EMPLOYMENT TRIBUNALS

Claimant: Alan Blacker

Respondent: The Bar Standards Board

Heard at: London Central (by video) **On:** 6 December 2024

Before: Tribunal Judge Andrew Jack, acting as an Employment Judge

Representation
Claimant: In person
Respondent: Mrs. H Winstone, counsel

PRELIMINARY HEARING IN PUBLIC
RESERVED JUDGMENT

The Tribunal determines that, pursuant to s. 120(7) of the Equality Act 2010, it has no jurisdiction to hear and determine any of the Claimant's complaints. Accordingly, all of the Claimant's complaints are struck out as having no reasonable prospect of success under rule 37(1)(a) of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013.

REASONS

Background

1. The most recent event that the claimant complains about is a decision made on 12 March 2024. Early conciliation took place from 15 April 2024 to 27 May 2024. The claim form was presented on 28 May 2024.

2. The General Council of the Bar has delegated its regulatory functions to the respondent. The respondent, exercising its delegated functions of the General Council of the Bar, regulates admission to the Bar.

3. The claimant applied to become a member of Inner Temple in February 2020. His application was referred to the Inn's Conduct Committee, who

decided in August 2020 that the claimant was not a 'fit and proper person' to be admitted to an Inn of Court.

4. The claimant applied for a review of this decision by the respondent. On 29 September 2020 a panel of the respondent's Independent Decision-making Body upheld the decision.

5. The claimant was able to apply to Inner Temple again, and did so in 2023. The Inn's Conduct Committee again decided that the claimant was not a 'fit and proper person' to be admitted to an Inn of Court. The claimant again sought a review by the respondent, and on 12 March 2024 a panel of the respondent's Independent Decision-making Body again upheld the decision.

6. The claim form was presented on 28 May 2024.The claim against the respondent concerns the two decisions of the respondent's Independent Decision-making Body. The claimant alleges direct disability discrimination, indirect disability discrimination and a failure to make reasonable adjustments. The respondent's panels are said to have acted in a discriminatory manner, to have failed to take any account of the claimant's disability and to have failed to make any reasonable adjustments in their thinking e.g. regarding the application of the burden of proof, reasoning and final decision making processes. His claim is set out in his ET1: bundle, p. 13. The claimant says that collectively and individually the various breaches of the Equality Act 2010 prevented the Independent Decision-making Body from reaching fair and sound decisions[1]: p. 385. His disability impact statement sets out the impairments upon which he relies as disabilities within the meaning of section 6 of the Equality Act 2010: p. 408.

7. There was a preliminary case management hearing before EJ Emery on 30 September 2024.

8. The purpose of today's preliminary hearing in public is to consider the respondent's application that the claim should be struck out on the basis that the Tribunal has no jurisdiction to hear this claim.

9. At the start of the hearing the claimant requested reasonable adjustments. He asked for understanding if he needed to leave the hearing without notice because of a gastrointestinal condition for which he is awaiting surgery. He asked for understanding if I heard beeping due to medication being delivered or a health monitor. He also asked for comfort breaks of 5 minutes every hour if possible. I agreed to all of this. In the event, we had two 10 minutes breaks when I heard beeping. I also offered a break before the claimant started his submissions. However he was happy to start without a break and told me that he would say if he needed a break.

10. There was a bundle of 429 pages. Mrs. Winstone had provided a skeleton argument, which had been copied to the claimant. The claimant had also

[1] Further details regarding the background to his claim is given in his document entitled Claimant's Amended Particulars of Claim (pages 383 - 389), which seeks to add a claim of direct age discrimination. That document is helpful in understanding the claim, although the application to amend has not yet been determined. The issue of jurisdiction needs to be dealt with first: if the Tribunal lacks jurisdiction, it lacks jurisdiction to permit amendments.

provided written arguments on jurisdiction (at p. 390 of the bundle and following). Both parties made detailed oral submissions.

11. There was some discussion about when the claimant had been provided with the bundle by the claimant's solicitors. The respondent provided a very detailed chronology of its contact with the claimant since 20 September 2024. The claimant explained that his complaint related to the stress and inconvenience of being ignored, and maintained that the conduct of the respondent's solicitors had caused him stress and emotional pain. There was however no suggestion that the claimant was unable to proceed with the hearing or that he had not been able to properly prepare. Indeed the claimant told me that he had made focused notes, and it was clear from his submissions that he had done so.

The Law

12. The relevant parts of sections 53, 54 and 120 of the Equality Act 2010 (EA) provide:

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.

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.

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);

…..

(7) Subsection (1)(a) does not apply to a contravention of section 53 in so far as the act complained of may, by virtue of an enactment, be subject to an appeal or proceedings in the nature of an appeal.

13. The relevant part of section 24 of the Crime and Courts Act 2013 provides:

24 *Appeals relating to regulation of the Bar*

(2) The General Council of the Bar, an Inn of Court, or two or more Inns of Court acting collectively in any manner, may confer a right of appeal to the High Court in respect of a matter relating to—

…..

