Case No: 1306993/2020, 1300135/2021, 1305090/2021

EMPLOYMENT TRIBUNALS

Claimant: **Mr Adekunle Soyege**

Respondent: **Solicitors Regulation Authority Limited**

Heard at: **Birmingham**

On: **6, 7, 8, 9, 10 March (in person) and 13 March 2023 (by CVP video link) and in chambers (with parties) 19 April 2023**

Before: **Employment Judge Flood**
Mrs Shenton
Mr Schofield

Representation
Claimant: In person
Respondent: Mr Sudra (Counsel)

RESERVED JUDGMENT

REASONS

The Complaints and preliminary issues

1. The claimant brings complaints of direct age, race and disability discrimination; indirect disability discrimination; failure to make reasonable adjustments;

age, race and disability related harassment and victimisation against the respondent. The claimant has made reference to an incorrect or 'bogus' claim form being referred to which throughout the proceedings which he alleged was not a claim he submitted to the Tribunal and that his actual claim form contains different types of allegations than those he actually makes. This has been a recurring point made and so what claim forms the claimant presented and when (and whether any should be rejected) was identified as a preliminary issue that the Tribunal may wish to determine. Before moving to the substantive matters in the claims, we have made the following determinations on the procedural history to the proceedings having examined carefully the original correspondence file for these proceedings at the Midlands West Tribunal:

Rejected claim form to Manchester Employment Tribunal

2. Included in the bundle at page 89-90 is a letter from the Manchester Employment Tribunal dated 3 July 2020 which informed the claimant that a claim form he had presented (allocated case number 2405600/2020) had been rejected on the basis that no early conciliation number had been included. The claimant subsequently appealed against this decision to reject his claim form and at pages 83-97 was included a decision of the Employment Appeal Tribunal rejecting the appeal under Rule 13 (2) of the Employment Appeal Tribunal Rules 2013.

3. On 3 July 2020, the claimant contacted ACAS to start early conciliation ('EC') and on 10 July 2020 an ACAS EC certificate was issued with reference number R165782/20/13 (page 266).

4. On 13 July 2020, the claimant contact ACAS to start EC again and on 7 August 2020, an ACAS EC certificate was issued with reference number R168616/20/18 (page 17).

1st Claim Form with claim number 1306993/2020

5. On 10 August 2020 the claimant presented a claim form to the Employment Tribunal. The claimant contends that the claim form he presented on this day is in fact the document shown at page 327 of the Bundle. Having checked the Tribunal's file, we find that the document at page 327 is not the same document as the claim form presented on 11 August 2020. On 13 August 2020, a letter was sent to the claimant on the advice of Employment Judge Woffenden (page 18) asking him to provide information that was missing from sections 5, 6 and 7 (which were blank on the document sent) and stating that the Tribunal did not have jurisdiction to deal with claims of "*perjury, defamation, mistake misrepresentation, conspiracy or inchoate offences or the torts of deceit or tortuous interference*". That letter was re-sent on 19 August 2020 after the claimant had requested it be provided in larger print). He was asked again by Employment Judge Butler on 26 August 2020 to respond to the letter sent on 19 August 2020 by 2 September 2020. The claimant did not provide the requested information but sent a lengthy e mail making reference to the rejection of his claim form in the Manchester Employment Tribunal. On 1 September 2020 the Tribunal again wrote to the claimant on the instruction of Employment Judge Broughton stating that he had failed to respond to previous letters and had presented a claim form which could not sensibly be responded to and may be an abuse of process. That letter gave the claimant 14 days to rectify the matter,

failing which the claim would stand dismissed. It asked again for the missing information at sections 5, 6 and 7 of the claim form. The claimant responded by sending various further e mails between 24 and 26 August 2020, including an e mail on 24 August attaching a further copy of a completed claim form headed: *"Claim 1306993/2020 please find attached in compliance with court order"*. The matter came before Regional Employment Judge Monk on 4 September 2020 who determined that the claimant had provided the missing information and therefore that the copy of the claim form provided by the claimant on 24 August 2020 could be accepted (with effect from 24 August 2020) when the information was provided.

6. On 4 September 2020, the Tribunal issued a Notice of Claim to the respondent related to case number 1306993/2020 (page 19-20) attaching the copy of the same claim form sent by the claimant to the Tribunal on 24 August 2020. This was undated as to receipt and included the ACAS reference number R168616/20/18 (shown at page 21-35). This claim form made complaints of age race and disability discrimination at box 8.1 and the box for including other types of claim the following was included "*victimisation harrssement [sic] breach of contract*". The claimant had disputed the validity of this claim form and contended it is not one presented by him as part of his claim. He had previously alleged that this form was 'bogus', but did seem to acknowledge in cross examination that this document was a document that was completed by him but still not the claim form he in fact presented on 10 August 2020. We find that although the claim form at pages 21-35 was not the same document presented on 10 August 2020, the document at pages 21-35 is a claim form completed by the claimant and submitted to the Tribunal in

response to requests for further information made by the Tribunal in August 2020. This claim form was the one that was accepted by the Tribunal on 24 August 2020 and served on the respondent on 4 September 2020 and which now appears at pages 21-35. The Tribunal administration numbering for that piece of correspondence (shown as handwritten text and circled number 29 at the top right hand of the page) which is on the Tribunal's original correspondence file is clearly visible on the document at pages 21-35. We were satisfied that this was a valid claim form completed and presented by the claimant which was accepted by the Tribunal on 24 August 2020. It appears that upon enquiring about the date the claim form was received, the respondent was mistakenly informed that the claim had been accepted on 11 August 2020 but we are satisfied that this claim was in fact accepted on 24 August 2020 when the claimant provided the requested information by presenting an updated claim form on this date i.e the document at pages 21-35.

7. The respondent filed an ET3 and grounds of resistance ('GoR') on 2 October 2020 (page 36-65). This ET3 response does not appear to have been referred to an Employment Judge to consider on the sift at the time it was submitted (there were significant delays in the Tribunal administration at the time due to the Covid 19 pandemic) and the claimant subsequently applied for a "default judgment" on 24 April 2021 purportedly on the basis that no response had been filed (pages 140-171). This was resisted by the respondent and it was pointed out that a response had been filed and that a further claim presented (see below) and response filed. The respondent suggested that the two claims (that were by this stage in play) be consolidated (page 173-4). The respondent's response was referred to an Employment

Judge and considered at the sift belatedly on 11 June 2021 and a letter sent to the parties confirming that it had been accepted (page 204-5). The matter was listed for a preliminary hearing for 22 July 2021.

Rejected claim form allocated case number 1307339/2020

8. The Claimant appears to have submitted a further claim form in the Midlands West Tribunal (Case No. 1307339/2020) possibly on 29 July 2020 but that was rejected by Employment Judge Woffenden on 19 August 2020. Unfortunately the documents related to this claim form are unable to be traced and given that this related to a matter closed almost 3 years ago, it is likely that such documents have since been destroyed. The claimant directed the Tribunal to page 250 (e mail from Ms J Banga, an administration officer at the Midlands West Tribunal) which made reference to claim number 1306993/2020. However despite that reference number being mistakenly used, it is clear that the context of that e mail is referring to a claim form that was rejected. This e mail was sent on the afternoon of 22 July 2021 directly after the 1st PH referred to at paragraph 11 below so we were satisfied that this e mail was sent pursuant to enquiries made by Employment Judge Wedderspoon about the confusion with regards to claim forms that was raised at the hearing that same day by the parties. Whilst it was unfortunate that there had been some confusion at the outset of this claim, the Tribunal were satisfied that the document at pages 21-35 was the 1st claim form presented by the claimant albeit that this was accepted by the Tribunal on 24 August 2020 (not 11 August 2020 as had originally been communicated).

2nd claim form with claim number 1300135/2021

9. On 24 December 2020, the claimant contacted ACAS again and commenced a further period of EC (page 69-72) which resulted in the issuing of a third ACAS EC certificate under reference number R233307/20/90 (page 73). A second claim form was presented by the claimant on 11 January 2021 which included this EC certificate reference number (R233307/20/90) and which made complaints of race and disability discrimination and breach of contract (page 74-86). The particulars of claim box at 8.2 also made referenced to victimisation and harassment. The claimant accepts that this was a valid claim form presented by him. On 13 March 2021, the Tribunal sent a letter to the claimant in respect to this claim form which was allocated number 1300135/2021 asking for the claimant to provide details of his start date, the last act complained of and a full copy of the text included in box 9.2. On 15 March 2021, the respondent was sent a notice of the claimant's second claim form referenced 1300135/2021 (page 101-102). On 12 April 2021, the respondent filed an ET3 form and GoR to this 2nd claim (page 103-126)

10. A preliminary hearing was listed in relation to the 2nd claim for 15 July 2021. On 22 April 2021, the respondent's solicitors wrote to the claimant making a complaint about the excessive amount of e mails he was sending (page 127-8). The respondent made an application to the Tribunal on 27 May 2021 for the claims to be struck out on the basis that the manner in which the claimant was conducting his case was vexatious, unreasonable and disruptive and/or that the claims had no reasonable prospect of success (page 175-185). On 13 July 2021 a letter was sent to the parties informing that that Employment Judge Findlay had directed that the Tribunal would consider whether to list for a preliminary hearing in public to consider the

strike out application at the forthcoming preliminary hearing in private for case management. The claimant was also directed to send no further communication before the date of the forthcoming preliminary hearing on 22 July 2021 (page 212).

11. The matter came before Employment Judge Wedderspoon for a preliminary hearing in private on 22 July 2021 ('1st PH') and the case management order sent to the parties after that hearing ('1st CMO') was shown at page 240-249. The issue of which claim forms had been presented came up for discussion at this hearing but was unable to be resolved. The issues were discussed and identified in a draft list of issues. There was further correspondence following that hearing in relation to the confusion around the correct claim form, but this was unable to be resolved after the hearing either. The 1st CMO provided the claimant with details of the definition of disability under the EQA and provided a link to the government guidance on the definition of disability (page 241). At paragraph 27 of the 1st CMO it is noted:

"*The respondent raised concerns about the very regular voluminous correspondence sent by the claimant to the respondent's solicitor which was disproportionate and unnecessary and the serious allegations regularly made against the respondent's solicitor suggesting she was dishonest. The Employment Judge alerted the claimant to the fact that the overriding objective was at the cornerstone of all the work in the Employment Tribunal. Acting proportionally and reasonably was an expectation of Tribunal litigation. Where a party acted disproportionately it may be deemed unreasonable resulting in a strike out of a party. Further allegations of dishonesty towards a legal professional were extremely*

serious allegations which should not be made casually or without direct compelling evidence. Any party making such allegations without corroboration could be considered to be acting unreasonably and face the sanction of a strike out. The claimant assured the Tribunal that he did not have any further correspondence to send to the respondent and no longer wished to make allegations of dishonesty against the respondent's solicitor."

12. On 8 October 2021, the parties were notified that the matter would be listed for a further preliminary hearing to consider the matters set out in the 1st CMO on 15 and 16 March 2022. At some time after the 1st PH, the claimant supplied the following information in response to the issues identified in the 1st CMO relating to whether the claimant had a disability:

"yes madam I cannot function properly without my glasses I believe I am graded minus 4.5 that is the highest they can prescribe for me in Sweden according to the Swedish doctor madam but I can obtain confirmation of these from the doctor madam or better still take any eyesight test anywhere in the world madam"

<u>3rd Claim form allocated case number 1305090/2021</u>

13. On 6 December 2021, the claimant contact ACAS to start EC and on 8 December 2021 a fourth ACAS EC certificate was issued with reference number R196940/21/15 (page 372). The claimant presented a 3rd claim form on 8 December 2021 which included this ACAS reference number (page 373-389) which was allocated case number 1305090/2021. This claim form made complaints of age, race and disability discrimination, victimisation and harassment. This claim

form related to a purported e mail from the respondent of 30 September 2021 about registration as a European lawyer and the withdrawal of an application for a PC for 2020-21. This claim form was acknowledged and a notice of claim sent to the respondent on 14 December 2021 (page 390-391). On 10 January 2021, the respondent filed its ET3 and GoR to this 3rd claim form (page 392-416).

14. The matter was listed for a preliminary hearing in private for case management which came before Employment Judge Dimbylow on 16 February 2022 ('2nd PH') and the case management order sent to the parties after that hearing ('2nd CMO') was shown at page 444-451. At the hearing the three claims before the Tribunal were consolidated and the issues in the 3rd claim were identified and recorded. The claimant was also ordered at paragraph 13 of the 2nd CMO to produce a written statement setting out details of his disability and its impact on him ('Disability Impact Statement') and produce supporting medical evidence by 23 February 2022. In addition at paragraph 43 of the 2nd CMO it was noted:

"*I drew to the claimant's attention the fact that it was very unhelpful to all concerned when he made wide sweeping allegations about the conduct of his opponents and their advisers which on the face of it were unsupported by any evidence. Similarly, it was unhelpful to bombard the respondent with numerous irrelevant emails. The same applies to the number of emails that the claimant has sent recently to the tribunal office which I understand numbers over 100 since December 2021. The claimant presented as muddled and disordered, and I was very concerned about this in case it pointed to an underlying problem. I canvassed*

with him whether he was affected by any form of distress, including any mental distress or mental health condition; but he said that was not the case."

15. On 17 February 2022, the claimant submitted an e mail headed "MY EYESIGHT DISCLOSURE" (page 484-486) which contained a chain of e mails partly in Swedish and partly in English dating from November 2017 one of which contained the following statement from the claimant:

    "*MY GOOD DOCTOR YOU CAN PROCEED WITH THE GLASSES I WILL SEND YOU THE DECISION OF AN APPLICATION I NEVER MADE IN THE FIRST PLACE BUT WAS GODKAND SIR*".

16. On 7 March 2022, the respondent made a further strike out application in relation to the 3rd Claim (page 472-480).

17. The matter came before Employment Judge Meichen for a preliminary hearing in public on 15 and 16 March 2022 ('3rd PH'). At that hearing the complaints of unfair dismissal, wrongful dismissal and breach of contract were struck out under Rule 37 of the ET Rules on the basis of no reasonable prospects of success because the claimant was not (and did not allege to be) an employee of the respondent. The complaints of direct discrimination, harassment and victimisation insofar as they related to an allegation that the respondent imposed restrictions on the claimant's practicing certificate were also struck out under rule 37. This was because there was no reasonable prospect of the Tribunal finding it has jurisdiction to hear this allegation by virtue of s.120(7) EQA because of the right of appeal conferred by s.13 Solicitors Act 1974. The judgment striking out those claims is at page 492. The case

management order sent to the parties after that hearing ('3rd CMO') was at page 493-520. This further identified the remaining issues in dispute and recorded them in a definitive list of issues to be determined at the final hearing ('List of Issues')(pages 509-520). The 3rd CMO noted at paragraph (12):

"As has been noted by myself and other Judges previously the claimant has sent an excessive number of lengthy but irrelevant emails to the Tribunal and the respondent. As an example the respondent told me they have received 175 emails from the claimant since the last hearing on 16 February and 75 in the week leading up to this hearing. This volume of correspondence is unhelpful to everyone including the claimant. I explained to the claimant that this approach must stop and he should only write to the tribunal or the respondent where he has been directed to do so by the tribunal or where it is necessary to do so to deal with a matter relevant to this claim. Any correspondence should be concise and long email chains should not be attached unless directly relevant. "

And further at paragraph (14):

"Like EJ Dimbylow (see paragraph 43 of his Order) I was concerned by the claimant's presentation, both at the hearing and in writing. I often found it difficult to follow the points he was making. I enquired if there was any issue affecting the claimant which the tribunal might need to be aware of so that adjustments could be made. The claimant assured me the only adjustment he requires is large print (size 16)."

18. The respondent presented an amended GoR and made a further strike out application on 29 April 2022 on the basis of non compliance with Tribunal orders and

"unreasonable, vexatious and disruptive conduct" (pages 525-582). The matter came before Employment Judge Meichen again on 20 January 2023 ('4th PH') and the case management order sent to the parties following that hearing ('the 4th CMO') was shown at pages 5884-5890. Employment Judge Meichen determined that the claimant had failed to comply with the Tribunal's order of 18 March 2022 and that the manner in which the claimant was conducting the proceedings was unreasonable, in particular because of his e mail correspondence. He decided not to strike out the claim because there could be a fair hearing and the parties had almost completed the preparation and it would not be proportionate to do so. The respondent was given leave to make a further strike out application on the basis of no reasonable prospects of success by 3 February 2023 to be determined at the outset of the final hearing if made (this was not ultimately pursued). An order was made that the claimant was not permitted to amend or add to the witness statement he had already provided without leave of the Tribunal. An order was also made that the claimant could provide English translations of medical evidence already supplied or submit new medical evidence relevant to the issue of whether he was a disabled person by no later than 10 February 2023 (and if not supplied, he was not permitted to rely on additional evidence without permission of the Tribunal). It was directed that the claimant's direct discrimination complaint should be determined on the basis of hypothetical comparators only.

