was entitled to raise before the High Court that the decision to enforce the Adjudication was related to his race, sex and age or any other protected characteristics. The High Court would have been bound to consider an allegation of discriminatory conduct. Thus, this complaint is barred by s.120(7) EQA.

c. *The prosecution before the Solicitors' Disciplinary Tribunal*. I do not see how this allegation can be analytically separated from allegation (b). There is no difference of substance between a decision to bring the case to the SDT and prosecuting it once it gets there. If the Claimant had felt that the Law Society/Respondent's decision to enforce the Adjudicator's decision was discriminatory, he was entitled to raise it before the SDT, and further, the High Court. Thus, this complaint is barred by s.120(7) EQA.

d. *Opposing the Claimant's appeal against the Solicitors' Disciplinary Tribunal to the High Court.* The Claimant would have been entitled to argue before the High Court that the Law Society/Respondent was resisting his appeal for discriminatory reasons. As discussed above, the High Court would in my judgement have been entitled to take any allegation of discriminatory influence into account in exercising its appellate powers under s.49 SA 1974. In my view this would extend to an allegation of the Respondent resisting an appeal as to prosecuting an allegation before the SDT. Thus, this complaint is barred by s.120(7) EQA.

e. *Pursuing the costs order arising out of that appeal*. I accept that this is not caught by s.120(7) EA 2010. Pursuing the costs order is not subject to any separate appellate procedure. Once the High Court has made its decision under s.49 SA 1974, that is the end of the matter. It did wonder whether there might have been an argument about the application to the Costs Judge and an attempt to appeal his decision, but this was not raised before me and I did not wish to explore this aspect of my own volition.

f. *Failing to advise the Claimant's disgruntled clients to pursue his professional indemnity insurers under the Third Parties (Rights Against Insurers) Act.* This was in fact a ground of appeal before the High Court: see §43 of the speech of Maddison J. in Casson v. The Law Society. As it was entertained by the High Court, it was obviously a point subject to an appeal. Unlawful discrimination could have been introduced as the illegitimate reason as to why the Respondent did not so advise the Claimant's clients. Thus, this complaint is barred by s.120(7) EQA.

g. *A representation by "one of the Respondent's operatives" that the Respondent did not expect solicitors like the Claimant to disobey orders.* This seems to me to be intimately connected with complaints (b) and (c) above (and probably also (d) as well). Assuming for present purposes that the reference to 'solicitors like the Claimant' was a reference to one of his protected characteristics, then such a comment (whether it might constitute direct discrimination or harassment) is an expression that the Respondent would take proceedings under para 5 of Schedule 1A if the Adjudicators' decision was not adhered to. This could have been raised before the SDT and High Court. Thus, this complaint is barred by s.120(7) EQA.

Strike Out/Deposit

86. Rule 37 of the 2013 Tribunal Rules permits a strike out all or part of a claim where the tribunal concludes that a claim *inter alia* "has no reasonable prospect of success".

87. Rule 39 of the 2013 Tribunal Rules permits a deposit order where the tribunal concludes that any specific allegation or argument in a claim has little prospects of success. The deposit is limited to £1,000 in respect of each allegation/argument.

88. Useful guidance on these powers was given by Wilkie J in Sharma v. New College Nottingham [2011] UKEAT/0287/11/LA:

> 20. […] the question in this case arises, to what extent is it within the powers of an Employment Judge, at a Pre-Hearing Review, without hearing any oral evidence or coming to any determination on what may be disputed facts, to strike out a claim as having no reasonable prospect of success, or make an order for a deposit on the grounds that the claim has little reasonable prospect of success?
>
> 21. In my judgment, it would be illogical to require an Employment Judge to have a different approach, depending on whether he is considering striking out, or making an order for a deposit as either order is, on any view, a serious, and potentially fatal, order.
>
> 22. The position has been considered by the House of Lords in the case of Anyamu v South Bank Students Union and Others [2001] ICR 391, in which Lord Hope of Craighead said at paragraph 37:

> "37. I would have been reluctant to strike out these claims on the view that discrimination issues of the kind which have been raised in this case should, as a general rule, be decided only after hearing the evidence. Questions of law that have to be determined are often highly fact-sensitive. The risk of injustice is minimised if the answers to these questions are deferred until all the facts are out. A Tribunal can then base its decision on its findings of fact, rather than on assumptions, as to what the Claimant may be able to establish if given an opportunity to lead evidence."
>
> […]
> 28. In my judgment, it is inadequate, as a piece of legal reasoning, for the Employment Judge simply to have said that because the contemporaneous documentation appears to be perfectly proper and polite in tone, and does not bear out the allegations made, that it is in any way appropriate for an order to be made on the basis that there is little reasonable prospect of success, an order which would have the effect, if not directly, certainly indirectly, of potentially terminating claim. That would be entirely contrary to the legal principles which have been well- established in connection with this kind of case.
>
> 29. Of course that does not mean that it necessarily follows that the prospects of success are good, bad or indifferent. What it means is that, on the basis of the contemporaneous documentation and given the disputed facts at the heart of this case, these matters ought in law only to be determined after a hearing at which the evidence has been received and the opportunity been given to cross-examine, respectively, on the accounts given by the Appellant and the Respondent.

