



EMPLOYMENT TRIBUNALS

Claimant: Mr I Laing

Respondent: Solicitors Regulation Authority Limited

Heard at: Birmingham

On: 13 July 2022,
in Chambers 22 July 2022

Before: Employment Judge Connolly (sitting alone)

Appearances

For the claimants: Did not attend and was not represented

For the respondent: Ms S Bowen (Counsel)

RESERVED JUDGMENT ON A PRELIMINARY HEARING

The claimant's complaint that the revocation of his practising certificate in April 2021 was an act of discrimination, harassment and/or victimisation is dismissed because the Tribunal has no jurisdiction to hear the same by virtue of section 120(7) of the Equality Act 2010.

For the avoidance of doubt, the claimant's other complaints of discrimination, harassment and/or victimisation are not affected by this decision.

REASONS

INTRODUCTION

1. By a Claim Form presented to the Tribunal on 18 September 2021 the claimant brought various complaints of direct race discrimination, direct sex discrimination, harassment related to race, harassment related to sex and victimisation against the respondent. The claimant is a non-practising solicitor, and he brings his claims against the respondent pursuant to **s.53 of the Equality Act 2010** in its capacity as a qualification body. The respondent is a statutory body, created by the Legal services Act 2007. It is responsible for the regulation of solicitors and law firms in England and Wales. It accepts that it is a qualifications body within the meaning of the Equality Act 2010.
2. The respondent applied for one of the claimant's complaints, namely that in relation to the revocation of the claimant's practising certificate, to be dismissed because,

the respondent asserted, the Tribunal had no jurisdiction to determine the same by virtue of the provisions of **s.120(7) of the Equality Act 2010**. That application (amongst others) was listed to be determined at an open preliminary hearing.

3. The claimant did not attend the hearing. I dealt with my decision to proceed in his absence on this single issue in a case management order and summary on 14 July 2022.
4. In broad terms, **s.120(7) Equality Act 2010** excludes the Tribunal's jurisdiction in respect of a contravention of **s.53 of the Equality Act 2010** by a qualifications body insofar as the act complained of may, by virtue of an enactment, be subject to an appeal or proceedings in the nature of an appeal. The issues to be determined were therefore:
 - 4.1 to identify the act complained of by the claimant
 - 4.2 to establish whether it may be subject to an appeal or proceedings in the nature of an appeal and
 - 4.3 whether this is an appeal by virtue of an enactment.
5. In order to carry out this task I was provided with a bundle of some 442 pages by the respondent, a helpful Skeleton Argument and two relevant authorities.

THE CLAIM AND COMPLAINTS

6. For the purpose of his claims of discrimination and harassment, the claimant relies on the fact he is a Black man. His complaints are contained in his Statement of Claim and in a document headed 'Further Information' which was provided pursuant to an Order by the Tribunal.
7. In very broad terms there are four categories or groups of complaint:
 - (a) in respect of an investigation the respondent carried out in relation to the claimant between October 2019 and December 2019 ('the first investigation');
 - (b) in respect of how the respondent dealt with the claimant's complaints about and enquiries in relation to the first investigation between October 2019 and January 2020;
 - (c) in respect of an investigation the respondent carried out in relation to the claimant between November 2020 and January 2021 ('the second investigation') and
 - (d) in respect of how the respondent dealt with the claimant's complaints about and enquiries in respect of the second investigation (particularly requests for provision, rectification and/or deletion of data) between January 2021 and March 2021.
8. It is appropriate to record at this stage that neither of the investigations resulted in any action against the claimant but he remained dissatisfied by the fact they had been carried out at all and that the details of the investigations would remain 'on his file', as it were. The respondent maintains that its investigations were appropriately initiated and conducted, that it dealt appropriately with the claimant's consequent

queries and complaints and that it was appropriate to retain the record of the investigations and their outcomes. In any event, it denies that it discriminated against the claimant, harassed him or victimised him as alleged.