The final hearing 6-13 March 2023

19. The matter came before the Tribunal for final hearing on 6 March 2023. The parties had been informed that due

to judicial unavailability it was not possible for the Tribunal to sit for the 7 days originally listed and so the final day of the listing was removed and the time estimate reduced to 6 days. On day 1, there had been a difficulty with obtaining a second non legal member to complete the panel, but a request having been put out internally it was possible during the course of that morning to find a non legal member to sit remotely by CVP with the judge and other non legal member attending the Tribunal in person. The Tribunal carried out its reading on day 1, and informed the parties that it would not be possible for the Tribunal to pre-read all the documents in the bundle but that only documents specifically referenced in the witness statements (which would be read in full in advance) would be read. The claimant asked the Tribunal to read the contents of all the case management orders and all of volume 1 of the Bundle in particular. He also specifically asked us to read pages 4927-5834 which we did. The respondent asked the Tribunal to read those documents cross referenced in the respondent's witness statements.

<u>Documents</u>

20. A lengthy bundle of documents had been produced for the final hearing which ran to 6 volumes in hard copy and a total of 5,883 pages ('Bundle'). Where page numbers are referred to in this judgment and reasons, these are references to page numbers in the Bundle. Additional pages 5884-5892 were also added to the Bundle containing more recent matters including a copy of the 4th CMO. The claimant raised a number of issues about documents he felt had been omitted from the Bundle during the course of the hearing. It is clear that this had been discussed extensively in correspondence and Mr Sudra assured the Tribunal that all the

documents requested by the claimant had now been included in the Bundle. An issue also arose about some of the copies of ET1 claim forms and ET3 response form appearing as blank documents in the pdf copy of the Bundle. Mr Sudra explained that due to the excessive size of the Bundle, there had been some document corruption which had deleted content from some of the documents appearing as forms. This was unfortunate, but the Tribunal and the claimant had complete hard copies of the Bundle with the correct uncorrupted forms by the time the hearing finally got statred. The Tribunal also had access to a bundle that had been prepared for the preliminary hearing on 20 January 2023 ('PH Bundle') which ran to 642 pages.

21. The claimant sent an e mail on the morning of day 2 of the hearing with a list of documents he said had been left out of the Bundle. These were discussed with the parties before we started hearing the evidence at 1.30pm on day 2. Mr Sudra again assured the Tribunal that all relevant documents had been included. The claimant referenced a skeleton argument that had been prepared and submitted by the respondent in advance of the 4th PH on 20 January 2023. Mr Sudra was unsure of the relevance but this was supplied and available to the Tribunal in any event. The respondent also handed up some additional documents submitted by way of medical evidence that had been suplied by the claimant on 6 February 2023 including a google translation from Swedish to English of the medical evidence provided by the claimant.

22. At the conclusion day 3 of the final hearing it became apparent that there was a defect with the Tribunal's emergency evacuation equipment (the hearing took place on the 13th floor of the Tribunal building). The

claimant presented with significant mobility problems and so the hearing was relocated to the Birmingham Civil Justice Centre (‘BCJC’) during the morning of day 4 of the hearing. We recommenced in BCJC at 1:30 PM on day 4. Employment Judge Wright, a recently appointed Employment Judge, observed the hearing on day 4 for but played no part in the proceedings.

23. On day 5 of the final hearing the claimant applied to have a further copy of a document submitted, and for the tribunal to access this document by way of the ‘read aloud’ function which was the method the claimant used to read his emails due to his sight difficulties. The respondent objected to this application and the Tribunal determined that it was not necessary for the fair disposal of these proceedings for this document to be admitted in this manner at this late stage. The claimant could provide no explanation why it had not been raised earlier, and we were satisfied that significant prejudice would be caused to the respondent to admit this document very late in the proceedings, after the claimant had already completed his evidence. The Tribunal were clear what the claimant contended was contained in the disputed document (which was an e mail already available to us in text form) and so could determine this on the basis of the evidence already before us.

24. We also had a Chronology, a Cast List and Opening Note prepared by the respondent. The claimant produced a response to the respondent’s Chronology and Opening note submitted by e mail on 27 February 2023 which we also considered.

25. The List of Issues (which we also set out below) was accepted by both parties as being correct and complete.

It was referred to extensively and repeatedly throughout the hearing.

The List of Issues

26. The issues to be determined by the Tribunal were as follows:

1. **Preliminary issues**, to be determined if the Tribunal consider it appropriate and necessary to do so:

   1.1 Which claim forms has the claimant presented and when?
   1.2 Should any of the claim forms be rejected?

2. **Jurisdiction**

   2.1 Does the Tribunal have jurisdiction to hear the claimant's claims having considered the effect of s.120(7) Equality Act 2010?

3. **Time limits**

   3.1 Were the discrimination and victimisation complaints made within the time limit in section 123 of the Equality Act 2010? The Tribunal will decide:

   3.1.1 Was the claim made to the Tribunal within three months (plus early conciliation extension) of the act to which the complaint relates?
   3.1.2 If not, was there conduct extending over a period?
   3.1.3 If so, was the claim made to the Tribunal within three months (plus early conciliation extension) of the end of that period?

3.1.4 If not, were the claims made within a further period that the Tribunal thinks is just and equitable? The Tribunal will decide:

3.1.4.1 Why were the complaints not made to the Tribunal in time?

3.1.4.2 In any event, is it just and equitable in all the circumstances to extend time?

4. **Disability**

4.1 Did the claimant have a disability as defined in section 6 of the Equality Act 2010 at the time of the events the claim is about? The Tribunal will decide:

4.1.1 Did he have a physical or mental impairment: partial sight?

4.1.2 Did it have a substantial adverse effect on his ability to carry out day-to-day activities?

4.1.3 If not, did the claimant have medical treatment, including medication, or take other measures to treat or correct the impairment?

4.1.4 Would the impairment have had a substantial adverse effect on his ability to carry out day-to-day activities without the treatment or other measures?

4.1.5 Were the effects of the impairment long-term? The Tribunal will decide:

4.1.5.1 did they last at least 12 months, or were they likely to last at least 12 months?

4.1.5.2 if not, were they likely to recur?

5. **Direct age, disability, race discrimination (Equality Act 2010 section 13)**

5.1 The claimant's age group is 50s, he is a black male and has partial sight.

5.2 Did the respondent do the following things:

5.2.1 Failed to properly investigate the claimant's professional circumstances. The alleged deficiencies in the respondent's investigation process are as follows:

5.2.1.1 The Respondent sending the letter of 14 June 2016 without the allegation letter, thereby denying the Claimant the opportunity to provide the investigation team with his version of events before it decided that he had breached the rules or had a case to answer.

5.2.1.2 The Respondent's failure to make any or any reasonable efforts to ensure that the Claimant had an opportunity to address the investigation team before it decided whether he had a case to answer.

5.2.1.3 The lack of consideration by the investigation team of the Claimant's racial background.

5.2.1.4 The acceptance by the investigation team of the uncorroborated evidence of Ruth Van Druemel despite the absence of any or any reasonable grounds for doing so.

5.2.1.5 Failure by the investigation team to pursue lines of enquiry during its interviews with potential witnesses that could have verified the claimant's

account such as Mr. Paul Bailey and Stuart Knight’s letters. This would have easily lead to the unearthing of matters which would have rebuffed the investigation team's belief that the claimant had a case to answer.

5.2.1.6 The deliberate or negligent misinterpretation by the investigation team of evidence adduced by witnesses.

5.2.1.7 Repeated unreasonable delays by the investigation team to respond to the claimant's correspondence throughout the period of the investigation.

5.2.1.8 Repeated unreasonable delays by the investigation team to respond to the Claimant's requests for better information throughout the period of the investigation.

5.2.1.9 The failure by the Respondent to pay any or any adequate attention to its own policy in respect of complaints against staff on numerous occasions; in most cases they completely ignored the claimant’s complaint.

5.2.1.10 Failure to complete the investigation in a timely fashion.

5.2.1.11 The conduct of the investigation team's formal proceedings in a manner not in accordance with the rules.

5.2.1.12 The production of a report by the investigation team in 2015 that found that the claimant had a case to answer - without the allegations having been put to the claimant.

5.2.1.13 The failure by the Respondent to provide the Claimant with copies of the meeting notes collated by the investigation team, adversely affecting the Claimant's ability to defend himself against all complaints.

5.2.1.14 The failure by the respondent to require the claimant to adduce further evidence in light of overwhelming evidence that the procedure used was flawed and the complaints against the claimant were unfounded.

5.2.1.15 The intimidation of the Claimant by Elaine Webb who was the adjudicator at the first decision making process – she ignored all requests for better information and made a decision based on lies.

5.2.1.16 Failure to inform the claimant of the change of facts relied upon for each decision from 2015 2016 2017 2018 2019 2021.

5.2.1.17 The failure by adjudicators to discuss the hearing with each other to correct the anomalies.

5.2.1.18 The failure by the Respondent to deal with the Claimant's grievance in good time or at all.

5.2.1.19 The failure by the Respondent to provide any or any adequate explanation for the failings of the investigation team in finding that the Claimant had a case to answer or breached the codes of practices.

5.2.2 Wrongly concluded the claimant did not have appropriate professional indemnity insurance from 2015.

5.2.3 Failed to review the restrictions and remove the same from the claimant's practising certificate.

5.2.4 Purported to approve the claimant's application as a registered European lawyer on 30 September 2021 following a successful appeal by the claimant. However, the claimant had made no such appeal or application.

5.3 Was that less favourable treatment?

The Tribunal will decide whether the claimant was treated worse than someone else was treated. There must be no material difference between their circumstances and the claimant's.

The claimant's direct discrimination claim will be decided on the basis of whether the claimant was treated less favourably than a hypothetical comparator.

5.4 If so, was it because of age, disability, race?

5.5 Did the respondent's treatment amount to a detriment?

5.6 *In respect of age only* Was the treatment a proportionate means of achieving a legitimate aim? The respondent will identify any legitimate aims relied upon as part of its updated response.

5.7 The Tribunal will decide in particular:

5.7.1 was the treatment an appropriate and reasonably necessary way to achieve those aims;

5.7.2 could something less discriminatory have been done instead;

5.7.3 how should the needs of the claimant and the respondent be balanced?

6. **Indirect discrimination (Equality Act 2010 section 19)**

6.1 The protected characteristic relied upon is disability: partial sight.

6.2 A “PCP” is a provision, criterion or practice. Did the respondent have the following PCP:

6.2.1 Communicated in written correspondence in “small” print ?

6.3 Did the respondent apply the PCP to the claimant?

6.4 Did the respondent apply the PCP to persons with whom the claimant does not share the characteristic, or would it have done so?

6.5 Did the PCP put persons with whom the claimant shares the characteristic at a particular disadvantage when compared with persons with whom the claimant does not share the characteristic?

6.6 Did the PCP put the claimant at that disadvantage?

6.7 Was the PCP a proportionate means of achieving a legitimate aim? The respondent will set out any legitimate aim relied upon as part of its amended response.

6.8 The Tribunal will decide in particular:

6.8.1 was the PCP an appropriate and reasonably necessary way to achieve those aims;

6.8.2 could something less discriminatory have been done instead;

6.8.3 how should the needs of the claimant and the respondent be balanced?

7. **Reasonable Adjustments (Equality Act 2010 sections 20 & 21)**

7.1 Did the respondent know or could it reasonably have been expected to know that the claimant had the disability? From what date?

7.2 A "PCP" is a provision, criterion or practice. Did the respondent have the following PCP:

7.2.1 Communicated in written correspondence in "small" print ?

7.3 Did the PCP put the claimant at a substantial disadvantage compared to someone without the claimant's disability?

7.4 Did the respondent know or could it reasonably have been expected to know that the claimant was likely to be placed at the disadvantage?

7.5 What steps could have been taken to avoid the disadvantage? The claimant suggests:

7.5.1 Writing to the claimant in larger font.

7.6 Was it reasonable for the respondent to have to take those steps and when?

7.7 Did the respondent fail to take those steps?

8. **Harassment related to race, age, disability (Equality Act 2010 section 26)**

8.1 Did the respondent do the following things:

8.1.1 Failed to properly investigate the claimant's professional circumstances. The alleged deficiencies in the respondent's investigation process are as set out above.

8.1.2 Wrongly concluded the claimant did not have appropriate professional indemnity insurance from 2015.

8.1.3 Failed to review the restrictions and remove the same from the claimant's practising certificate.

8.1.4 Purported to approve the claimant's application as a registered European lawyer on 30 September 2021 following a successful appeal by the claimant. However, the claimant had made no such appeal or application.

8.2 If so, was that unwanted conduct?

8.3 Did it relate to age, disability, race?

8.4 Did the conduct have the purpose of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant?

8.5 If not, did it have that effect? The Tribunal will take into account the claimant's perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect.

9. **Victimisation (Equality Act 2010 section 27)**

9.1 Did the claimant do a protected act as follows:

9.1.1 Complain in writing in 2015 that he was being discriminated against?

9.2 Did the respondent do the following things:

9.2.1 Failed to properly investigate the claimant's professional circumstances. The alleged deficiencies in the respondent's investigation process are as set out above.

9.2.2 Wrongly concluded the claimant did not have appropriate professional indemnity insurance from 2015.

9.2.3 Failed to review the restrictions and remove the same from the claimant's practising certificate.

9.2.4 Purported to approve the claimant's application as a registered European lawyer on 30 September 2021 following a

successful appeal by the claimant. However, the claimant had made no such appeal or application.

9.3 By doing so, did it subject the claimant to detriment?

9.4 If so, was it because the claimant did a protected act?

9.5 Was it because the respondent believed the claimant had done, or might do, a protected act?

10. **Remedy for discrimination or victimisation**

10.1 Should the Tribunal make a recommendation that the respondent take steps to reduce any adverse effect on the claimant? What should it recommend?

10.2 What financial losses has the discrimination caused the claimant?

10.3 Has the claimant taken reasonable steps to replace lost earnings, for example by looking for another job?

10.4 If not, for what period of loss should the claimant be compensated?

10.5 What injury to feelings has the discrimination caused the claimant and how much compensation should be awarded for that?

10.6 Has the discrimination caused the claimant personal injury and how much compensation should be awarded for that?

10.7 Is there a chance that the claimant's employment would have ended in any event? Should their compensation be reduced as a result?

10.8 Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?

10.9 Did the respondent or the claimant unreasonably fail to comply with it?

10.10 If so is it just and equitable to increase or decrease any award payable to the claimant?

10.11 By what proportion, up to 25%?

10.12 Should interest be awarded? How much?

The Relevant Law

27. The relevant sections of the EQA applicable to this claim are as follows:

4 The protected characteristics

The following characteristics are protected characteristics: …

Age,…, disability, ….race, …"

6 Disability

(1) A person (P) has a disability if -
(a) P has a physical or mental impairment, and
(b) the impairment has a substantial and long-term adverse effect on P's ability to carry out normal day-to-day activities.

13 Direct discrimination

(1) A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others".

19 Indirect discrimination

(1) A person (A) discriminates against another (B) if A applies to B a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of B's.

(2) For the purposes of subsection (1), a provision, criterion or practice is discriminatory in relation to a relevant protected characteristic of B's if—

(a) A applies, or would apply, it to persons with whom B does not share the characteristic,

(b) it puts, or would put, persons with whom B shares the characteristic at a particular disadvantage when compared with persons with whom B does not share it,

(c) it puts, or would put, B at that disadvantage, and

(d) A cannot show it to be a proportionate means of achieving a legitimate aim.

(3) The relevant protected characteristics are—

……

disability;

20 Duty to make adjustments

(1) Where this Act imposes a duty to make reasonable adjustments on a person, this section, sections 21 and 22 and the applicable Schedule apply; and for those purposes, a person on whom the duty is imposed is referred to as A.

(2) The duty comprises the following three requirements.

(3) The first requirement is a requirement, where a provision, criterion or practice of A's puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.

21 Failure to comply with duty

(1) A failure to comply with the first, second or third requirement is a failure to comply with a duty to make reasonable adjustments.

(2) A discriminates against a disabled person if A fails to comply with that duty in relation to that person.

(3) A provision of an applicable Schedule which imposes a duty to comply with the first, second or third requirement applies only for the purpose of establishing whether A has contravened this Act by virtue of subsection (2); a failure to comply is, accordingly, not actionable by virtue of another provision of this Act or otherwise.

23 Comparison by reference to circumstances

(1) On a comparison of cases for the purposes of section 13....there must be no material difference between the circumstances relating to each case."

26 Harassment

(1) A person (A) harasses another (B) if—
(a)A engages in unwanted conduct related to a relevant protected characteristic, and
(b)the conduct has the purpose or effect of—
(i)violating B's dignity, or
(ii)creating an intimidating, hostile, degrading, humiliating or offensive environment for B.
…

(4) In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account—
(a)the perception of B;
(b)the other circumstances of the case;
(c)whether it is reasonable for the conduct to have that effect."