(d) admission to an Inn of Court or call to the Bar.

…..

(6) The High Court may make such order as it thinks fit on an appeal under this section.

14. *Michalak v General Medical Council* [2017] UKSC 71 is a decision of the Supreme Court. It concerned whether the availability of judicial review was sufficient for the s. 120(7) EA exclusion to apply, and the Court held that it was not. Lord Kerr said this:

> 16. Not only was the employment tribunal designed to be a specialised forum for the resolution of disputes between employee and employer, it was given a comprehensive range of remedies which could be deployed to meet the variety of difficulties that might be encountered in the employment setting. Thus, for instance, the tribunal may make a declaration as to the rights of the complainant and the respondent in relation to the matters that arise in the proceedings before it (section 124(2)(a)); it may order a respondent employer to pay compensation to a complainant employee (section 124(2)(b)); and it may make a recommendation (section 124(2)(c)). If a recommendation is not followed, the tribunal has power (under section 124(7)) to increase the award of compensation, or, if an award has not been already made, to make one.
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> 17. These considerations provide the backdrop to the proper interpretation of section 120(7). Part of the context, of course, is that appeals from decisions by qualification bodies other than to the employment tribunal are frequently available. It would obviously be undesirable that a parallel procedure in the employment tribunal should exist alongside such an appeal route or for there to be a proliferation of satellite litigation incurring unnecessary cost and delay. Where a statutory appeal is available, employment tribunals should be robust in striking out proceedings before them which are launched instead of those for which specific provision has been made. Employment tribunals should also be prepared to examine critically, at an early stage, whether statutory appeals are available.
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> 18. Parliament plainly 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. That rationale can only hold, however, where the alternative route of appeal or review is capable of providing an equivalent means of redress.

> 19. Quite apart from the range of remedies available to it, the employment tribunal, as a forum for dealing with complaints by employees concerning their employment, has distinct advantages for complainants. It is a specialist tribunal with expertise in hearing discrimination claims across a range of sectors; it is designed to be accessible to litigants in person; and it is generally a cost-free jurisdiction (rule 74 of the Employment Tribunals Rules of Procedure 2013).
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> *Proceedings in the nature of an appeal*
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> 20. In its conventional connotation, an "appeal" (if it is not qualified by any words of restriction) 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 or court from which the appeal was taken and, if it disagrees with those conclusions, substitute its own. …..

15. In *Ali v Office of the Immigration Services Commissioner*, [2021] I.C.R. 452, EAT, Judge Auerbach said that there is no requirement in s. 120(7) that the provision conferring the right of an appeal expressly provides a right to appeal of the grounds that the respondent has done something that amounts to an act of discrimination. The only requirement is that the "act complained of" be the subject of an appeal, and "act complained of" means the substantive conduct complained of: paragraph 33.

16. Judge Auerbach did not accept a submission based on the alternative appeal tribunal available in that case (the First-tier Tribunal) not being a suitable specialist forum. He accepted that employment tribunals do indeed have particular expertise and experience in hearing and determining claims of discrimination, but rejected the submission giving three reasons: see paragraphs 42-45. The first is that Parliament has not given employment tribunals exclusive jurisdiction over all claims and issues arising under the EA. The second was that the words of s. 120(7) are plain: where s. 120(7) applies it robs the tribunal for the jurisdiction that it might otherwise have had under s. 53. The third was that, in this area, there is no concurrent jurisdiction: where s. 120(7) does apply, it makes sense for the jurisdiction to be confined to the alternative statutory route.

17. Judge Auerbach did not accept a submission based on the difference in the remedies available to the employment tribunal and to the alternative appeal tribunal available in that case (the First-tier Tribunal). The submission relied on paragraph 16 of *Michalak v General Medical Council*, quoted above. Judge Auerbach rejected the submission for two reasons. The first was that s. 120(7) excludes the employment tribunal's jurisdiction if the act complained of may be subject to an appeal. It does not, itself, require that the body that would be seized of those proceedings to have the power to grant the same remedies as the employment tribunal would have, or even equivalent remedies. The second was that Lord's Kerr's requirement that the alternative route of appeal is capable of providing an equivalent means of redress requires that the remedies available to

alternative tribunal or court are *effective* or *adequate*, not that the remedies do not *differ*: paragraphs 46-55, see in particular paragraphs 50 and 55.

18. The claimant mentioned *Jooste v General Medical Council* [2012] Eq LR 1048, EAT, in his submissions. I therefore note that the Court of Appeal and the Supreme Court have concluded that *Jooste* was wrongly decided: *Michalak v General Medical Council*, paragraph 30.

Conclusions

19. The parties agree that the respondent is a qualifications body within the meaning of s. 54 EA.

20. So the respondent must not discriminate against a person by not conferring a relevant qualification on them: s. 53(1) EA.

21. Section 53 is in Part 5 (work) of the EA. So, as the parties agree, the employment tribunal potentially has jurisdiction to determine a complaint that the respondent has contravened s. 53.