9. The claimant also raised a potential fifth complaint at various points in the Statement of Claim and Further Information i.e. that the revocation of his practising certificate was direct race or sex discrimination, race or sex-related harassment or victimisation. The claimant stated the following in these documents:

'The claimant has been subjected to continued direct discrimination on grounds of race and sex by harassment, and victimisation by the respondent contrary to sections 9, 11, 13, 26, 27, 53 and 96 of the Equality Act 2010, culminating in the decision by the respondent to revoke his practising certificate. This decision has directly resulted from the less favourable treatment that the claimant has been subjected and continues to be subjected to by the respondent' (p18 [6])

'I have suffered damage directly resulting from the investigation by the SRA. As a direct result, I did not apply to renew my practising certificate and will not do so for the foreseeable future – because of the way I have been treated by the SRA....' (p31[5])

'Due to the treatment that I have suffered and continue to suffer directly resulting from the actions of the SRA, I have suffered financial loss. I am therefore compelled not to renew my practising certificate (which I notified the SRA in the latest investigation in November 2019) and to consider withdrawing from the roll of solicitors. I cannot and will not be part of an organisation that actively discriminate against its members.' (p35)

'The claimant has suffered a detriment directly resulting from the actions of the respondent culminating in the revocation of his practice at a practising certificate by the respondent...' (p38)

'Creating a hostile environment for the claimant to practice' (p402(iv))

10. The respondent agrees that the claimant did not apply for a practising certificate at the expiry of his certificate in/about April 2021. It accepts that his certificate was revoked. It states that this was by notice sent on 15 April 2021 and asserts that it was revoked because the claimant had not applied for it to be renewed despite receiving the necessary reminders to do so (Grounds of Resistance **p58 [29]**).
11. It is not entirely clear to me but the respondent understands the claimant to be making a complaint that this decision or revocation by them was an act of direct discrimination, harassment or victimisation. It is difficult to understand the claimant's case in this regard if, as he seems to accept, the revocation was an inevitable consequence of his decision to apply for renewal of the certificate. Alternatively, it may be this is not advanced as a complaint of discrimination itself but as a matter relevant to remedy / compensation i.e. it may be the claimant's case that his decision not to apply for his certificate was because of the respondent's alleged earlier discrimination and that he should therefore be entitled to recover any financial loss attributable to the fact he does not have a practising certificate. The claimant attended a hearing before EJ Meichen on 18 February 2022 when this issue was

listed for determination. He did not say at that point that he was not raising a complaint of discrimination, harassment or victimisation about the revocation of his practising certificate and so I will proceed on the basis that he is raising such a complaint.

12. It should be noted, however, that, in discussion with the respondent today, it was accepted that, in principle, the claimant would be entitled to pursue the argument on remedy set out in [11] above irrespective of whether any complaint of discrimination about the revocation of the practising certificate was dismissed.

RELEVANT LAW

13. The hearing proceeded on the undisputed basis that a practising certificate is a relevant qualification and its revocation is capable of falling within the scope of **s.53 of the Equality Act 2010** which is contained in **Part 5 of the Act**.

14. Insofar as relevant to this case, **s.120(7) of the Equality Act 2010** provides as follows:

‘(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 insofar as the act complained of may, by virtue of an enactment, be subject to an appeal or proceedings in the nature of an appeal.’

15. This is an area where there is a significant quantity of statutory and regulatory provision which it is necessary to set out in some detail.

16. Firstly, **s.28 of the Solicitors Act 1974** provides as follows:

(1) ***The [Society] may make regulations. . . about the following matters, namely—***

- (a) admission as a solicitor;*
- (b) the keeping of the roll;*
- (c) practising certificates***

.....

[(3B) Regulations about practising certificates . . . may (among other things)—

(a) prescribe the form and manner in which applications for, or relating to, practising certificates . . . are to be made;

(b) prescribe information which must be included in or accompany such applications;

(c) *make provision about time limits for dealing with such applications, and confer on a person power to extend or bring forward such a time limit in prescribed circumstances;*

(d) *prescribe the requirements which applicants for practising certificates must satisfy before they may be issued with a practising certificate;*

(e) *prescribe descriptions of applicants, and conditions in relation to them, for the purposes of section 10(2) (circumstances in which practising certificates must be issued subject to prescribed conditions);*

(f) . . .

(g) *prescribe circumstances for the purposes of section 10(3) (circumstances in which application may be refused etc in the public interest);*

(h) *make provision about when conditions imposed on practising certificates take effect (including provision conferring power on the Society to direct that a condition is not to have effect until the conclusion of any appeal in relation to it);*

(i) *make provision for the commencement, duration, replacement, withdrawal and expiry of practising certificates . . .;*

(j) *prescribe circumstances for the purposes of section 13A(2) (circumstances in which conditions can be imposed during period of practising certificate);*

(k) *require solicitors who hold practising certificates to notify the Society of such matters as may be prescribed, at such times, or in such circumstances as may be prescribed*

.....