27 Victimisation

(1) A person (A) victimises another person (B) if A subjects B to a detriment because—
(a) B does a protected act, or
(b) A believes that B has done, or may do, a protected act.

(2) Each of the following is a protected act—
(a) bringing proceedings under this Act;
(b) giving evidence or information in connection with proceedings under this Act
(c) doing any other thing for the purposes of or in connection with this Act;
(d) making an allegation (whether or not express) that A or another person has contravened this Act."

53 Qualifications bodies

(1) A qualifications body (A) must not discriminate against a person (B)—
(a)in the arrangements A makes for deciding upon whom to confer a relevant qualification;
(b)as to the terms on which it is prepared to confer a relevant qualification on B;
(c)by not conferring a relevant qualification on B.

(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.

(4) A qualifications body (A) must not victimise a person (B)—
(a)in the arrangements A makes for deciding upon whom to confer a relevant qualification;
(b)as to the terms on which it is prepared to confer a relevant qualification on B;
(c)by not conferring a relevant qualification on B.

(5) A qualifications body (A) must not victimise 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.

(6) A duty to make reasonable adjustments applies to a qualifications body.

(7) The application by a qualifications body of a competence standard to a disabled person is not disability discrimination unless it is discrimination by virtue of section 19.

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.

…

(5) A reference to conferring a relevant qualification includes a reference to renewing or extending the conferment of a relevant qualification.

(6) A competence standard is an academic, medical or other standard applied for the purpose of determining whether or not a person has a particular level of competence or ability.

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 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.

123 Time limits

(1) [Subject to [sections 140A and 140B],] proceedings on a complaint within section 120 may not be brought after the end of—

(a) the period of 3 months starting with the date of the act to which the complaint relates, or

(b) such other period as the employment tribunal thinks just and equitable.

(3) For the purposes of this section—

(a) conduct extending over a period is to be treated as done at the end of the period;

(b) failure to do something is to be treated as occurring when the person in question decided on it.

136 Burden of proof

(2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.

(3) But subsection (2) does not apply if A shows that A did not contravene the provision.

212 General interpretation

(1) In this Act

substantial" means more than minor or trivial.

SCHEDULE 1 - DISABILITY: SUPPLEMENTARY PROVISION,

PART 1, DETERMINATION OF DISABILITY,

IMPAIRMENT

…..

Effect of medical treatment

5 (1) An impairment is to be treated as having a substantial adverse effect on the ability of the person concerned to carry out normal day-to-day activities if—

(a) measures are being taken to treat or correct it, and

(b) but for that, it would be likely to have that effect.

(2) "Measures" includes, in particular, medical treatment and the use of a prosthesis or other aid.

(3) Sub-paragraph (1) does not apply—

(a)in relation to the impairment of a person's sight, to the extent that the impairment is, in the person's case, correctable by spectacles or contact lenses or in such other ways as may be prescribed;

(b)in relation to such other impairments as may be prescribed, in such circumstances as are prescribe

28. **The Equality and Human Rights Commission Code of Practice on Employment ("the Code")** paragraph 6.10 says the phrase "provision, criterion or practice" ("PCP") is not defined by EqA but

"should *be construed widely so as to include for example any formal or informal policy, rules, practices, arrangements or qualifications including one off decisions and actions*".

The obligation to take such steps as it is reasonable to have to take to avoid the disadvantage is considered in the Code. A list of factors which might be taken into account appears at paragraph 6.28, but (as paragraph 6.29 makes clear) ultimately the test of reasonableness of any step is an objective one depending on the circumstances of the case.

29. We have also considered the guidance issued by the Secretary of State under section 6(5) of the EQA on

matters to be taken into account in determining questions relating to the definition of disability below:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/570382/Equality_Act_2010-disability_definition.pdf

30. The following statutory provisions and authorities were considered by the Tribunal in relation to the issue of whether any of the claimant's claim forms were required to be rejected:

Employment Tribunals Act 1996

18A Requirement to contact ACAS before instituting proceedings

(1) Before a person ("the prospective claimant") presents an application to institute relevant proceedings relating to any matter, the prospective claimant must provide to ACAS prescribed information, in the prescribed manner, about that matter. This is subject to subsection (7).
(2) On receiving the prescribed information in the prescribed manner, ACAS shall send a copy of it to a conciliation officer.
(3) The conciliation officer shall, during the prescribed period, endeavour to promote a settlement between the persons who would be parties to the proceedings.
(4) If—
(a)during the prescribed period the conciliation officer concludes that a settlement is not possible, or
(b)the prescribed period expires without a settlement having been reached, the conciliation officer shall issue a certificate to that effect, in the prescribed manner, to the prospective claimant.

The Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 ('ET Rules')

Irregularities and non-compliance

6. A failure to comply with any provision of these Rules (except rule 8(1), 16(1), 23 or 25) or any order of the Tribunal (except for an order under rules 38 or 39) does not of itself render void the proceedings or any step taken in the proceedings. In the case of such non-compliance, the Tribunal may take such action as it considers just, which may include all or any of the following—

(a)waiving or varying the requirement;

(b)striking out the claim or the response, in whole or in part, in accordance with rule 37;

(c)barring or restricting a party's participation in the proceedings;

(d)awarding costs in accordance with rules 74 to 84

Rejection: form not used or failure to supply minimum information

10. (1) The Tribunal shall reject a claim if – …

(a) it is not made on a prescribed form;

(b) it does not contain all of the following information –

(i) each claimant's name;

(ii) each claimant's address;

(iii) each respondent's name;

(iv) each respondent's address; or

(c) it does not contain one of the following –

(i) an early conciliation number;

(ii) confirmation that the claim does not institute any relevant proceedings; or

(iii) confirmation that one of the early conciliation exemptions applies.

Rejection: substantive defects

12.(1) The staff of the tribunal office shall refer a claim form to an Employment Judge if they consider that the claim, or part of it, may be—

(a) one which the Tribunal has no jurisdiction to consider;
(b) in a form which cannot sensibly be responded to or is otherwise an abuse of the process;
(c) one which institutes relevant proceedings and is made on a claim form that does not contain either an early conciliation number or confirmation that one of the early conciliation exemptions applies;
(d) one which institutes relevant proceedings, is made on a claim form which contains confirmation that one of the early conciliation exemptions applies, and an early conciliation exemption does not apply;
(da) one which institutes relevant proceedings and the early conciliation number on the claim form is not the same as the early conciliation number on the early conciliation certificate;
(e) one which institutes relevant proceedings and the name of the claimant on the claim form is not the same as the name of the prospective claimant on the early conciliation certificate to which the early conciliation number relates; or
(f) one which institutes relevant proceedings and the name of the respondent on the claim form is not the same as the name of the prospective respondent on the early conciliation certificate to which the early conciliation number relates].

(2) The claim, or part of it, shall be rejected if the Judge considers that the claim, or part of it, is of a kind described in sub-paragraphs (a) (b), (c) or (d) of paragraph (1).

(2ZA) The claim shall be rejected if the Judge considers that the claim is of a kind described in sub-paragraph (da) of paragraph (1) unless the Judge considers that the claimant made an error in relation to an early conciliation number and it would not be in the interests of justice to reject the claim.

(2A) The claim, or part of it, shall be rejected if the Judge considers that the claim, or part of it, is of a kind described in sub-paragraph (e) or (f) of paragraph (1) unless the Judge considers that the claimant made an error in relation to a name or address and it would not be in the interests of justice to reject the claim."

HM Revenue and Customs v Garau 2017 ICR 1121, EAT, - The EC provisions do not allow for more than one EC certificate per 'matter' to be issued. If more than one such certificate is issued by ACAS, a second or subsequent certificate is outside the statutory scheme and has no impact on the limitation period.

Romero v Nottingham City Council EAT 0303/17 - once a claimant has commenced the EC process, the rules on extending time limits apply to the single mandatory process and not in relation to any subsequent EC process (and EC certificate issued) that relates to the same matter.

E.ON Control Solutions Ltd v Caspall [2020] ICR 552*,* held that Rule 12(2) obliged the Tribunal to reject the claim if the Judge considers sub-paras (1)(a), (b), (c) or (d) to apply and the obligation is not stated to be limited to a particular stage in the process but is expressed in general terms, so failure to include an accurate ACAS EC number meant that a Tribunal was required to reject the claims whatever stage of the proceedings this occurred, not just on presentation.

Sainsbury's Supermarkets Ltd v Clark & Ors [2023] EWCA Civ 386 where the Court of Appeal gave the following guidance:

"The legislative purpose of s 18A of the 1996 Act was to require claimants to go to ACAS and to have an EC certificate from ACAS (unless exempt from doing so) before presenting a claim to an ET in order to be able to prove, if the issue arises, that they have done so. I do not accept that it is part of the legislative purpose to require that the existence of the certificate should be checked before proceedings can be issued, still less to lay down that if the certificate number was incorrectly entered or omitted the claim is doomed from the start. If the claim is rejected in its earliest stages under Rule 10 or 12 then the claimant may seek rectification or reconsideration. If it is not, then the time for rejection of the claim has passed. The respondent may instead apply to have the claim dismissed under rule 27 or struck out under rule 37, with the tribunal having the power to waive errors such as the one relied on in the present case under Rule 6.

31. The Tribunal also considered the following relevant regulatory provisions in relation to the qualification of solicitors:

The Solicitors Act 1974

9 Applications for practising certificates.

(1) A person whose name is on the roll may apply to the Society to be issued with a practising certificate.
(2) . . . .
(3) An application under this section must be—
(a) made in accordance with regulations under section 28, and
(b) accompanied by the appropriate fee.

10 Issue of practising certificates.

(1) Subject to the following provisions of this section, where an application is made in accordance with section 9, the Society must issue a practising certificate to the applicant if it is satisfied that the applicant—
(a) is not suspended from practice, and
(b) is complying with any prescribed requirements imposed on the applicant.
(2) A practising certificate issued to an applicant of a prescribed description must be issued subject to any conditions prescribed in relation to applicants of that description.
(3) In such circumstances as may be prescribed, the Society must, if it considers it is in the public interest to do so—
(a)refuse to issue a practising certificate under this section, or
(b)where it decides to issue a practising certificate, issue it subject to one or more conditions.
(4) The conditions which may be imposed include—
(a) conditions requiring the person to whom the certificate is issued to take specified steps that will, in the opinion of the Society, be conducive to the carrying on by that person of an efficient practice as a solicitor ...;
(b)conditions which prohibit that person from taking any specified steps, except with the approval of the Society.
(5) In this section —
"prescribed" means prescribed by regulations under section 28;
"specified", in relation to a condition imposed on a practising certificate, means specified in the condition."

13 Appeals etc in connection with the issue of practising certificates.

(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.

(2) A person who holds a practising certificate subject to a condition within section 10(4)(b) may appeal to the High Court against any decision by the Society to refuse to approve the taking of any step for the purposes of that condition.

(3) The Society may make rules which provide, as respects any application under section 9 that is neither granted nor refused by the Society within such period as may be specified in the rules, for enabling an appeal to be brought under this section in relation to the application as if it had been refused by the Society.

(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 not to issue a certificate,

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

(f). . . . . or

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

(5) On an appeal under subsection (2), the High Court may—

(a) affirm the decision of the Society,

(b) direct the Society to approve the taking of one or more steps for the purposes of a condition within section 10(4)(b), or

(c)make such other order as the High Court thinks fit.

(6) In relation to an appeal under this section the High Court may make such order as it thinks fit as to payment of costs.
(7) The decision of the High Court on an appeal under subsection (1) or (2) shall be final.

13A Imposition of conditions while practising certificates are in force.

(1) Subject to the provisions of this section, the Society may in the case of any solicitor direct that his practising certificate for the time being in force (his "current certificate") shall have effect subject to such conditions as the Society may think fit.
(2) The power conferred by subsection (1) is exercisable in relation to a solicitor at any time during the period for which the solicitor's current certificate is in force if—
(a). . . . .
(b)it appears to the Society that the case is of a prescribed description.
(3) "Prescribed" means prescribed by regulations under section 28.]
(6) A solicitor in whose case a direction is given under this section may appeal to the [F4High Court against the decision of the Society.]
(7) On an appeal under subsection (6), the High Court may—
  (a) affirm the decision of the Society; or
  (b) direct that the appellant's current certificate shall have effect subject to such conditions as the [F5High Court] thinks fit; or
  by order revoke the direction; or
  (d) make such other order as [F6it] thinks fit.
(7A) The decision of the High Court on an appeal under subsection (6) shall be final.
(8) Subsections (4) and (5) of section 10 apply for the purposes of subsection (1) of this section as they apply for the purposes of that section.

44D Disciplinary powers of the Society

(1) This section applies where the Society is satisfied—

(a) that a solicitor or an employee of a solicitor has failed to comply with a requirement imposed by or by virtue of this Act or any rules made by the Society, or
(b) that there has been professional misconduct by a solicitor.

(2) The Society may do one or both of the following—
(a) give the person a written rebuke;
(b) direct the person to pay a penalty not exceeding £25,000].

44E Appeals against disciplinary action under section 44D

(1)A person may appeal against—

(a) a decision by the Society to rebuke that person under section 44D(2)(a) if a decision is also made to publish details of the rebuke;
(b) a decision by the Society to impose a penalty on that person under section 44D(2)(b) or the amount of that penalty;
(c) a decision by the Society to publish under section 44D(3) details of any action taken against that person under section 44D(2)(a) or (b).

…….

(4) On an appeal under this section, the Tribunal has power to make such order as it thinks fit, and such an order may in particular—
(a) affirm the decision of the Society;
(b) revoke the decision of the Society;

(c) in the case of a penalty imposed under section 44D(2)(b), vary the amount of the penalty;
(d) in the case of a solicitor, contain provision for any of the matters mentioned in paragraphs (a) to (d) of section 47(2);
(e) in the case of an employee of a solicitor, contain provision for any of the matters mentioned in section 47(2E);
(f) make such provision as the Tribunal thinks fit as to payment of costs.

(5) Where by virtue of subsection (4)(e) an order contains provision for any of the matters mentioned in section 47(2E)(c), section 47(2F) and (2G) apply as if the order had been made under section 47(2E)(c).

(6) An appeal from the Tribunal shall lie to the High Court, at the instance of the Society or the person in respect of whom the order of the Tribunal was made.

(7) The High Court shall have power to make such order on an appeal under this section as it may think fit.
(8) Any decision of the High Court on an appeal under this section shall be final.
(9) This section is without prejudice to any power conferred on the Tribunal in connection with an application or complaint made to it.

44C Power to charge for costs of investigations.

(1) The Society may make regulations prescribing charges to be paid to the Society by solicitors who are the subject of a discipline investigation.
(2) A “discipline investigation” is an investigation carried out by the Society into—
(a) possible professional misconduct by a solicitor, or
(b) a failure or apprehended failure by a solicitor to comply with any requirement imposed by or by virtue of this Act or any rules made by the Society.
(3) Regulations under this section may—

(a)make different provision for different cases or purposes;
(b)provide for the whole or part of a charge payable under the regulations to be repaid in such circumstances as may be prescribed by the regulations.

(4) Any charge which a solicitor is required to pay under regulations under this section is recoverable by the Society as a debt due to the Society from the solicitor.

(5) This section (other than subsection (2)(a)) applies in relation to an employee of a solicitor as it applies in relation to a solicitor.

The SRA Application, Notice, Review and Appeal Rules (‘SRA Appeal Rules’) were made under sections 2, 13, 28 and 31 of the Solicitors Act 1974, section 9 of the Administration of Justice Act 1985, section 89 of, and paragraphs 2 and 3 of Schedule 14 to, the Courts and Legal Services Act 1990, and section 83 of, and Schedule 11 to, the Legal Services Act 2007. The SRA Appeal 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 2: Decisions made by the SRA with a right of appeal to the Tribunal

As set out in the SRA Regulatory and Disciplinary Procedure Rules:

1. A decision made under rule 3.1(a) to give a written rebuke.

…..

5. A decision made under 9.2 to publish a decision.

Annex 3: Decisions made by the SRA with a right of appeal to the High Court

Individual Authorisation

As set out in the SRA Authorisation of Individuals Regulations:

……

8. A decision made under regulation 7.1(a) to refuse an application for a practising certificate, or registration or renewal of registration in the register of European lawyers or the register of foreign lawyers.

9. A decision made under regulation 7.1(b) to impose conditions on a practising certificate or the registration of a European lawyer or foreign lawyer.

32. The relevant authorities considered on the issue of jurisdiction are as follows:

Michalak v General Medical Council and others [2017] UKSC contains guidance on how s.120(7) Equality Act 2010 should be construed and the meaning of 'an appeal or proceedings in the nature of an appeal'. In particular the following paragraphs were relevant:

"[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."

Ali v Office of the Immigration Services Commissioner [2021] IRLR 84 which confirmed that the 'act complained of' within the meaning of section 120 (7) EQA 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. It also confirmed that *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. Furthermore to amount to 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

33. The relevant authorities which we have considered on the direct discrimination and victimisation claims are as follows:

Anya v University of Oxford & Another [2001] IRLR 377 **-** it is necessary for the employment tribunal to look beyond any act in question to the general background evidence in order to consider whether prohibited factors have played a part in the employer's judgment. This is particularly so when establishing unconscious factors.