89. I made enquiries and heard evidence from the Claimant as to his ability to pay a deposit. It was apparent that he is financially constrained. He is only paying £100 per month in respect of his costs liability to the Respondent. His wife was the owner of the property in which they lived. I heed the decision of the EAT in Hemdan v. Ishmail [2017] IRLR 228 as to the need for proportionality between the aims used and the aim pursued and that therefore an order to pay a deposit must accordingly be one that is capable of being complied with. Proportionality must be carried out in relation to a single deposit order or a series of deposit orders.

90. On my analysis of the application of s.120(7) EQA only complaint (e) survives.

91. If I am wrong about the application of s.120(7) EQA, my conclusion would have been:

- Complaint (a): little prospects of success and a deposit would have been ordered. The adjudicators' decision was reasoned, on a technical legal issue and as shown by the decision of the SDT and High Court, legitimate in substance. It seems fanciful that two separate Adjudicators would have decided two separate complaints about the Claimant influenced by his protected characteristics. I cannot

say that there are no prospects and so would not have struck the allegation out, because of the suggestion that someone referred to “solicitors like you”.

- Complaint (b): little prospects of success and a deposit would have been ordered. Once the Adjudicators have made their decisions and they have been ignored a responsible professional body would seek to bring the decisions forward for enforcement. It is implausible that separate persons within the Respondent would have been influenced by the Claimant’s protected characteristics.

- Complaint (c): little prospects of success and a deposit would have been ordered. The analysis applies as in (b).

- Complaint (d): no prospects of success and I would have struck out this allegation. While it is always difficult to say that an allegation of discrimination has no prospects of success, I have to reflect on some realities. The Respondent had succeeded in its case before the SDT on the basis of a long, carefully considered judgement. It is to my mind inconceivable and bizarre for the Claimant to argue that the Respondent was influenced by his protected characteristics in doing exactly what any responsible regulator would be expected to do in resisting an appeal (properly so because the appeal was dismissed) when there is not a jot of evidence that the decision at that stage was impacted by those characteristics.

- Complaint (f): no prospects of success and I would have struck out this allegation. When taken down to its essence, the Claimant is arguing that the Respondent was acting in a discriminatory manner by not advising his clients (which the Respondent had no obligation to do) on a point which was irrelevant to whether he had rendered inadequate professional services. The Respondent has no duty to advise the Claimant’s clients. The allegation was quite rightly dealt with robustly on its merits by the High Court and an allegation of discrimination on top puts the issue beyond the pale of what the public can expect Employment Tribunals to deal with.

- Complaint (g): little prospects of success and a deposit would have been ordered, albeit a modest one. The comment relied upon by the Claimant is ambiguous and was unparticularised and in that respect is sketchy at best. There is an obvious time jurisdiction issue but I do not take that into account.

92. I must carefully direct my attention to the surviving ground of complaint (e) which relates to the Respondent seeking to enforce a costs order in its favour arising out of the appeal over the period between January 2010 to January 2020. I found it difficult to decide whether this had little or no prospects of success. On balance I have decided that the allegation is on the “little prospects” side of fanciful. The allegation is highly unlikely because a responsible regulator would inevitably seek to enforce a costs order in its favour made after the Claimant’s unsuccessful appeal. That is the usual action in litigation no matter what the opposing party’s personal characteristics. However, in contrast with my view as to the prospects of allegation (d) above, the detailed assessment process was long, drawn out and subject to acknowledged delays on the

part of the Respondent. I could conceive of a situation where, though very unlikely, an Employment Tribunal could conclude that a litigant's personal characteristics may have influenced the successful parties' attitude towards enforcement of costs.

93. I have decided that the Claimant should pay a deposit of £500 for this residual ground of complaint to continue. He has a job and income and though circumstances are tight, I conclude that the Claimant should be able to find this money. I do not consider that this is a disproportionate impediment to his continuing with his claim if he desires to do so.

94. For the avoidance of doubt, the fact that this allegation, subject to a deposit, may continue to final hearing should not be treated as if it creates a stay or any other impediment to the enforcement of the costs order from the Appeal and related proceedings.

Employment Judge McCluggage

Date 07.05.2021