(3D) *Regulations under this section may make provision for appeals to the High Court against decisions made by the Society under the regulations.*

(3E) *In relation to an appeal under regulations made by virtue of subsection (3D), the High Court may make such order as it thinks fit as to payment of costs.*

(3F) *The decision of the High Court on such an appeal shall be final.*

(3G) *Regulations under this section may—*

(a) *provide for a person to exercise a discretion in dealing with any matter;*

(b) *include incidental, supplementary and consequential provision;*

- (c) *make transitory or transitional provision and savings;*
- (d) *make provision generally or only in relation to specified cases or subject to specified exceptions;*
- (e) *make different provision for different cases.]*

17. The **SRA Authorisation of Individuals Regulations** have been made by the respondent's board under various provisions of various Acts including **s.28 of the Solicitors Act 1974** (as set out in the supplemental notes). The Regulations set out an extensive scheme of requirements relating to the authorisation of individuals as solicitors, the effect of authorisation on how an individual may practise, the requirements for and how applications for authorisation will be decided, the conditions that apply during authorisation and how authorisation may be revoked. They also set out the education and training requirements of those seeking to be admitted as solicitors and to exercise higher rights of audience in the higher courts of England and Wales.

18. Most relevantly to this case, they provide as follows in **regulation 8.4**

'The SRA may revoke a practising certificate, or withdraw registration in the register of European lawyers or the register of foreign lawyers at any time, if the SRA is satisfied:

- (a) *that the practising certificate of registration was granted or renewed as a result of error, misleading or inaccurate information, or fraud;*
- (b) *that the replacement or renewal date has passed and an application has not been made for replacement of the practising certificate or renewal of the registration;*
- (c) ...

19. Finally, the respondent's board has also made the '**SRA Application, Notice, Review and Appeal Rules**' under various provisions of various Acts (as set out in the supplemental notes on p315) including **s.28 of the Solicitors Act 1974**. The introduction, although not part of the Rules, identifies that the Rules make provision for notices given by the respondent, applications made to the respondent and internal reviews and external appeals against disciplinary and regulatory decisions.

20. Those Rules provide as follows:

'....Rule 5: Appeals to the High Court or Tribunal

5.1 Unless otherwise provided in the relevant statute, or rules of the Tribunal, Court or Legal Services Board, any appeal to the High Court or Tribunal against a decision set out in Annex 2 or 3, as appropriate, must be commenced within 28 days from the date of notification the decision that is subject to appeal.

.....

*Annex 3: Decisions made by the SRA with a right of appeal to the High Court
As set out in the SRA Authorisation of Individuals Regulations:*

.....

10. A decision made under regulation 8.4 to revoke a practising certificate or withdraw registration in the register of European lawyers or the register of foreign lawyers'.

21. Annex 3 identifies eleven types of decisions made under various of the **SRA Authorisation of Individuals Regulations** which are said to be decisions which have a right of appeal to the High Court.

22. The respondent relies particularly on the highlighted parts above.

23. The respondent also, fairly and properly, drew my attention to **sections 9, 10 and 13 of the Solicitors Act 1974**. Those sections make provision for a person whose name is on the roll to apply to be issued with a practising certificate (**s.9**); for the respondent to issue a practising certificate, refuse to issue a certificate or issue it subject to conditions (**s.10**) and for a person who makes an application under s.9 to appeal to the High Court against a decision to refuse or to impose a condition. In relation to appeal, **s.13** specifically provides as follows:

(1) A person who makes an application under section 9 may appeal to the High Court against –

(a) A decision to refuse the application for a practising certificate,

(b)or

(c) A decision to impose a condition on a practising certificate issued in consequence of the application.

.....

(4) on an appeal under subsection (1), the High Court may –

(a) Affirm the decision of the Society.

(b)

(c) Direct the Society to issue a certificate to the applicant free from conditions or subject to such conditions as the High Court may think fit,

(d) Direct the Society to issue a certificate,

(e) If a certificate has been issued, by order suspend it,

(f)or

(g) Make such order as the High Court thinks fit.

.....