Igen v Wong and Others [2005] IRLR 258 and Madarassy v Nomura International PLC [2007] IRLR 246.

The employment tribunal should go through a two-stage process, the first stage of which requires the claimant to prove facts which could establish that the respondent has committed an act of discrimination, after which, and only if the claimant has proved such facts, the respondent is required to establish on the
balance of probabilities that it did not commit the unlawful act of discrimination. In concluding as to whether the claimant had established a prima facie case, the tribunal is to examine all the evidence provided by the respondent and the claimant.

Madarrassy vNomura International Ltd 2007 ICR 867 - the bare facts of the difference in protected characteristic and less favourable treatment is not *"without more, sufficient material from which a tribunal could conclude, on balance of probabilities that the respondent" committed an act of unlawful discrimination".* There must be "something more".

Nagarajan v London Regional Transport [1999] IRLR 572, HL,-The crucial question in every case was, *'why the complainant received less favourable treatment … Was it on grounds of race? Or was it for some other reason, for instance, because the complainant was not so well qualified for the job?*'

Chief Constable of West Yorkshire Police v Khan [2001] UKHL 48, [2001] IRLR 830, [2001] ICR 1065, HL, - The test is what was the reason why the alleged discriminator acted as they did? What, consciously or unconsciously was their reason? Looked at as a question of causation ('but for …'), it was an objective test. The anti-discrimination legislation required something different; the test should be subjective: *'Causation is a legal conclusion. The reason why a person acted as he did is a question of fact.*'

Bahl v Law Society [2003] IRLR 640 – "*where the alleged discriminator acts unreasonably then a tribunal will want to know why he has acted in that way. If he gives a non-***discriminatory** *explanation which the tribunal considers to be honestly given, then that is likely to be a full answer to any discrimination claim. It need not be, because it is possible that he is subconsciously influenced by unlawful discriminatory considerations. But again, there should be proper evidence from which such an inference can be drawn. It cannot be enough merely that the victim is a member of a minority group. This would be to commit the error identified above in connection with the Zafar case: the inference of discrimination would be based on no more than the fact that others sometimes discriminate unlawfully against minority groups.*"

34. On whether the discrimination complaints are in time, the Tribunal considered:

Section 33(3) of the Limitation Act 1980 (power to extend time in personal injury actions) specified a number of factors that a

court **is** required to consider when balancing the prejudice which each party would suffer as a result of granting or refusing an extension, and to have regard to all the other circumstances, in particular: (a) the length of and reasons for the delay; (b) the extent to which the cogency of the evidence is likely to be affected by the delay; (c) the extent to which the party sued had co-operated with any requests for information; (d) the promptness with which the claimant acted once he or she knew of the facts giving rise to the cause of action; and (e) the steps taken by the claimant to obtain appropriate professional advice once he or she knew of the possibility of taking action.

British Coal Corporation v Keeble [1997] IRLR 336, it was held that the Tribunal's power to extend time was similarly as broad under the 'just and equitable' formula. However, it is unnecessary for a tribunal to go through the above list in every case, 'provided of course that no significant factor has been left out of account by the employment tribunal in exercising its discretion' (Southwark London Borough v Afolabi [2003] IRLR 220).

Robertson and Bexley Community Centre (trading as Leisure Link) 2003 IRLR 434CA - there is no presumption that time should be extended to validate an out of time claim unless the **Claimant** can justify the failure to issue the claim in time. The Tribunal cannot hear a claim unless the Claimant convinces the Tribunal that it is just and equitable to extend time so the exercise of the discretion is the exception rather than the rule.

Abertawe Bro Morgannwg University v Morgan [2018] EWCA Civ 640 - the "such other period as the employment tribunal thinks just and equitable" extension indicates that Parliament chose to give the tribunal the widest possible discretion. Although there is no prescribed list of factors for the tribunal to consider, "factors which are almost always relevant to

consider are: (a) the length of, and reasons for, the delay and (b) whether the delay has prejudiced the respondent".

Findings of Fact

35. The claimant attended to give evidence. Ms R Van Dreumel ('RVD'), Investigation Officer at the respondent's Supervision Unit from 2012 - February 2019; Ms M Johal ('MJ'), the respondent's Senior Complaints and Customer Service Executive and Mr R Watson ('RW') Authorisation Officer, Practising Certificates, Renewals and Registrations unit gave evidence for the respondent. We considered the evidence given both in written statements and oral evidence given in cross examination, re-examination and in answer to questioning from the Tribunal. We considered the ET1s and the ET3s together with relevant numbered documents referred to below that were pointed out to us in the Bundle.

36. In order to determine the issues set out above, it was not necessary to make detailed findings on all the matters heard in evidence. We have made findings not only on allegations made as specific discrimination complaints but on other relevant matters raised as background. These findings may be relevant to drawing inferences and conclusions. We made the following findings of fact:

36.1 The claimant is a non practising solicitor and identifies himself as a black man in his fifties who is partially sighted. In relation to the claimant's contention that he is partially sighted, this was mentioned many times in correspondence with the respondent and during the proceedings. The first time it appears that this issue was raised with the respondent was during an e mail sent to RVD on 7 June 2015 when he writes:

"APOLOGISE FOR THE BOLD, I CANNOT SEE VERY WELL WITH MY OLD GLASSES" (page 909)

And again in an e mail on 23 September 2015 he writes:

"I MAY BE BLIND BLACK AND OR STUPID BUT I AM NOT A CRIMINAL".

This phrase, or phrases of a similar nature were then used repeatedly by the claimant in correspondence throughout the course of events. For example he mentions his in applications for PCs for 2017/18 that he is *"partially blind".* The occasions upon which this is raised with the respondent are too numerous to set out in this judgment (Mr Sudra suggested it was used in over 100 documents). The claimant produced some medical evidence at pages 5884-5893. This is a letter originally in Swedish (with a translation appended) with notes from an examination of the claimant by an optician, Karin Didoff, Goteburg conducted on 6 February 2023. It provides some measurements which are not explained but then goes on to note:

"This man sees very poorly.
He does not know why and has not been to an ophthalmologist.
I do not see any direct lens clouding.
He has injured his back.
Speaks English.
Visual acuity near v:0.2,
I would appreciate a check and an answer."

To the extent that this assists at all, it is only relevant as to the claimant's state of health as at this time in early 2023. The claimant agreed in cross examination that this was all the medical evidence that had been produced for this Tribunal in the 6 volume bundle before it. There was some suggestion from him that other

medical evidence existed, but these were not adduced and no applications were made for them to be admitted.

36.2 The respondent is a statutory body brought into operation by the Legal Services Act 2007. It is responsible for the regulation of solicitors in England and Wales and is a qualifying body within the meaning of section 53 EQA. The respondent is given the power under the SRA Disciplinary Procedure Rules 2011 (shown at pages 665-692) to investigate the conduct of anyone it regulates. The respondent published the SRA Principles 2011 ('SRA Principles')(shown at pages 732-7). The SRA Principles are made by the respondent's board under sections 31, 79 and 80 of the Solicitors Act 1974 ('SA'), sections 9 and 9A of the Administration of Justice Act 1985 and section 83 of the Legal Services Act 2007. The SRA Principles are supported by the outcomes set out in the SRA Code of Conduct 2011 ('Outcomes') (shown at pages 738-745). All solicitors regulated by the respondent were legally required to comply with and meet the SRA Principles and Outcomes. The respondent has the power to issue disciplinary sanctions and control the manner in which a regulated person could practice if the SRA Principles had been breached or Outcomes had not been met. Solicitors regulated by the respondent are also required at all times to comply with the SRA Indemnity Insurance Rules (shown at page 754-769). This requires a solicitors firm to at all times have the appropriate level of professional indemnity insurance ('PII') cover in place as set out in the SRA Indemnity Insurance Rules.

36.3 Matters relating to the issuing and renewal of practising certificates authorising solicitors to practice law in England and Wales ('PCs') were dealt with by the respondent's Practising Certificates Renewals and

Registrations ('PCRE') team. The PCRE team and in particular the Authorisation Officers within that team are responsible for considering whether any conditions should be imposed on the PC of individual solicitors under the respondent's powers exercised pursuant to sections 13 and 13A SA (as above).

36.4 In the event that conditions are imposed on an individual's PC, upon application to renew a PC each year, an Authorisation Officer considers whether the conditions should be continued, varied or removed. The PCRE team implements the rules set out in the SRA Application, Notice, Review and Appeal Rules (page 723-731) and as above. When considering an application and Authorisation Officer completes a pro forma decision document including a summary of events and the reasons for their decision. The Authorisation Officer looks for identified risks to members of the public, the legal profession or both and then considers how that risk can be mitigated by the imposition of conditions on PCs. In an application being considered on consecutive years, when reviewing the imposition of conditions, the Authorisation Officer's key task is to examine how the applicant's circumstances have changed, if at all, since the conditions were imposed. The decision to impose or reimpose a condition on a PC is made by one Authorisation Officer and then sent to the applicant in order that they can make representations. Those representations are sent to a second Authorisation Officer who considers these and makes the first instance decision ('FID') on whether conditions should be imposed. An applicant has the right of appeal against the FID and then the matter is referred to an Adjudicator to consider (see below).

36.5 Any reports of misconduct involving solicitors received by the respondent were initially reviewed by the respondents Investigation and Supervision Unit ('I&S'). The role of the I&S was to investigate those reports of misconduct and engage with regulated persons to encourage compliance with the respondent's rules. The I&S was tasked with gathering evidence and deciding whether to recommend that any disciplinary action should be taken. The I&S did not have the power to issue disciplinary sanctions, but could make a recommendation that a matter be referred to an Adjudicator to make that decision. In more serious cases, the I&S could refer the matter to the respondent Legal and Enforcement team (who could then refer on to the Solicitors' Disciplinary Tribunal, which had more extensive powers to issue larger fines, suspend or strike off solicitors from the roll). The I&S could also take the decision that no further action would be taken or could issue a letter of advice.

36.6 There was a separate department within the respondent called the Forensic Investigation Unit which tended to investigate possible breaches of the SRA Accounts Rules. A forensic investigation could also result in a report being produced which would be sent to the I&S to consider whether further action against the individual solicitor or firm was appropriate. Individual investigators in the I&S carried out an investigation and completed a recommendation report (also known as a case note). If formal action were recommended, this would be passed to the Adjudication Team who reviewed the recommendation and made a decision about appropriate action.

36.7 The Adjudication team was a separate decision making function in the respondent tasked with reaching

impartial third-party decisions on matters referred to them by Authorisation Team (including the PCRE), I&S and Legal and Enforcement. Formal sanctions could be issued by Adjudicators pursuant to the respondent's powers under the SA such as a fine of up to £2000, the imposition of restrictions or conditions on the way a solicitor practised or a formal rebuke. The Adjudicator allocated to the matter would be sent a bundle of documents from the relevant referring department with a recommendation and any representations received from the individual in question. The Adjudicator makes the final decision and is able to disagree and make a different decision entirely to that recommended.

36.8 The respondent operates a complaints procedure whereby users can complain about the service it provides. We were referred to pages 693-709 which contains this procedure. There is a three stage process. An initial response to a complaint is provided by the relevant unit that received the complaint. If the complainant is unhappy with the stage 1 decision they can request a review by the entral Complaints Team under stage 2. If a complainant remains unhappy with the response from stage 2, it is referred to an Independent Reviewer to make a final decision under stage 3. The Independent Reviewer is an external appointment and independent of the respondent which was introduced on 1 October 2010. At pages 1376-1377 we were directed to a document which explained the role that the Independent Reviewer carries out. This document explained:

"The SRA has appointed the independent reviewer to consider complaints about the standard of service provided by the SRA. The independent reviewer accepts complaints from members of the public and

from those regulated by the SRA. Allegations of unreasonable delay, unprofessional behaviour, poor communication and discrimination fall inside the independent reviewer's remit."

36.9 We were also referred to the respondent's Style Guide at pages 5514-5520 and a later version of this document at pages 776-793. In the later version of this document there is reference to the preferred size of font being font size 11pt as a minimum to make text as easy to read as possible. We find in general that all communications we were referred to that had emanated from the respondent were at least that font size and we could not find that any such documents were in what might generally be regarded as being in "small print".

36.10 We also heard about the Legal Ombudsman ('LO'). The LO has a different remit which is to investigate complaints by individual clients (or beneficiaries under wills) about the service they receive from solicitors. The LO is essentially a consumer protection organisation whereas the respondent is a regulator, albeit there can be crossover between the matters considered by the two organisations. It is open to the LO to refer matters to the respondent that it believes may indicate professional misconduct.

36.11 The claimant was admitted to the roll of solicitors in England and Wales ('the Roll') as a solicitor on 17 November 2003 and from 18 March 2013 practised as a sole practitioner trading as Nat Jen Soyege Solicitors ('NJS'). The claimant acknowledged that he had considerable experience in practising in the law, knew the importance of compliance with procedure and that there were strict time limits applicable to making legal complaints.

PII Cover for NJS 2014/2015

36.12 Towards the end of 2014, the claimant was in correspondence with the providers of PII cover for NJS, Chancery PII. At pages 824-837 we were referred during the hearing to copies of this correspondence. This shows that from October 2014 the claimant was being chased by Chancery PII for an outstanding payment in order that his PII cover for the practising year 2014/15 would be in force (which commenced on 1 November 2014). On 13 November 2014 (and again on 8 December 2014) the claimant was notified that there was an outstanding balance on his account of £3,020.84 and that as such his PII cover was not in place for the practising year 2014/15 (pages 833-4). It informed him that he would be covered by an extension to the 2013/14 practising year PII cover known as the Cessation Period which would end at midnight on 29 December 2014. This e mail further informed the claimant that:

"If you have not paid the outstanding balance by the end of the Cessation Period and renewed your policy, you will be forced by the SRA Rules to close your practice".

36.13 The claimant was notified on 13 January 2015 by Charles Hawtin at Chancery PII that as he had failed to make payment, that his 2013/14 policy would be placed into runoff and that the SRA had been informed (page 833). The claimant complained about this and on 16 January 2015, was sent a reply from Mark Carver at Chancery PII (page 826-7) which dealt with a number of his complaints but also stated:

"As explained in Mr Hawtin's e-mail 19 December 2014, we required payment by the 29 December 2014 and the consequences were clearly outlined. Mr Hawtin

subsequently extended the deadline until 07 January, with further extensions granted until 09 January and 13 January."

It is clear to us that the claimant had been informed that his PII cover had ceased on 13 January 2015. However we also find that the 2013/2014 Practising year cover in fact ceased at the end of the Cessation Period i.e midnight on 29 December 2014 in accordance with the relevant rules on PII. The "extension" that is referred to in the e mail from Mr Carver on 16 January 2015 is an extension to the deadline for payment of the outstanding sums, not an extension to the PII cover itself.

<u>Forensic Investigation following referral on 21 January 2015</u>

36.14 On 21 January 2015 a referral was received by the respondents forensic investigation unit and allocated to Mr M Dhanda ('MD'), a forensic investigation officer working in that department. The referral related to establishing whether NJS had professional indemnity insurance ('PII') in place for the indemnity year 2014/2015, as any failure to have PII in place could breach or potentially breach the SRA Principles. On 23 January 2015 MD carried out a walk-in visit to the premises of NJS (accompanied by S Taylor ('ST'), a fellow forensic investigation officer). They met with the claimant on that occasion. Following that visit a Final Time Report ('FTR') was produced and the entry relating to that visit made by MD was shown at page 1022-3. In particular we noted the following entries about the interactions MD had with the claimant (described as AS):

"AS was very difficult to comprehend and it appeared he may have been drinking. The visit lasted for one hour

fifteen minutes. AS stated that he would be sending a substantial number of emails providing information in respect of his PII Insurance and other requested information."

The claimant was very upset at the suggestion that he had been drinking contending that he was teetotal. We accepted that this was a mistaken view by MD and the claimant was not drinking on that occasion.

and

"The firm does not have PII cover as AS confirmed that the firm was placed in run off cover. AS said that he was In the process of taking legal action against his insurers as he had made part payments towards the premium and that the insurance had been cancelled whilst he had been promised more time to pay the balance."

and

"AS stated that he had no live matters and the last case was completed 7-8 months ago."

and

"AS confirmed that he has not taken on any new clients since well before 30 October 2014. He has been asked to provide a list of the last 10 client matters that *he has dealt with relevant dates."*

36.15 The report noted that the claimant had submitted a substantial number of emails with multiple attachments which would be reviewed and recorded that a further visit was carried out on 17 February 2015. The FTR appears to have been concluded on 10 March 2015 with the investigation being closed in the forensic investigation unit (page 1024).