22. But the tribunal's jurisdiction will be excluded by s. 120(7) EA in so far as the act complained of may, by virtue of an enactment, be subject to an appeal or proceedings in the nature of an appeal. The only issue between the parties (as the claimant confirmed during his submissions) is whether the respondent is correct that s. 120(7) applies.

23. Section 24 of the Crime and Courts Act 2013 is plainly an enactment. By virtue of it, a right of appeal to the High Court has been conferred. There is a right of appeal, provided for by Rule rQ40 of the BSB Rules, against certain decisions of the respondent which adversely affect an individual. There is, in particular, a right of appeal to the High Court in respect of a decision of the Independent Decision-making panel (as the Memorandum of Understanding between the respondent and the Inns of Court makes clear).

24. The claimant complains that he has been subject to disability discrimination by the respondent. It is because of this discrimination, he says, that the Independent Decision-making panel decided against him. He complains that collectively and individually the various breaches of the Equality Act 2010 that he alleges prevented the Independent Decision-making Body from reaching fair and sound decisions. In his submissions the claimant emphasised the importance of his claim in the tribunal, saying that he has not been granted rights of audience before the senior courts and his career prospects have been damaged. He complains, in other words, about the decisions of the Independent Decision-making panel, on the grounds that their decisions were wrong due to disability discrimination.

25. But he has a right of appeal against those decisions. The acts complained of are the decisions of the Independent Decision-making panel. Further, neither section 24 of the Crime and Courts Act 2013 nor Rule rQ40 places restrictions on the grounds on which an appeal can be brought. They do not prevent him bringing an appeal on the basis that the decisions were due to discrimination. Indeed in the appeal in the High Court which he

brought he did argue, for example, that the decision making panels were discriminatory and failed to take account of his disabilities which are protected characteristics under the EA, and that they failed to make reasonable adjustments[2]: p. 280.That appeal has been struck out on procedural grounds. But that does not alter my conclusion that the acts complained of can, by virtue of an enactment, be subject to an appeal in the High Court. Section 120(7) therefore applies, and the employment tribunal therefore lacks jurisdiction.

26. It will already be clear that I do not accept the claimant's submissions with respect to jurisdiction. I now say why.

27. The claimant argued that the claim in the employment tribunal is about the discriminatory way in which the respondent made its decisions and is nothing to do with the decisions made, although the decisions are pleaded by way of background. Conversely, although discrimination was pleaded in the High Court appeal, that is as context only and is not strictly relevant. I do not accept that. It is clear from the claim form that the claim in the employment tribunal concerns the two decisions of the respondent's Independent Decision-making Body. The claimant says that collectively and individually the various breaches of the Equality Act 2010 prevented the Independent Decision-making Body from reaching fair and sound decisions. And in explaining why it is important that he is able to bring proceedings in the employment tribunal he emphasises that as a result of the decisions made he does not have rights of audience in the higher courts and his career prospects have been damaged. His claim in the tribunal cannot accurately be characterised as a complaint about the way in which decisions were reached but not a complaint about the decisions themselves. In the High Court appeal he has argued that the decisions made were discriminatory and failed to take account of his disabilities which are protected characteristics under the EA, and that there was a failure to make reasonable adjustments. His appeal in the High Court cannot accurately be characterised as a challenge to the decisions but not a challenge to the way in which they are made.

28. The claimant emphasised that the employment tribunal is a specialist tribunal with a wealth of experience of discrimination cases. But the words of s. 120(7) are clear. Where s. 120(7) applies it prevents the tribunal having the jurisdiction that it might otherwise have had under s. 53. This submission fails for the reasons summarised at paragraph 16 above.

29. The claimant argued that the tribunal as a specialist tribunal has appropriate remedies available. But in an appeal the High Court may make such order as it thinks fit on an appeal under section 24 of the Crime and Courts Act 2013. The remedies available to the High Court are plainly *effective* or *adequate*, even if they are not identical to the remedies available to the employment tribunal: see paragraph 17 above.

30. The claimant argued that the tribunal is accessible to litigants in person and is generally a costs free jurisdiction. In making these submissions he relied on paragraph 19 of Lord's Kerr's judgment in *Michalak v General*

[2] The claimant has brought both an appeal and an application for judicial review in the High Court. It is clear from the heading and introduction to the document at p. 280 that it is intended to state the claimant's grounds of appeal in the appeal.

Medical Council, quoted above. He argued that the tribunal was therefore the suitable forum for his claim. But those matters are not requirements of s. 120(7). Section 120(7) does not exclude the tribunal's jurisdiction only if the alternative route of appeal is generally a costs free jurisdiction or as accessible to litigants in person as the employment tribunal. Again, the words of s. 120(7) are clear.

31. The tribunal lacks jurisdiction to hear the claimant's complaints. They are therefore all struck out as having no reasonable prospect of success.

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Employment Judge Andrew Jack

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7 December 2024

RESERVED JUDGMENT & REASONS SENT TO THE PARTIES ON

13 December 2024

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FOR EMPLOYMENT TRIBUNALS