24. In addition, I noted that **s.15 and s.16 of the Solicitors Act 1974** make provision for a person whose certificate had been suspended, to apply to the respondent for the suspension to be terminated and, in the event that application is refused, to appeal against that decision to the High Court which may affirm the decision or terminate the suspension conditionally or unconditionally.

25. As originally enacted, the Act included at **s.14** provisions for the commencement, expiry and replacement of practising certificates but that provision was repealed by the Legal Services Act 2007 with effect from 1 July 2009. The only provision made under an enactment governing the expiry or revocation of practising certificates to which have been referred is the **SRA Authorisation of Individuals Regulations** above.

26. I was referred to **Michalak v General Medical Council and others [2017] UKSC 71** for useful guidance as to the purpose of the Equality Act 2010, the context in which s.120(7) should be construed and as binding authority on the meaning of 'an appeal or proceedings in the nature of an appeal'. I took particular note of the following paragraphs:

[17]... 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.

[18] Parliament clearly intended that section 120 (7) would exclude jurisdiction for certain challenges against decisions of qualification bodies. The rationale for doing so is plain. Where Parliament has provided for an alternative route of challenge to a decision, either by appeal or through an appeal-like procedure, it makes sense for the appeal procedure to be confined to that statutory route. This avoids the risk of expensive and time-consuming satellite proceedings and provides convenience for appellant and respondent alike.

....

[20] In its conventional connotation, an "appeal" is a procedure which entails a review of an original decision in all its aspects. Thus, an appeal body or court may examine the basis on which the original decision was made, assess the merits of the conclusions of the body record from which the appeal was taken and, if it disagrees with those conclusions, substitute its own.'

27. Finally, the respondent referred me to the first instance decision of Employment Judge McCluggage in the Employment Tribunal in **Casson v Solicitors Regulation Authority 1305385/2020**. Although in no way binding upon me, this decision contained an enormously helpful review of the relevant authorities in this area. I was particularly assisted by the reference to **Ali v Office of the Immigration Services Commissioner [2021] IRLR 84**, **Khan v GMC [1994] IRLR 646** and **R v Dept of Health ex.p. Ghandi [1991] IRLR 431**.

28. I identify 3 relevant principles from the above:

- 28.1 The 'act complained of' is the substantive act complained of i.e. in this case the decision to revoke the certificate not the legal cause of action i.e. a particular strand of discrimination (**Ali [34]**)
- 28.2 In any event, where there are no restrictions on the grounds of appeal which may be advanced, an appellate body, particularly where that body is a court, would be entitled, indeed required, to consider any argument that the act complained of was discriminatory (**Ali [36] [40]**)
- 28.3 In order to constitute an appeal or proceedings in the nature of an appeal, the appellate body must have an unconstrained ability to look at the matter again, come to a different decision if appropriate and reverse the decision under appeal (**Ali [52-53]**).

29. I also had regard to **British Medical Association v Chaudhary [2003] EWCA Civ, 645 [2003] ICR 1510** where Mummery LJ held as follows:

[110] *In my judgment, “enactment” in the context of s 54(2) is unambiguous. On this point I agree with the decision of both the employment tribunal and of the appeal tribunal. “Enactment” includes the subordinate legislation under which the appeal is brought (ie the 1995 Order). It is not confined to appeals brought under primary legislation. I cannot detect any sensible or rational purpose in restricting the operation of the section to appeals brought under primary legislation and in excluding appeals brought under subordinate legislation.*

THE RESPONDENT’S SUBMISSIONS

30. The respondent’s primary submission was that its decision to revoke the claimant’s practising certificate may be subject to an appeal to the High Court by virtue of the **Authorisation of Individuals Regulations 8.4** and the **SRA Application, Notice, Review and Appeal Rules Annex 3 para 10**. These regulations/rules were both made pursuant to the power in **s.28 of the Solicitors Act 1974** and thus the right of appeal was by virtue of an enactment.

31. Alternatively, if and insofar as I take the view that the right of appeal to the High Court under the **Solicitors Act 1974** and various regulations and rules thereunder did not extend to the precise situation in this case, the respondent submitted that the phrase ‘*may be subject to an appeal*’ was apt to cover the situation where the claimant could have applied for a certificate and could have appealed the outcome were he dissatisfied.