Reports received from Legal Ombudsman ('LO') February and March 2015

36.16 On 19 February 2015, the respondent received a report from Mr P Bailey ('PB') at the LO in relation to NJS about a "*General failure to cooperate with an investigation under s.145 of the Legal Services Act 2007 ('LSA 2007')"* (page 863-5). This related to a matter on which the claimant had been representing a client identified as Mr N in relation to a personal injury claim brought by Mr N's daughter. Mr N had complained to the LO and the LO had been investigating the matter and was alleging that there had been a failure to co-operate with its investigations. This report included a number of attachments including letters from the LO and evidence produced by the claimant's firm. On 12 March 2015 a second and further LO report was received related to NJS again relating to a "*General failure to cooperate with an investigation under s.145 of the LSA 2007*" (page 866-8). This report related a different complaint related to advising Mr N's daughter on an immigration matter. The claimant acknowledged that having received these reports from the LO, the respondent was obliged to act on and respond to these matters and that the reports contained serious allegations. The claimant also alleged that these complaints had been made on the basis of racist actions from L Macdonald but did not clarify what this meant or whether there were any documents in the bundle supporting this contention so we were unable to take this any further.

36.17 We were also directed to a letter at page 5505-2213 which was a letter from PB to Mr N dated 3 June 2015. This letter stated that the LO had completed its investigation into NJS's actions as regards Mr N and enclosed a recommendation report. We noted in our

deliberations that this was an incomplete copy of the document as the pages were numbered from 1 to 10 and page 3 of 10 was missing. This letter set out some background information to the Mr N matter and went on to conclude in respect to a number of matters on the Mr N complaint that the service of NJS was "*reasonable*". It referred to a large number of unstructured e mails being sent to the LO by the claimant and that NJS did not respond to further requests for information leading to a referral to the respondent. It made a recommendation to the LO that no remedy was required for Mr N as:

"the service provided by the firm was a reasonable standard".

We accepted the evidence of RVD that this was not of direct relevance to the matters being investigated by the respondent as the remit of the LO (largely about service standards) was entirely different to the respondent's remit (which related to professional conduct matters). Therefore we do not accept as a fact as alleged by the claimant that the conclusion of PB "completely exonerated him". The LO and the respondent were investigating two entirely different aspects of the circumstances arising out of the particular matters involving Mr N.

<u>Shakespeare Martineau complaint and related matters</u>

36.18 In February 2015, the claimant made a complaint to the respondent about the solicitors' firm Shakespeare Martineau LLP ('SM LLP') in relation to the actions of that firm representing clients with whom the claimant and his partner were in a personal landlord tenant housing dispute. The initial outcome of the complaint was that no action would be taken against SM LLP and the claimant was informed of this on 23 February 2015

(page 5838-9). Although it initially appeared that the claimant was content with this decision, he subsequently complained to the respondent in correspondence sent between 28 September and 1 October 2015 about the way it handled his complaint. MJ had been allocated to respond to this and to address related complaints made by the claimant (relating also to a block it had placed on his emails and an allegation he made of race discrimination) at the respondent's Stage 2 review of its complaints process. On 13 January 2016 she wrote to the claimant setting out her conclusions (page 887-890). MJ's letter referred to the claimant having sent a large volume of emails between 28 September and 1 October 2015 and that a team leader in the respondent's central administration unit, Ms K Arrowsmith had written to him on 5 October 2015 to ask him to refrain from sending emails, otherwise it may have been necessary for a block to have been put on such emails (see letter at page 881). The letter also explained that the claimant was informed on 22 December 2015 that another team leader in the supervision unit, Ms J Duffy ('JD') had arranged for a block to be placed on incoming emails (see letter at page 885-6). The claimant had appealed against JD's decision on 23 December 2015 and also further complained about lack of updates from the respondent. He also made an allegation of discrimination in an email dated 31 December 2015 (page 5868) namely: "*I feel racially discriminated against on the basis that I am black*".

36.19 MJ's letter went on to acknowledge that the claimant had suggested he wish to make a further complaint about SM LLP, and that as such the block on his emails would be temporarily removed to enable him to provide evidence to report this second complaint. MJ warned

the claimant that the restriction may have to be reimposed if further irrelevant emails continue to be sent. It acknowledged that the claimant had made a request that the respondent correspond to him by email due to a "*visual impairment*". MJ also informed the claimant that she had not seen any evidence to substantiate his complaint of being treated unfairly on the grounds of race. The claimant sent a further query on 13 January 2016 to ask whether separate investigations would be conducted into two individual solicitors, at SM LLP, V Foley and C Clay, to which MJ responded that there would be no further investigations for the same reasons. She informed the claimant that if he wished to make any new complaints about the solicitors or the firm he should make a report using the form on the respondents website. MJ's letter set out the steps the claimant could take to appeal against her decisions on these matters, namely to refer the matter to the Independent Reviewer within 15 working days. No referral was made by the claimant within this timescale. The claimant referred the matter to the Independent Reviewer two years later in February 2018 and on 26 February 2018 the Independent Reviewer wrote to the respondent asking for its response on the matters raised (page 5879). MJ replied on 28 February 2018 setting out the steps taken to deal with the complaints (page 5877). On 1 March 2018 the Independent Reviewer closed the complaint received by the claimant without investigation and notified the claimant of this (page 5881).

<u>Investigation by RVD</u>

36.20 On 25 March 2015, RVD on behalf of the respondent wrote to the claimant to inform him that the respondent had received two reports about his conduct that were

currently being investigated (page 869). The first was the referral from the LO in relation to the Mr N matters (which the respondent allocated a reference CDT/1133088-2015). The second was a report made directly to the respondent from a Mr B about a probate matter that was alleged to have not been completed (which was allocated the reference CDT/1133883-2015). The e mail also explained that on the Mr B matter, a claim had also been made on the respondent's compensation fund which was being dealt with separately by another member of staff, Ms S Malcolm ('SM'), but that RVD was considering the claimant's conduct as a separate matter. It went on to state that no allegations were being made at this stage but that the respondent would be in touch in due course. The claimant sent various e mails in response to this to the respondent e.g on 25 March 2015; 26 March 2015 and 5 May 2015.

36.21 On 5 June 2015 RVD wrote to the claimant to inform him that a formal investigation was being commenced (page 799-871). This letter was headed with reference number CDT/1133088 – 2015 which was the reference number that had been originally allocated to the first referral from the LO in relation to Mr N's matters on 19 February and 12 March 2015. The letter set out background about the Mr B matter (and how Mr B's matter interacted with the allegation that the claimant did not have PII in place). The letter went on to set out further background about the Mr N matter. It made four allegations in relation to the claimant's conduct relating to Mr B, namely:

"1) By seeking further payment from Mr B on 13 March 2014, he failed to uphold Principles 2, 4, 5

and 6 of the Principles and Outcome 1.12 of the Code;

2) *By informing MD and ST on 23 January 2015 that he had no live matters, he failed to uphold Principles 2 and 7 of the Principles;*

3) *By continuing to work on the Mr B matter after 29 December 2014 he worked without PII and failed to uphold Principles 4, 5, 6 and 7 of the Principles and achieve Outcome 1.8 of the Code and breached the SRA Indemnity Insurance Rules 2013;*

4) *By failing to explain to Mr B that could no longer act for him after 29 December 2014, failed to uphold principles 4 and 5 of the Principles and achieve Outcomes 1.2, 1.4, 1.5 and 1.12 of the code."*

The letter made a further fifth allegation as follows:

"I note your statement in your email dated 25 March 2015 that the Legal Ombudsman had sent correspondence to the wrong address and that you have since responded to them.
Please provide a copy of the response you sent to the Ombudsman and explain how it provides the information requested in their email of 13 November 2014. it is alleged that if you have not provided the requested information to the Ombudsman then you have failed to uphold Principle 7."

36.22 This letter included supporting documents identified as enclosures P1 to P65 (page 807-871). Much of this information had been supplied by the claimant himself. These enclosures were referred to during the hearing extensively and included the claimant's

correspondence with Mr B and the LO in relation to his complaints (pages 807-824; 838-847; 849-853; 854-862); the report from the LO to the respondent (pages 863-868) and exchanges of correspondence between the claimant and his PII insurer, Chancery PII between October 2014 and January 2015 (page 825-837). The claimant was asked to provide its response to the allegations made by 2 June 2015. RVD's investigations were carried out on reviewing the many documents and she did not meet personally with the claimant or any other individual as part of this investigatory process and as such no notes of meetings were collated. We accepted her evidence that this was the standard way that investigations took place, i.e as a paper based exercise solely on the documentary evidence available and provided.

36.23 The claimant complained about the reference number that was included in the header of this letter, contending that this solely referred to the Mr N matter and therefore was invalid as to the Mr B issue or anything else. RVD explained that it was common practice when several referrals had been received and initially allocated separate reference numbers, that as the investigation proceeded, just one reference number would be used in correspondence moving forward. She said that in this particular case, it appeared that just one of the initial reference numbers was adopted by her to deal with all matters that were the subject of her investigation moving forward. We accepted this evidence. The claimant seemed to be suggesting that the use of this single reference number, and the failure to use the other reference number that had initially been allocated to the Mr B matter, somehow invalidated the entire investigation. We could find no basis for this suggestion and find that the reference number used RVD in this

letter and all subsequent correspondence (CDT/1133088 – 2015) validly covered all aspects of the investigation RVD was carrying out as set out clearly in this letter.

36.24 Following receipt of this letter the claimant sent very many e mails to RVD during her investigation. It is not possible for the Tribunal to consider each and every piece of information submitted by the claimant as there were so many. We accepted RVD's evidence that the way that the claimant presented his e mails meant that she had difficulties understanding the content and the relevance to the allegations being made. We also accepted that RVD responded as best she could in a timely fashion but the volume of material being sent by the claimant meant the process took longer than it might otherwise have. At page 892 we saw an email from the claimant on 29 January 26 asking for RVD's report and complaining about the delay, and at page 891 RVD's response confirming that the report was being finalised but adding:

"*One of the reasons it is taking so long is that I need to consider each email which you sent to me. You sent me several hundred emails. That's why I asked you not to send any more emails until you have received the draft report, at which point you can send me any additional comments altogether in one go for consideration. So please stop sending me emails. I will forward you a copy of the report for comment once it is finalised.*"

36.25 It is clear that the claimant's constant barrage of emails was hampering the progress of the investigation although it was still progressing during this time. The respondent supervision unit had an aspiration to complete any investigations within a 12 month period to avoid such investigations becoming what were known

as “aged matters”. The claimant at times used offensive language in his e mails for example an e mail he sent to RVD contained an e mail sent to Premium Credit Ltd where he referred to the organisation as “*drunks*” and having a “*crazy arsed number that no-one can contact you from abroad*” (page 877). RVD on this occasion wrote to remind the claimant that as a solicitor he was required by Principle 6 of the SRA principles to behave in a way that maintains the trust public places in him and in the provision of legal services (page 876). The claimant’s e mails often copied irrelevant addressees and the claimant used different e mail addresses to circumvent restrictions that were eventually put in place to try and curtail the amount of e mail correspondence he was sending. When the claimant accused RVD on 29 January 2016 of intimidating him, RVD apologised and questioned what had been done to make the claimant feel intimidated, also referring the claimant’s email to her team leader consider under the respondent’s complaints procedure (page 891-2). RVD emailed the claimant on 1 February 2016 to confirm that if he wanted to make a complaint he should contact Miss J Ward (‘JW’) (page 893). The claimant confirmed the same day that did not wish to pursue a complaint (page 894). The claimant made reference to difficulties with his sight in various emails this time. On 7 June 2015, he mentioned in an email to RVD that could not see very well with his old glasses (page 1030) and in an email on 23 September 2015 stated “*I cannot see anything without my glasses*” and “*I may be blind black and/or stupid but I am not a criminal*”. No further information was provided by the claimant and we accepted RVD’s evidence that she did not interpret these comments as a request for any adjustment to be

made and this was a reasonable assumption to have made.

36.26 On 7 April 2016 RVD sent the claimant a copy of her supervision report with draft recommendation and regulatory schedule asked for him to send comments by 29 April 2016 (pages 896-952). She asked the claimant to send all comments in one document and if any attachments were provided to support such comments to explain their relevance. RVD explained that she had recommended that conditions be put on the claimant's PC and that a finding of misconduct be made. It was also explained that the recommendation would go to the Adjudicator who could disagree with RVD's recommendation as they had the final decision. In a separate email sent the same date RVD sent the claimant the appendices marked AP1 – AP297 that had been referred to in her report (page 954-1251).

36.27 The claimant again sent a large number of e mails to RVD between 9 April and 8 May 2016 (pages 5531-5757). These emails were similar in format and style to previous correspondence, containing large amounts of information attaching various and reference documents and copying in numerous email addresses at different organisations. On 10 April 2016 the claimant emailed RVD (page 1252-3) and within the text of that email was an allegation of racism, namely:

"INSTEAD OF LOOKING FOR CROOKS THEY ARE TO BUSY HARRASING BLACK PEOPLE"

and

"THE LAW SOCIETY WILL NOT DO ANYTHING ABOUT YOU AGAINST A BLACKMAN BUT IF I SAY

THIS IS BLATANT RACISM INCOMPETENCE AND LACK OF RESPECT FOR BLACK PEOPLE"

RVD flagged up with MJ on 11 April 2016 that this allegation had been made (page 1252). RVD informed the claimant on 4 May 2016 (page 1259) that his complaints had been forwarded to her team leader, JW, and that her report would be sent to the adjudicator, together with the claimant's email of response. At the claimant was at this time sent a further copy of the original letter from RVD dated 5 June 2015 (although in her e mail RVD mistakenly referred to this letter as being dated 6 June 2015 and corrected this error later – see page 1260) and her report of 7 April 2016. In this email RVD also informed the claimant that some of his emails had been blocked as they contained swear words and requested that the claimant did not refer to her personal life in his emails.

<u>Outcome of LO investigation into Mr B complaint</u>

36.28 On 14 April 2016 LO completed its preliminary investigation into the complaint made by Mr B about NJS and wrote to Mr B on that date (page 1254-1258). Mr S Knight ('SK') of the LO who made the decision confirmed that the service provided to Mr B from NJS "*was of a reasonable standard*". The letter informed Mr B that he had various options to either accept the preliminary decision or if rejected request a final decision from the LO. In the explanation for this preliminary decision, SK set out the circumstances which led to the complaint which was largely about NJS charging an additional £2000 for work which Mr B alleged was not carried out. It noted that the respondent had decided on 7 July 2015 to make a payment to Mr B out of the Solicitors Compensation Fund in the sum of £2215, to represent the monies paid to NJS by Mr B in

March 2014 of £2000 and in January 2015 of £215. As Mr B had indicated that he was seeking to recover the sum of £2000 paid in March 2014, SK concluded that Mr B had already been compensated by the SRA for this money and that the LO did not need to consider the matter further. We again accepted RVD's evidence that the LO's remit was entirely different and the conclusion of SK in relation to the service provided did not mean that the claimant's conduct met the standards required. Therefore we do not accept as a fact as alleged by the claimant that the conclusion of SK *"completely exonerated him".* The LO and the respondent were investigating two entirely different aspects of the circumstances arising out of the particular matter involving Mr B's case.

JW investigation into claimant complaints of discrimination

36.29 JW investigated the claimant's complaints of racism informing the claimant on 9 May 2016 of her decision at Stage 1 of the respondent's complaints process that no evidence was found that the respondent dealt with the claimant's matter in a discriminatory way the grounds of the claimant's race/ethnicity (page 1264-1267). JW also investigated an allegation that the respondent had dealt with the matter in a discriminatory manner on the grounds of the claimant's disability. Her letter of 9 May 2016 acknowledged that the claimant had told the respondent he was partially sighted, but could find no evidence that any harassment or discrimination had taken place on the basis of disability. It further noted:

"*I do not see that you have told us that you are unable to read our emails. If you would like us to use a larger font in our correspondence, please do let us know and we will make the appropriate adjustment*"

The claimant did not request for such an adjustment to be made.

36.30 JW also notified the claimant in this letter that the respondent would no longer accept emails from the claimant but only letters by post. She referred to the block that had put been placed on the claimant's email by the corporate complaints team earlier in the year, which had since been removed and that continuing to send numerous emails would result in the restriction being reinstated. She noted that the claimant had sent over 1000 emails in relation to RVD's investigation, copied other organisations in those emails and made comments about RVD's personal life. The claimant was informed that his emails would be blocked from the date of this letter, that emails would still be sent to him by the respondent but all responses must be submitted by post. The claimant was informed that the restriction would remain in place the 12 months and gave him the right to appeal against this decision as follows:

"If you wish to appeal my decision to restrict contact with you, you can let me know by telephoning me on 0121 329 6459; or by writing to us by post at the address below within 10 working days from the date of this letter. Our Corporate Complaints Team will then consider your request. "

36.31 The supervision report prepared by RVD and attached documentation was sent to the Adjudications team in mid May 2016 and was allocated to an Adjudicator, Miss E Webb ('EW') on 18 May 2016 (page 1268). The report contained a detailed analysis on the five allegations that had been made against the claimant (page 1273-1306). She made a recommendation that three conditions be imposed on the claimant's PC that:

(1) He only act as a solicitor in employment;

(2) He is not to act as a sole practitioner, or manager or owner of an authorised body;

(3) He should inform an employer or prospective employer of conditions and their reasons.

36.32 We accepted the evidence of RVD that she considered that these conditions addressed the risk of the claimant practising without the benefit of PII and that the conditions were proportionate. She also recommended the imposition of a written rebuke to the claimant by the Adjudicator and that he be required to pay a financial penalty.

36.33 EW made her decision on 14 June 2016 (page 1324-1335), finding that the claimant had breached rule 4 of the SRA Indemnity Insurance Rules 2013, failed to achieve outcomes 1.2, 1.5, 1.8, 1.12, 1.13 of the SRA Code of Conduct and failed to uphold SRA Principles 2, 4, 5, 6 & 7. She concluded in relation to each of the five allegations:

"Allegation 1

[Claimant] asked a client for more money to carry out work although the client had already paid [claimant] the agreed fee for this work. In doing so, he failed to uphold Principles 2, 4, 5, and 6 of the SRA Principles 2011 ("Principles") and failed to achieve Outcome 1.13 of the SRA Code of Conduct 2011 ("Code").

Allegation 2

On 23 January 2015 [claimant] told SRA officers that he had no live matters and his last case had completed months previously, whilst he was still working on a client

matter. In doing so, he failed to uphold Principles 2 and 7.

Allegation 3

[Claimant] continued to work on a client's matter after 29 December 2014 whilst he did not have qualifying insurance in place, knowingly or recklessly in disregard of the SRA Insurance Indemnity Rules 2013 ("SIIR") and his wider regulatory obligations. In doing so, he failed to uphold Principles 4, 5, 6 and 7, failed to achieve Outcome 1.8 of the Code, and breached Rule 4 of the SIIR.

Allegation 4

[Claimant] did not explain to his client that he could no longer act for him after 29 December 2014 as he no longer had professional indemnity insurance. Instead, he gave the impression to the client that he could resume acting on his matter once an SRA inspection had finished. [Claimant] knew at the time that he could not continue to practise as he did not have the required insurance in place. He therefore failed to uphold Principles 4 and 5 and achieve Outcomes 1.2, 1.5 and 1.12.

Allegation 5

[Claimant] has not complied with a request to provide information by the Legal Ombudsman in relation to a complaint by Mr Mohammad N, a former client. By not providing the information, [Claimant] has failed to uphold Principle 7."

The claimant was issued with a written rebuke which would be published ('the Rebuke') and EW imposed conditions on the claimant's 2015/2016 PC, adopting

the conditions recommended by RVD but widening the first condition to require any future employment to be approved in writing by the respondent, which again would be published ('the PC Conditions'). The claimant was also ordered to pay £3825 in relation to the costs of the investigation ('the Costs Direction'). The claimant pointed out that at page 1331 that the reference to the date of 13 January 2014 in the written decision of EW was incorrect and we accepted that this was an error in the report, which should have read 13 January 2015. However read in context this did not change the meaning of what was set out in the document.

36.34 On 20 June 2016 RVD wrote to the claimant informing him of the Adjudicator's decision and providing him with a copy of it (page 1336-1337). This letter informed the claimant of his rights to appeal as follows:

"I draw your attention to paragraph 9 of the decision in respect of appeals.

You have 28 days to appeal against the practising certificate conditions and their publication.

You have 14 days to appeal against the findings, the rebuke and its publication.

Please note that the decision which is headed "Decision for Publication" will be published on the SRA website after 28 days have expired, unless before then you lodge an appeal.

There is no free standing right of appeal against a costs direction. If you appeal the substantive decision you do not have to comply with any costs direction pending the outcome. If there is no appeal and our file is closed you will hear from our Finance Department about any costs direction made at first instance."

No appeal was made against this decision by the respondent.

Application for PC for 2016/2017

36.35 The claimant applied to renew his PC for the practising year 2016/2017 on 25 October 2016. This was referred to the PCRE and consideration was made as to whether the conditions imposed earlier that year should be retained. A decision was made on 19 January 2017 by Mr P Moore ('PM') an Authorised Officer that the three conditions imposed by EW, namely that the claimant:

(1) could act as a solicitor only in employment which has first been approved in writing by the SRA;

(2) could not BE a sole practitioner, manager or owner of an authorised body;

(3) had to immediately inform any actual or prospective employer of these conditions and the reasons for them,

should be retained and a copy of his decision was shown at pages 1338-1353. His decision included what documents had been reviewed and made reference that the claimant in his application to renew his PC had asked for the conditions to be removed stating the following reason: *"I have judicial review the bogus rebuke (sic) but pending the end of litigation the status quo remains the same".* The decision also made reference to having contacted the claimant with a recommendation on 24 November 2016 asking for his representations, but that no response had been received. The decision went on to set out the legal and regulatory framework applied and for the decision that was made, commenting that the claimant had not practised as a solicitor since February 2015 and there

was "*no mitigation or evidence of rehabilitation that would support the removal of these conditions at this time*". The claimant was informed that he could appeal against this decision but did not do so.

Application for PC 2017/2018

36.36 The claimant applied to renew his PC again on 25 October 2017. A decision was made by Mr C Paterson ('CP'), an Authorised Officer on 16 January 2018 that the three conditions should remain. His decision was set out at pages 1355-1370. It again noted that the claimant had asked the condition to be removed providing reasons as follows: "*I HAVE A CONDITION RESTRICTING ME WORKING MATTERS ARE STILL PENDING IN COURT DESPITE THIS I CONTINUED TO BE HHARRASSED BY THE SRA DESPITE THE FACT THAT THE STATUS QYÚO MUST (sic) REMAIN THE SAMEI (sic) AM UNEMPLOYED HOMELESS AND LIVINGONBENEFITS (sic) IN SWEDEN I MA (sic) PARTIALLY BLIND TOO you have banned me from contacting you via e mail but you know jow (sic) to contact me for harrassing (sic) bills despite you knowing the law about matters and status quo remaining the same during litigation i don't (sic) care no more*". The claimant had not practised since every 2015 and that no mitigation or evidence of rehabilitation supporting the removal of conditions had been supplied. The claimant appealed against CP's decision on 7 February 2018. CP prepared a review report for the Adjudicator to consider this appeal which included a bundle of documents (page 1387-1710). This bundle of documents contained the claimant's appeal representations and we heard about the claimant having included a soiled fork within a package submitted as part of this representations. When asked about this in cross examination, the

claimant did not admit that this was an unpleasant thing to have done but that it was included with the folder to ensure that the same documents were sent back to him as he submitted. We agreed with the respondent's submission that this was an unpleasant way for the claimant to have conducted himself. The claimant's appeal was considered by a senior adjudicator, Ms A Forbes ('AF') and her decision was at page 1712-1717. She retained two conditions but decided to remove one, namely stipulating the claimant immediately inform any prospective employer of the other conditions and their reasons. AF regarded this condition as superfluous because the claimant was already required by one of the other conditions to have any prospective employment approved by the respondent, which would mean notifying any employer of the conditions in any event. CP emailed the claimant on 15 May 2018 to inform him of the decision (page 1711) and he was informed of his right to appeal the decision to the High Court.

Application for PC 2018/2019

36.37 On 9 October 2018 the claimant applied to renew his PC for 2018/2019 by completing the online renewal form (page 1723). This application was dealt with by RW. RW considered the application, looking at why the conditions have been imposed in the first place and considering whether anything had changed since that time. RW contacted the claimant on 4 February 2019 to let him know that his recommendation was that the conditions should be retained (page 1724-6) and asking for initial comments. RW's draft decision was reviewed and signed off as a FID by CP as Authorised Officer and RW's team leader at the time. CP's FID that the two conditions be retained was sent to the claimant on 20

February 2019. The decision (page 1729-1744) again noted that the claimant had not practised since February 2015 and that the claimant asked for the conditions to be removed citing the reason as "*it is illegal and it is subject to court proceedings it is up to you*".

36.38 The claimant emailed RW on 22 February 2019 stating: "*this is fraud how did you contact me on the 4h february 2018 how come you have v not used the same contact for the letter of the 20th february 2018 now how come correspondences are banned from ,my side and is the*

For ever is it because I am black or is the ban legal of course I'm going to appeal"

RW wrote to the claimant on 12 March 2019 asking him to refrain from sending multiple emails (referring to 13 emails being sent in quick succession on 27 February). RW explained that the restriction on sending emails had been temporarily lifted to allow the claimant to deal with his 2018/19 PC application, but that if the claimant continued to email RW and colleagues in the manner he had been doing it may be necessary to reimpose the restriction and require the claimant to communicate by post. RW also sent a copy of the letter from RVD (and attachments) of 5 June 2015 as the claimant had requested it.

36.39 The claimant appealed against CP's FID and RW prepared and submitted an appeal report (page 1762-1766) and bundle (pages 1751-2204) to the Adjudicator. The claimant provided representations on 15 May 2019 and RW sent these and an updated report to the claimant on 5 July 2019 (page 2205). The assigned Adjudicator, Mr M Edwards ('ME') made a decision on the claimant's appeal on 15 July 2019

(pages 2208-2200) dismissing the appeal and setting out his detailed reasons why this was the case. This included a summary of the many representations made by the claimant. ME concluded that was unable to revisit the findings of the Adjudicator in 2016 that had initially led to the imposition of the restrictions, noting that the claimant had not appealed the findings or decision at the time. ME specifically dealt with a point made by the claimant that had the Adjudicator seen a copy of the letter from SK at the LO dated 14 April 2016 (see paragraph 36.28 above), this would have exonerated him. ME noted that whilst he did not know whether this document had been seen by the adjudicator in 2016, in ME's view this letter had "*no bearing or relevance to the allegations which the adjudicator considered*" because SK's letter firstly only dealt with one of the four allegations considered by the adjudicator and for that allegation there was no express exoneration, simply an acknowledgement that the client in question, Mr B, had already been compensated and thus there was nothing for the LO to address. ME's decision also included a statement encouraging the claimant to reflect on what had been said about SK's letter being irrelevant, when making further applications for PCs. It further noted that the fact that the Adjudicator's decision did not refer to SKs letter do not mean that the Adjudicator acted fraudulently or dishonestly.

36.40 ME's decision also dealt with allegations of discrimination made by the claimant in particular complaints about the restrictions imposed on the claimant's communications with the respondent. He stated that the restrictions were operational and had been imposed because of the claimant's inappropriate use of email, and that it had been waived to allow the claimant to communicate the purpose of his application.

ME concluded that the decision as regards to restriction was based on the claimant's conduct not his race or any disability. ME also concluded that there was no evidence of serious procedural irregularities as alleged by the claimant nor any evidence of bias and conspiracy against the claimant by the respondent's employees. ME also ordered that the claimant had failed to demonstrate he was suffering financial hardship by being unable to practice as a result of conditions imposed. ME's decision was sent to the claimant on 16 July 2019 by RW (page 5880) and the claimant was advised of his right to appeal to the High Court.

<u>Application for PC 2019/20</u>

36.41 The claimant applied on 25 October 2019 for the renewal of his PC and asked for the conditions to be removed. This application was initially dealt with Mr L Kanene ('LK') another Authorisation Officer. LK wrote to the claimant on 21 April 2020 recommending that the conditions be retained (page 2230-2232). The claimant made representations on 16 June 2020 and 8 July 2020 (pages 2357-640). This was referred to an Authorised Officer, Ms S Carmichael ('SC') and the FID of SC to impose conditions as recommended was sent to the claimant on 21 July 2020 (page 2237-8). SC's decision (pages 2239-2256) set out the background to the latest PC renewal and the regulatory framework and included reference to representations made by the claimant. SC stated that the claimant had not made out any grounds or arguments as to why the conditions should not be imposed, but went on to respond to some of the points raised by the claimant, including addressing an allegation that the claimant never received the original allegations made against him on 5 June 2015 (which she did not accept). She went on to deal with other

points raised by the claimant including that he had had incurred costs of £8 million and was entitled to damages of £75 million; that he had been discriminated against based on his race, harassed and defamed; and that there had been serious procedural irregularities. She concluded that none of these matters had been made out.

36.42 The claimant applied for a review of SC's FID on 1 September 2020 (page 2643-4861) and having been sent a review report prepared by LK (pages 2285-9), the Adjudicator allocated, EW, decided to uphold the FID. Her decision (page 4883-4891) was sent to the claimant on 2 December 2020 by LK .

Application for PC 2020/21

36.43 On 18 September 2021 the claimant appears to have applied for a PC for the practising year 2020/21 (page 4893-4). This application was subsequently withdrawn and at page 4895-4896 we saw a copy of an automated email which the claimant received from the respondent on 30 September 2021.

Alleged application as a Registered European Lawyer ('REL')

36.44 One of the claimant's allegations in these proceedings is that the respondent created an application from him to be an REL, rejected that application, then created an appeal against rejection which was then approved. This was a puzzling allegation to the respondent as it could find no evidence of an application ever having been made or rejected, an appeal received or approved. At page 4917-8 we saw a screenshot showing the applications made by the claimant to the respondent, in particular all the various applications referred to above

for a PC. There was no reference here to an application to become a REL. The claimant to support this allegation relies on a document which was at page 4897. This appears to include an email from the respondent (from its email address no-reply@mail.sra.org.uk) on 30 September 2021. However the layout of the email is unusual with no header or footer and includes the following text:

"We've approved your application for registration as a registered European lawyer application for 2020 - 2021 following your successful appeal. To read our decision and reasons, login to your mySRA account.

Log in to mySRA

Dear Adekunle Soyege

We acknowledge that you have withdrawn your practising. certificate application for 2020 -2021.

If you have queries, you can contact us.

Thank you

Robert Loughlin

Executive Director, Operations and Performance"

36.45 It emerged very late during the course of the hearing, that what the claimant was alleging was that the text about the REL application set out above, namely:

"We've approved your application for registration as a registered European lawyer application for 2020 - 2021 following your successful appeal. To read our decision and reasons, login to your mySRA account.

Log in to mySRA"

was not written as text in the email he says he received but emerged when the claimant activated the read aloud function for the email received. He says this was in fact the email of 30 September 2021 referred to at paragraph 36.43 above confirming the withdrawal of his application for a PC 2020/21. The claimant's late application to admit the original copy of this email was refused by the tribunal (see above). Whilst it was not possible for the Tribunal to definitively get to the bottom of how this e mail came to be we were able to determine that the claimant had not established on the balance of probabilities that the message alleged to have been hidden as read aloud text had been sent to him by the respondent. The claimant has failed to establish on the balance of probabilities or provide any evidence at all at all that the respondent manufactured an application in his name to be an REL, subsequently refused that application, manufactured an appeal in the claimant's name and then allowed that appeal. We find that this simply did not take place.

Conclusions

37. The issues between the parties which fell to be determined by the Tribunal were set out above. We have approached some of the issues in a different order but set out our conclusions on each issue below:

    Paragraph 1 - Preliminary issues, to be determined if the Tribunal consider it appropriate and necessary to do so:

    Paragraph 1.1 - Which claim forms has the claimant presented and when?

38. Paragraphs 1-13 above contain our findings of fact on this issue. There was clearly some confusion about

which claim forms had been sent to the parties at various times and thus included in the various bundles that were prepared in advance of each hearing held to date. Nonetheless this Tribunal was satisfied that the List of Issues contained all the complaints that were included in each of the claim forms presented by the claimant and thus all complaints brought forward have been considered by the Tribunal. We were not persuaded by the claimant's arguments that there were bogus claim forms in existence or that the respondent's ET3 responses submitted were in some way invalid.

Paragraph 1.2 - Should any of the claim forms be rejected?

39. The respondent raised the argument for the first time at the 3rd PH that the 2nd and 3rd Claim Forms were invalid and should have been rejected by the Tribunal under rules 10 (1) (c) or 12 (1) (c) of the ET Rules. This argument was developed at the final hearing by Mr Sudra on the basis that if the claimant submitted that the 1st Claim Form was 'bogus', the Tribunal should not consider it at all and it should be disregarded. He therefore adjusted the submission to argue that the 3rd Claim Form alone was invalid and should be rejected. The basis of this argument is that the 3rd Claim Form (and 2nd Claim Form if indeed the 1st Claim Form was found to be the one presented by the claimant) contains a different early conciliation certificate number than the one contained in the original claim form (be that the 2nd or indeed 1st Claim Form). He submits that as all the complaints in the 2nd or 3rd Claim form ultimately relate to the same 'matter' for the purpose of section 18A (1) of the Employment Tribunals Act 1996, any early conciliation certificates issued after the first period of conciliation are invalid and cannot count. He contends

that following **Garau, Caspall** and **Romero** and related authorities (above), that the claimant's insertion of the ultimately ineffective EC number relating to the 3rd (and potentially 2nd) period of ER undertaken is the same as if those claim forms contained no number at all. Accordingly the Tribunal was obliged even at the stage of final hearing to reject any such claim form that did not contain the one valid EC number, which obliged it to reject the 3rd (and potentially 2nd) Claim Form.