32. In support of both submissions, the respondent contended it would be unsatisfactory if there were parallel jurisdictions in the High Court and Employment Tribunal in respect of practising certificates and/or that the High Court had exclusive jurisdiction over some matters concerning the issue and suspension of practising certificates but not others, such as their revocation under the **SRA Authorisation Regulations**.

CONCLUSIONS

The act complained of

33. I find that the substantive act of which the claimant apparently complains is the respondent’s decision to revoke his practising certificate, notified to him on 15/16 April 2021.

34. The unlawfulness of which he complains is that this decision was an act of direct race or sex discrimination, race or sex-related harassment or victimisation. I will refer to these compendiously as ‘discrimination’.

May be subject to an appeal

35. I have found it more difficult to determine whether this is an act which may be subject to an appeal.

36. If the claimant had applied for and been refused a certificate or, if one of the investigations had resulted in the imposition of a condition on his certificate which he applied to have removed, I would have had little hesitation in finding that such acts may be subject to appeal by virtue of an enactment. The **Solicitors Act 1974**

expressly provides for such an appeal; the powers of the High Court in such an appeal are clearly identified in the Act; those powers clearly have the essential hallmarks of an appeal and, further, or in the alternative, I find that the High Court would have been entitled and obliged to consider any allegations that the decision was discriminatory in the sense set out in the Equality Act 2010.

37. I found the question of whether the decision to revoke a certificate may be subject to appeal where the claimant had made no relevant application for a certificate to be more complex for two reasons:

- Firstly, the right to appeal is identified with extreme brevity simply by inclusion in a list in an Annex to the Rules where one has to read the headnote as part of the regulation in order to make sense if it
- Secondly, the powers of the High Court when dealing with such an appeal are not expressly stated in contrast to the situation, for example, under **sections 13 and 16 of the Solicitors Act 1974**.

38. On balance I am satisfied that, however brief, the combination of the **Authorisation of Individuals Regulations 8.4** and the **SRA Application, Notice, Review and Appeal Rules Annex 3 para 10** properly interpreted do provide for an appeal to the High Court in this respect. They provide for appeals in respect of a variety of particular acts or decisions which are not provided for in the Act itself. I also attach weight to the respondent's argument and the observations in **Michalak [17-18]** that it would be undesirable for there to be two different routes to challenge the respondent's regulatory decisions on practising certificates and risk satellite litigation to determine into which route each individual decision fell.

39. Furthermore, I take the view that, what is provided for in the Rules is an appeal despite the fact that the scope of the appeal is not explicitly set out. I find that on hearing such an appeal, and by virtue of its inherent jurisdiction to control its own processes and the procedures, the High Court would have the power to determine all relevant facts and affirm the decision, direct the respondent to issue a certificate or make such other decision as it saw fit. It would also, as set out above, have the power to scrutinise and confront allegations of discrimination and come to a substantive view about them.

By virtue of an enactment

40. Finally, I find that this appeal route exists 'by virtue of an enactment'. The relevant enactment is **s.28 of the Solicitors Act 1974**, particularly **s.28(3D)** and the regulations made by the respondent directly thereunder. As set out above, **s.28** empowers the respondent to 'make regulations' and repeatedly refers to regulations 'under this section'. It expressly provides at **s.28(3D)** that regulations under this section may make provision for appeals to the High Court against decisions made by the respondent under the regulations. The relevant rules and regulations in this case providing for the appeal to the High Court were made by the respondent's board 'under' this section. By virtue of implies to me that the appeal is 'as a result of' an enactment. I find that these rules and regulations and the right of appeal they contain were by virtue of an enactment in that sense.

41. Alternatively, and by drawing a parallel with **British Medical Association v Chaudhary above**, I can find no reason to sensibly exclude subordinate regulations

made by a statutory body under primary legislation from the scope of the term enactment.

42. In the circumstances, it is unnecessary for me to come to a view on the respondent's alternative submission. Had it been necessary to do so, I would have found, as above, that the act complained of was the decision to revoke the certificate. In my view, it is that act that the claimant must have the ability to appeal. That is how I interpret the word 'may' in **s.120(7)**. I do not accept that the claimant's entitlement to make an application for a certificate and appeal any decision that resulted, thereby changing the act complained of, would have satisfied the requirement that the act complained of 'may...be subject to an appeal'. I would therefore have rejected the respondent's alternative submission.

Employment Judge Connolly

Signed: 22 July 2022