40. The Tribunal was not persuaded by these submissions having considered in particular the decision of **Sainsburys Supermarkets Limited v Clark** (above) which was promulgated after the date the evidence and submissions were completed (but before the Tribunal met to make its decision). The time for considering whether any of the claim forms should have been rejected was in our view long since passed. The 1st, 2nd and 3rd Claim Forms were presented, accepted by the Tribunal and issued and served on the respondent with rule 6 of the ET Rules giving this Tribunal to waive errors including that relating to an incorrect EC number being included on any such form. There is no doubt that the claimant completed a period of EC before presenting the 1st, 2nd and 3rd Claim Forms so we determine that any failure to include the correct EC number is waived under rule 6 of the ET Rules. Therefore the 1st, 2nd and 3rd Claim Forms were validly presented as set out at paragraphs 1-13 above and are not rejected under rules 10 or 12 of the ET Rules.

<u>Paragraph 2 - Jurisdiction</u>

<u>Does the Tribunal have jurisdiction to hear the claimant's claims having considered the effect of s.120(7) Equality Act 2010?</u>

41. Mr Sudra submitted that the Tribunal had no jurisdiction to hear the claimant's of direct age, race and disability discrimination; indirect disability discrimination; failure to make reasonable adjustments; harassment and victimisation. He submits that all the complaints made by the claimant under the EQA ultimately relate to a matter over which the claimant had a statutory right of appeal to the High Court under section 49 SA. Therefore the complaints are excluded from the jurisdiction of the Tribunal by the application of section 120 (7) EQA. At the 3rd PH, Employment Judge Meichen heard an application by the respondent made under rule 37 ET Rules to strike out the claims under the EQA because the claimant had little prospect of succeeding because of this particular issue (see paragraph 17 above). The decision of Employment Judge Meichen was that one part of the EQA claims that had been made, namely an allegation that the respondent imposed restrictions on the claimant's PC, should be struck out but that the remaining complaints would proceed to final hearing. Therefore it remained a live issue to be considered by this Tribunal.

42. Mr Sudra suggests it is not appropriate to "salami slice" the complaints made and as such the entire claim should be dismissed. However, in order to decide whether s. 120(7) applies, we must determine for each of the complaints made by the claimant: (1) what the act complained of is; (2) whether that act is something that may be subject to an appeal or proceedings in the nature of an appeal; and (3) whether such appeal is by virtue of an enactment. Whilst the complaints all arise out of the initial investigation and decision of the respondent and later applications for PCs, we must still identify the act that is actually complained of as being

an act of discrimination/vistimisation in order to determine with the exception in s. 120(7) is applicable.

43. The claimant makes many different factual allegations but a number of those are repeated as complaints of direct discrimination, harassment and victimisation. The complaints of indirect discrimination and failure to make reasonable adjustments also arise out of the same factual allegation. We reminded ourselves that the "act complained of' is the substantive act complained not the legal cause of action itself i.e. what the respondent did or did not do, not the particular type of discrimination that is complained about. We have therefore identified four strands of factual allegation made in the List of Issues and we considered those questions for each of those strands in turn.

Strand 1 - Allegations about the initial investigation and outcome at paragraphs 5.2.1 (excluding sub paragraphs 5.2.1.9, 5.2.1.16, 5.2.1.17 and 5.2.1.18); 5.2.2; 8.1.1 (with the same applicable excluded sub paragraphs), 8.1.2, 9.2.1 (with the same applicable excluded sub paragraphs) and 9.2.2.

What is the act complained of?

44. Firstly the claimant makes allegations at paragraphs 5.2.1; 8.1.1 and 9.2.1 that the respondent "failed to properly investigate the claimant's professional circumstances" and at 5.2.2, 8.1.2 and 9.2.2 that the respondent "*wrongly conclude the claimant did not have appropriate professional indemnity insurance from 2015*". The deficiencies relied upon in the investigation process are further particularised at paragraphs 5.2.1.1 to 5.2.1.19 and these same deficiencies are relied upon for all acts said to be direct discrimination, harassment and victimisation in the claim. Allegations 5.2.1.9 and

5.2.1.18 (which relate to complaints made by the claimant against respondent staff and a purported 'grievance'), and allegations 5.2.1.16 and 5.2.1.17 (which relate to decisions relating to later applications for a PC) are addressed separately below. For all other complaints here, the "investigation" that is complained about is the investigation conducted by the respondent commenced on 5 June 2015 (see paragraph 36.20) culminating in to the decision of EW on 14 June 2016 to impose three sanctions on the claimant, namely the Rebuke, the PC Conditions and the Costs Direction (see paragraph 36.33). The investigation and the outcomes here are inexorably linked and it is not possible to split these acts out. Therefore we find that the substantive act complained of for all such matters is the investigation resulting in EW's decision to impose Rebuke, the PC Conditions and the Costs Direction.

Is that act subject to an appeal?

45. This claimant was informed of the right of appeal against EW's decision when he was notified of it 20 June 2016 (paragraph 36.34). This letter also informed him that whilst the imposition of the Cost Direction did not have a freestanding right of appeal attached to it, an appeal against the substantive decisions would also put on hold any requirement to pay costs pending the outcome of the appeal (in effect providing an appeal against this as well). An appeal could have raised any issue the claimant wished about the nature of the investigation which led to the decision including that the respondent acted in a discriminatory fashion. On hearing such an appeal, and by virtue of both sections 13 and/or 13A and 44E of the Solicitors Act 1974 (paragraph 31 above) and its own inherent jurisdiction to control its own processes and the procedures, the

High Court had power to make such order on an appeal under this section as it may have thought fit. It would also, and was indeed required to as set out in the **Ali** case above, have the power to scrutinise and address allegations of discrimination and come to a substantive determination about them.

Is the appeal by virtue of an enactment?

46. The issuing of the Rebuke and the PC Conditions are matters over which the claimant had a right to appeal by virtue of an enactment. The right of appeal to the High Court against a decision to impose a condition on a PC is set out at section 13 (1) (c) and/or 13(A) (6) of the SA. The right to appeal to the Solicitors Disciplinary Tribunal (and subsequently the High Court) against the decision to rebuke a person is set out at section 44E (1) (a) and 44E (6) of the SA. Those rights are further set out in the SRA Appeal Rules at Rule 5, Annex 2 (1) & (2) and Annex 3 (9). Section 44C (3) of the SA also makes provision for regulations to be made regarding the repayment of charges payment in certain circumstances.

47. Therefore the allegations of direct discrimination, harassment and/or victimisation set out at paragraph 5.2.1, 8.1.1 and 9.2.1 (excluding sub paragraphs 5.2.1.9, 5.2.1.16, 5.2.1.17 and 5.2.1.18 and equivalent excluded sub paragraphs), 5.2.2, 8.1.2 and 9.2.2 are dismissed because the Tribunal has no jurisdiction to hear the same by virtue of section 120(7) of the EQA.

Strand 2 - Allegations relating to complaints made by the claimant against the respondent itself at paragraphs 5.2.1.9 and 5.2.1.18 (and the equivalent sub paragraphs as they appear in paragraphs 8.1.1 and 9.2.1).

What is the act complained of?

48. Allegations 5.2.1.9 (where the claimant complains that the respondent did not pay adequate attention to its own policy in respect of complaints against staff and ignored his complaints) and (to the extent this is a valid allegation at all 5.2.1.18 the failure to deal with a 'grievance') relate to a different "investigation". This appears to be an allegation about the way the respondent investigated those complaints made by the claimant about its own employees. The claimant first made complaints about the respondent itself on or around 28 September 2015 when he complained about the way it had handled his earlier complaint about SM LLP (paragraph 36.18). He then subsequently complained about JD placing a block on his e mails on 23 December 2015 and also made an allegation of race discrimination on 31 December 2015 (paragraph 36.19 above). MJ addressed these complaints in a Stage 2 review, the outcome of which was in a letter sent to the claimant on 30 January 2016 (paragraphs 36.18 and 36.19). There was a further complaint about race discrimination on 10 April 2016 which was referred to JW on 11 April 2016 (paragraph 36.29). JW provided her Stage 1 outcome to this complaint on 9 May 2016 further informing the claimant that the restrictions on his communications would be reinstated (paragraph 36,29 and 36.20).

Is that act subject to an appeal?

49. There is a right of appeal against decisions made at Stages 1 and 2 of the Complaints Process which is set out in the respondent's policy and procedure for handling complaints (paragraph 36.8). An appeal against a Stage 1 decision is to the Corporate Complaints team (who issue a Stage 2 decision) and

then a further appeal against the Stage 2 decision is available to the Independent Reviewer. MJ informed the claimant of his right to appeal against her Stage 2 decision in her letter of 30 January 2016 (paragraph 36.19) and JW informed the claimant of his right to appeal against her Stage 1 decision this time to the Corporate Complaints Team in her letter of 11 April 2016 (paragraph 36.30). It is clear that the Independent Reviewer's remit included complaints of discrimination (paragraph 36.8)

Is the appeal by virtue of an enactment?

50. We had more difficulty in determining whether the appeal to the Independent Reviewer that was clearly offered to the claimant was by virtue of an enactment. The Tribunal were not addressed on this as the respondent submitted that all elements of the claim had to be considered as one act and so did not address this point explicitly. With respect, the Tribunal has concluded that this is not the correct approach and it is necessary to identify each act complained of in some level of granularity including where any right of appeal derives from. The right to appeal against decisions on complaints made against the respondent is set out in its complaints procedure (see paragraph 36.8) but it is unclear to this Tribunal where that procedure is derived from and whether it is "by virtue of an enactment". On this basis we cannot conclude that the Tribunal has no jurisdiction to hear allegations of direct discrimination, harassment and/or victimisation set out at paragraph 5.2.1.9 and 5.2.1.18 by virtue of section 120(7) of the EQA.

Strand 3 - Allegations about the subsequent decisions to retain/not remove the conditions on the claimant's PC in 2016, 2017, 201, 2019 and 2021

at paragraphs 5.2.1.16; 5.2.1.17 (and the equivalent sub paragraphs as they appear in paragraphs 8.1.1 and 9.2.1) paragraph 5.2.3; 8.1.3; 9.2.3 and relating to a registered European lawyer on 30 September 2021 at 5.2.4, 8.1.4 and 9.1.4.

What is the act complained of?

51. The acts complained of in these various allegations is more straightforward although it encompasses more factual events. Here it is abundantly clear that the claimant is complaining about the each of the decisions made in subsequent years from 2016 onwards to continue to impose conditions on his PC or more correctly to issue a PC for the relevant year subject to conditions. Our findings of fact about these decisions are set out at paragraphs 36.35-36.43. The act complained of in each allegation is the same fundamental act and that is a decision to impose conditions on his PC. This decision was made each year and communicated to the claimant. He also complains about a purported application (which he denies making) to be a registered European lawyer and our findings of fact on that act complained of are at paragraphs 36.44 and 36.45.

Is that act subject to an appeal?

52. On various occasions that the claimant is informed that his PC will be issued subject to conditions, he is informed by the decision maker, that he has the right to appeal against that decision to the High Court (see paragraphs 36.35, 36.36, 36.40). That right of appeal applied to all such decisions to impose conditions and under section 13 (1) (c) SA (above) and its own inherent jurisdiction to control its own processes and the procedures, the High Court had the power to affirm the

decision, remove the conditions or make such order on an appeal under this section as it may have thought fit. It would also, as set out in the Ali case above, have the power and be required to address allegations of discrimination and make findings on them. There is also a right of appeal against a decision in relation to registration as a European lawyer to the High Court if the claimant had in fact made such an application(see below).

Is the appeal by virtue of an enactment?

53. The issuing of PCs which included the imposing of conditions (and decisions about applications for registrations as a European lawyer) were both clearly matters over which the claimant had a right to appeal by virtue of an enactment. The right of appeal to the High Court against a decision to impose a condition on a PC is set out at section 13 (1) (c) of the SA. That rights is further set out in the SRA Appeal Rules at Rule 5, Annex 3 (9). The right of appeal to the High Court against decisions in respect of registration in the register of European lawyers is set out at Rule 5 and Annex 3 (8) of the SRA Appeal Rules were made under sections 2, 13, 28 and 31 of the Solicitors Act 1974, section 9 of the Administration of Justice Act 1985, section 89 of, and paragraphs 2 and 3 of Schedule 14 to, the Courts and Legal Services Act 1990, and section 83 of, and Schedule 11 to, the Legal Services Act 2007

54. Therefore the allegations of direct discrimination, harassment and/or victimisation set out at paragraph 5.2.1.16; 5.2.1.17 (and the equivalent sub paragraphs as they appear in paragraphs 8.1.1 and 9.2.1) paragraph 5.2.3; 8.1.3; 9.2.3 and relating to a registered European lawyer on 30 September 2021 at 5.2.4, 8.1.4 and 9.1.4 are dismissed because the Tribunal has no

jurisdiction to hear the same by virtue of section 120(7) of the EQA.

Strand 4 – Indirect discrimination and reasonable adjustments complaints at paragraphs 6 and 7 re use of "small" print,

What is the act complained of?

55. Here the claimant is making a generalised complaint that the respondent had a policy/practice of communicating with users in small print. Leaving aside for the moment whether such a policy existed (which is addressed below), the act complained of is operating such a policy/practice in communications with the claimant and others.

Is that act subject to an appeal?

No specific appeal exists as far as we could see, albeit that the claimant was able to make a complaint under the respondent's complaints process (see paragraph 36.8) and that complaints process ultimately does offer the claimant the right to appeal ultimately to the Independent Reviewer in the same way as the allegations made at Strand 2 above. Therefore there is a right to appeal.

Is the appeal by virtue of an enactment?

For the same reasons as set out at paragraph [ ] above, we cannot conclude that this right of appeal is by virtue of an enactment and thus it is not correct to say that the Tribunal has no jurisdiction to hear such allegations virtue of section 120(7) of the EQA.

Paragraph 4 - Disability

Paragraph 4.1 - Did the claimant have a disability as defined in section 6 of the Equality Act 2010 at the time of the events the claim is about?

56. The respondent had not conceded any elements in the definition of disability and so it is incumbent on the claimant to prove on the balance of probabilities that he falls within the definition contained in section 6 EQA.

Paragraph 4.1.1 - Did he have a physical or mental impairment: partial sight?

The claimant states on many occasions throughout these proceedings and on many multiple times during correspondence with the respondent since the events leading to this claim began that he is partially sighted (see paragraph 36.1). The medical evidence seen by the Tribunal was that referred to at paragraph 36.1 above that the claimant “sees very poorly” and has a visual acuity score of “near v:0.2”. We also saw some partial e mails making reference to glasses (paragraph 15 above) and his contention in correspondence with the Tribunal from 2022 that he cannot function with glasses and is graded minus 4.5 (paragraph 12). We take note of the advice of the guidance issued by the Secretary of State under section 6(5) of the EQA on matters to be taken into account in determining questions relating to the definition of disability (above) that impairment should be given its ordinary meaning and it is not necessary for the cause of the impairment to be established, nor does the impairment have to be the result of an illness. Therefore we find that the claimant has just about satisfied the burden of showing he has an impairment of “partial sight” from when this was first raised in June 2015.

Paragraph 4.1.2 - Did it have a substantial adverse effect on his ability to carry out day-to-day activities?

57. Although we were satisfied that the claimant had an impairment in relation to his sight, the medical or any other evidence does not assist the Tribunal in determining what the impact was on the claimant's ability to carry out day-to-day activities at the time of the alleged discrimination between 2015 and 30 September 2021. We take note of the fact that the provision requiring the Tribunal to consider the effect of an impairment without measures taken to correct them does not apply to sight impairments to the extent that they are capable of correction by spectacles or contact lenses (Sch1, Para 5(3)) EQA above). Therefore the effects on ability to carry out normal day-to-day activities are those which remain when spectacles or contact lenses are used (or would remain if they were used). The claimant had been ordered on at least two occasions to adduce medical and other evidence to support his contentions on disability (see paragraphs 14 and 18 above). The claimant's own contention in these proceedings is that he cannot function properly without his glasses (paragraph 12). He informs the respondent that he cannot see very well with his "old glasses" and whilst he states on a number of occasions he is blind, there is no independent evidence whatsoever to support this. The Tribunal has considered carefully whether other evidence about this impairment has been produced to assist it in making the determination on what its effects were, but ultimately we are unable to conclude that the claimant has satisfied the burden of proof to show that the effects of any impairment related to sight on his ability to carry out day-to-day activities were substantial and adverse.

58. As the claimant had not satisfied us that any physical impairment had a substantial adverse effect on his ability to carry out day-to-day activities, it is not necessary to consider the remaining questions identified as issues numbered 4.1.3 to 4.1.5 about whether the effects were long term or likely to recur. The claimant has not shown that at the time of the alleged discrimination a disabled person as defined by section 6 EQA.

Paragraph 5 - Direct age, disability, race discrimination (Equality Act 2010 section 13)

Paragraph 5.1 - The claimant's age group is 50s, he is a black male and has partial sight.

59. It is clear to us from the claimant's evidence at the Tribunal that he holds a genuine and strong belief that he has been discriminated against in particular because of his race and his purported disability. The claimant was less resolute on age and we were not convinced that the claimant held a genuine belief that his age played a part in the respondent's decision making. He was unable to explain the basis for the age discrimination complaint, other than stating it was about being too old, rather than being too young comparatively. However in all instances for us to reach the conclusion that the claimant has been subjected to such discrimination, there must be evidence, although it is possible that evidence could be inferences drawn from relevant circumstances. A belief, that there has been unlawful discrimination, however strongly held is not enough. It is accepted that the claimant is a black male in the age group of 50s but as we have concluded above, the claimant has not shown that his partial sight amounts to a disability within the meaning of section 6 EQA. To the extent that his complaints of discrimination

related to that alleged protected characteristic, then they can go no further on this basis alone.

Paragraph 5.2 Did the respondent do the following things:

Paragraph 5.2.1 Failed to properly investigate the claimant's professional circumstances. The alleged deficiencies in the respondent's investigation process are as follows:

Paragraph 5.2.1.1 The Respondent sending the letter of 14 June 2016 without the allegation letter, thereby denying the Claimant the opportunity to provide the investigation team with his version of events before it decided that he had breached the rules or had a case to answer.

60. The Tribunal has no jurisdiction to consider this complaint by virtue of section 120(7) of the EQA. Nonetheless for completeness we refer to our findings at paragraphs 36.21-23 and 36.27 above. The claimant received the letter setting out the allegations made against him and a large number of attachments (and was sent these again on 4 May 2016) before the decision was made on 14 June 2016 so this allegation is not made out on the facts in any event.

Paragraph 5.2.1.2 The Respondent's failure to make any or any reasonable efforts to ensure that the Claimant had an opportunity to address the investigation team before it decided whether he had a case to answer.

61. The Tribunal has no jurisdiction to consider this complaint by virtue of section 120(7) of the EQA. Nonetheless for completeness we refer to our findings of fact at paragraph 36.24 and 36.25. The claimant sent

vast numbers of e mails to the respondent which gave him the opportunity to set out his case but these were in the main unclear, irrelevant and confusing. Even when restrictions on communication were put in place by the respondent to prevent the misuse of e mail, the claimant was given the opportunity to correspond by post (paragraph 36.30). This allegation was not made out on the facts.

Paragraph 5.2.1.3 The lack of consideration by the investigation team of the Claimant's racial background.

62. It is not entirely clear what the allegation is but in any event, the Tribunal has no jurisdiction to consider this complaint by virtue of section 120(7) of the EQA. Those complaints the claimant did raise about alleged race discrimination were investigated and responded to by the respondent's complaints team in any event (see paragraphs 36.19 and 36.29).

Paragraph 5.2.1.4 The acceptance by the investigation team of the uncorroborated evidence of Ruth Van Druemel despite the absence of any or any reasonable grounds for doing so.

63. The Tribunal has no jurisdiction to consider this complaint by virtue of section 120(7) of the EQA. This allegation is unclear and in any event our findings of fact at paragraphs 36.20-36.27; 36.31 and 36.33 (where in particular EW made a different decision that RVD) would have led us to conclude that this allegation is not made out on the facts.

Paragraph 5.2.1.5 Failure by the investigation team to pursue lines of enquiry during its interviews with potential witnesses that could have verified the claimant's account such as Mr. Paul Bailey and Stuart

Knight's letters. This would have easily lead to the unearthing of matters which would have rebuffed the investigation team's belief that the claimant had a case to answer.

The Tribunal has no jurisdiction to consider this complaint by virtue of section 120(7) of the EQA. We dealt with this factual allegation at paragraphs 36.16-36.17 & 36.28 above and did not accept that the matters dealt with by the LO had the effect suggested by the claimant as the LO and the respondent were investigating entirely different aspects of the circumstances of these complaints. This allegation would therefore have failed on the facts.

Paragraph 5.2.1.6 The deliberate or negligent misinterpretation by the investigation team of evidence adduced by witnesses.

64. It is not entirely clear what the allegation is but in any event (no witnesses were interviewed during the investigation (see paragraph 36.22), the Tribunal has no jurisdiction to consider this complaint by virtue of section 120(7) of the EQA.

Paragraph 5.2.1.7 Repeated unreasonable delays by the investigation team to respond to the claimant's correspondence throughout the period of the investigation.

Paragraph 5.2.1.8 Repeated unreasonable delays by the investigation team to respond to the Claimant's requests for better information throughout the period of the investigation.

65. The allegations at 5.2.1.7 and 5.2.1.8 are essentially the same complaint. The Tribunal has no jurisdiction to consider either complaint by virtue of section 120(7) of

the EQA. Moreover we were satisfied that it was the way in which the claimant was conducting himself in correspondence with RVD (see findings of fact at paragraphs 36.24 and 36.25) that caused any delay. There were no repeated unreasonable delays so this allegation would have failed on the facts.

Paragraph 5.2.1.9 The failure by the Respondent to pay any or any adequate attention to its own policy in respect of complaints against staff on numerous occasions; in most cases they completely ignored the claimant's complaint.

66. The Tribunal does have jurisdiction to consider this complaint. Our findings of fact at paragraphs 36.8, 36.18, 36.19, 36.29 and 36.30 address the complaints policy and the way the claimant's complaints against it staff were handled by the respondent. We were not able to conclude that the claimant has shown that there was any failures at all on the respondent's part to comply with its policies on complaints nor that any of his complaints were ignored. The complaints were dealt with appropriately and promptly and responded to. This allegation is not made out on the facts and is dismissed.

Paragraph 5.2.1.10 Failure to complete the investigation in a timely fashion.

67. The Tribunal has no jurisdiction to consider either complaint by virtue of section 120(7) of the EQA. The way in which the claimant was conducting himself in correspondence with RVD (see findings of fact at paragraph 36.24 and 36.25) did cause some delays. Nonetheless despite this, the investigation having commenced on 5 June 2015 and concluded on 7 April 2016 was in any event completed within the respondent's aspirations to conclude investigations

before they became 'aged' matters. We conclude the investigation was completed in a timely fashion and this allegation would not have succeed on the facts in any event.

<u>Paragraph 5.2.1.11 The conduct of the investigation team's formal proceedings in a manner not in accordance with the rules.</u>

68. The Tribunal has no jurisdiction to consider either complaint by virtue of section 120(7) of the EQA. No specifics are provided about this allegation in any event and we could not find it would have succeeded on the facts given our findings of fact at paragraphs 36.20-36.27 and 36.31-36.34 which was thorough and followed the processes set out for dealing with such matters proscribed by the respondent (paragraphs 36.5-36.7).

<u>Paragraph 5.2.1.12 The production of a report by the investigation team in 2015 that found that the claimant had a case to answer - without the allegations having been put to the claimant.</u>

69. The Tribunal has no jurisdiction to consider either complaint by virtue of section 120(7) of the EQA. In any event, see our conclusions at paragraphs 60 and 61 above in relation to allegations 5.2.1.1 and 5.2.2.2. This would not have succeed on the facts in any event.

<u>Paragraph 5.2.1.13 The failure by the Respondent to provide the Claimant with copies of the meeting notes collated by the investigation team, adversely affecting the Claimant's ability to defend himself against all complaints.</u>

70. The Tribunal has no jurisdiction to consider either complaint by virtue of section 120(7) of the EQA. In any

event we found at paragraph 36.22 that no meeting notes were collated in the investigation conducted by the respondent so this allegation would have failed on the facts in any event.

Paragraph 5.2.1.14 The failure by the respondent to require the claimant to adduce further evidence in light of overwhelming evidence that the procedure used was flawed and the complaints against the claimant were unfounded.

71. The Tribunal has no jurisdiction to consider either complaint by virtue of section 120(7) of the EQA. In any event, for the same reasons as set out in paragraph 61 above in relation to the allegation at 5.2.1.2, this allegation would not have succeeded on the facts in any event.

Paragraph 5.2.1.15 The intimidation of the Claimant by EW who was the adjudicator at the first decision making process – she ignored all requests for better information and made a decision based on lies.

72. The Tribunal has no jurisdiction to consider either complaint by virtue of section 120(7) of the EQA. Moreover the claimant had no direct interaction with EW in the first decision making process (see paragraphs 36.31-36.33) as all communication was directed via RVD (paragraph 36,44). It is difficult to see how this could have been seen as intimidation of the claimant. There did not appear to be any requests made to EW and there was no evidence that her decision was based on lies. This claim would have been unsuccessful on the facts in any event.

Paragraph 5.2.1.16 Failure to inform the claimant of the change of facts relied upon for each decision from 2015 2016 2017 2018 2019 2021.

73. The Tribunal has no jurisdiction to consider this complaint by virtue of section 120(7) of the EQA. Even if this is not the case, we refer to our findings of fact at paragraphs 36.35-36.43. On each occasion when the claimant was issued with a PC subject to conditions from 2015 onwards, the respondent sent a report setting out in full its reasons for the decisions made which were sent to the claimant. This allegation would not have been successful in any event.

Paragraph 5.2.1.17 The failure by adjudicators to discuss the hearing with each other to correct the anomalies.

74. The Tribunal has no jurisdiction to consider this complaint by virtue of section 120(7) of the EQA. The reference to anomalies appears to have been the typographical errors raised repeatedly by the claimant during the hearing which were in some cases repeated in later reports. It is not clear on what basis the claimant suggests that adjudicators should have been discussing the matter with each other. This allegation was so unclear as to have been likely to fail on the facts in any event.

75. Paragraph 5.2.1.18 The failure by the Respondent to deal with the Claimant's grievance in good time or at all.

This was a puzzling allegation simply because it was never suggested or contended that the claimant was an employee of the respondent who would have been entitled to raise a grievance against the respondent. However to the extent that this is an allegation about

failure to deal with complaints made against the respondent, for the same reasons as set out in paragraph 66 above in relation to allegation 5.2.1.9, this complaint is dismissed as having not been made out on the facts.

76. Paragraph 5.2.1.19 The failure by the Respondent to provide any or any adequate explanation for the failings of the investigation team in finding that the Claimant had a case to answer or breached the codes of practices.

The Tribunal has no jurisdiction to consider this complaint by virtue of section 120(7) of the EQA. In any event as per our findings of fact at paragraphs 36-21-36.27 and 36.31-36.34, we conclude that the reports and all correspondence prepared by RVD and by EW contained a full and detailed and certainly adequate explanation for the findings made, thus the complaint would have failed on the facts in any event.

Paragraph 5.2.2 Wrongly concluded the claimant did not have appropriate professional indemnity insurance from 2015.

77. The Tribunal has no jurisdiction to consider this complaint by virtue of section 120(7) of the EQA. For completeness please see our findings of fact on this matter at paragraphs 36.12 and 36.13 above. We did not find that the conclusion of the respondent was wrong and thus this allegation would have failed on the facts in any event.

Paragraph 5.2.3 Failed to review the restrictions and remove the same from the claimant's practising certificate.

The Tribunal has no jurisdiction to consider this complaint by virtue of section 120(7) of the EQA. Even

if this is not the case, we refer to our findings of fact at paragraphs 36.35-36.43. On each occasion when the claimant applied for and was issued with a PC subject to conditions from 2015 onwards, the respondent reviewed in detail whether the conditions should remain setting out its rationale in a very detailed and clear manner. This allegation would not have been successful on the facts.

Paragraph 5.2.4 Purported to approve the claimant's application as a registered European lawyer on 30 September 2021 following a successful appeal by the claimant. However, the claimant had made no such appeal or application.

78. The Tribunal has no jurisdiction to consider this complaint by virtue of section 120(7) of the EQA. Even if this is not the case, we refer to our findings of fact at paragraph 36.44 that this allegation was not made out on the facts in any event.

Paragraph 5.3 Was that less favourable treatment?

79. As the Tribunal had no jurisdiction to consider the majority of the above complaints by virtue of section 120(7) of the EQA, and those that it did were not made out on the facts, it is not necessary to decide whether the claimant was treated worse than someone else (where there were no material difference in circumstances) was treated. This complaint was to be decided on the basis of whether the claimant was treated less favourably than a hypothetical comparator. The claimant had in any event adduced no evidence (and there were no inferences which we could make from our findings) which would have led us to conclude that there was any less favourable treatment at all so it

is hard to see how this element of the complaint could have succeeded.

Paragraph 5.4 - If so, was it because of age, disability, race?

80. As all of the allegations failed on the facts or on jurisdictional matters, it was again unnecessary to determine whether any treatment was because of age or race. As the claimant had not shown he possessed the protected characteristic of disability, this claim failed on this basis alone. In any event, we entirely accepted the submissions of the respondent that the the claimant has not raised a prima facie case of direct discrimination such as to cause the burden of proof to shift to the Respondent under s.136 EQA. Even if any of the allegations stood up factually, the mere fact that these took place and the fact of the claimant possessing protected characteristics cannot without more prove discrimination as per **Madarassy v Nomura International (above).** We cannot conclude that the claimant's age or race was a relevant factor in any treatment by the respondent so the complaints would have failed on this ground in any event.

81. As none of the above complaints have made it past this first stage, it is unnecessary for us to determined the questions at Paragraph 5.5 and Paragraph 5.6 above.

82. All of the complaints of direct race, age and disability discrimination are accordingly dismissed

Paragraph 6 - Indirect discrimination (Equality Act 2010 section 19)

Paragraph 6.1 -The protected characteristic relied upon is disability: partial sight.

83. For the reasons set out above the claimant not shown that at the time of the alleged discrimination he was a disabled person as defined by section 6 EQA. Therefore this complaint can go no further and is dismissed. It is not necessary for us to consider the remaining questions set out at sub paragraphs 6.2 to 6.8. In our findings of fact we did consider the issue raised more generally by the claimant that the respondent communicated to him in "small print". We were unable to find that this was ever the case. We refer to our findings of fact at paragraph 36.9 above about font size used more generally. Moreover the respondent offered the claimant the opportunity to ask for correspondence to be sent to him in a larger font in a letter sent by JW on 9 May 2016 (see paragraph 36.29). The claimant never responded to this. The complaint of indirect disability discrimination is dismissed.

Paragraph 7 - Reasonable Adjustments (Equality Act 2010 sections 20 & 21)

84. For the same reasons set out at paragraph 83 above, the claimant's complaint under sections 20 & 21 EQA must fail and we make precisely the same observations regarding the factual allegations about the font size. There is no requirement to go on to consider the issues identified in the remaining subsections of paragraph 7 of the List of Issues. The claim in respect of a failure to make reasonable adjustments is dismissed.

Paragraph 8 - Harassment related to race, age, disability (Equality Act 2010 section 26)

85. The claimant relies upon precisely the same factual allegations as amounting to unwanted conduct and harassment related to race, age and disability under paragraph 8 of the List of Issues as he does for his

complaints of direct race, age and disability discrimination. None of those allegations was successful either because the Tribunal had no jurisdiction or because the allegation was not made out on the facts. For precisely the same reasons as set out above, the complaints of harassment set out at paragraph 8 under section 26 EQA fail and are dismissed.

Victimisation (Equality Act 2010 section 27)

Paragraph 9.1 - Did the claimant do a protected act as follows:

9.1.1 Complain in writing in 2015 that he was being discriminated against?

86. We refer to our findings of fact at paragraph 36.18 above. The claimant complained on 31 December 2015 of face discrimination and we conclude that the claimant did a protected act on this occasion.

Paragraph 9.2 Did the respondent do the following things:

87. The same factual allegations as are relied upon as allegations of direct race, age and disability discrimination are also relied upon as being detriments on the grounds of having made a protected act. For the same reasons, those complaints fail (either on jurisdictional grounds or on the basis of failure to establish the facts) and it is not necessary to consider the remaining questions listed in the remaining sub paragraphs of paragraph 9 of the List of Issues. The complaint of victimisation under section 27 EQA is dismissed.

88. Although none of the claimant's complaints of discrimination have been held to be successful, we have also considered the issue of limitation as this was identified at paragraph 3 the List of Issues. Mr Sudra submits that anything that happened before 25 September 2020 (or 13 July 2020 in relation to the 1st Claim) is potentially out of time. Many of the complaints made would on their face be presented out of time unless they formed part of a continuing act ending with an act of discrimination presented in time. Since we have not found any of the complaints to be well founded on their merits, these cannot form part of a continuing act of discrimination with any later acts.

89. The Tribunal, therefore, only had jurisdiction to consider allegations if it is just and equitable to do so in all the circumstances. Considering the relevant law above, in particular, British Coal Corporation v Keeble and Robertson v Bexley Community Care above, we concluded that would have been just and equitable to extend time to consider these and accordingly we determined all such allegations on other jurisdictional points or on their merits as set out above. As the evidence had all been collated and prepared by the respondent and presented and heard at the time we were considering this issue, it caused no prejudice to the respondent for us to consider these allegations with those that would have been in time.

Employment Judge Flood

12 June 2023