Neutral Citation Number: [2018] EWHC 2762 (Admin)

Case No: CO/2922/2018

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT IN WALES
DIVISIONAL COURT

Cardiff Civil and Family Justice Centre
2 Park Street, Cardiff, CF10 1ET

Date: 19/10/18

Before :

LORD JUSTICE HICKINBOTTOM
and
MRS JUSTICE ANDREWS

- -

Between :

JULIANA DORAIRAJ

Appellant

- and -

THE BAR STANDARDS BOARD

Respondent

- -
- -

Marc Beaumont (instructed under **The Bar Public Access Scheme**) for the **Appellant**
Alison Padfield QC (instructed by **Capsticks Solicitors LLP**) for the **Respondent**

Hearing date: 19 October 2018

- -

Approved Judgment (as corrected)

Lord Justice Hickinbottom :

Introduction

1. The Appellant was called to the Bar by Lincoln's Inn on 24 November 2011. She is an unregistered (i.e. non-practising) barrister.

2. In the early hours of 14 February 2015, she was arrested at a night club in Cardiff having been captured on CCTV picking up another customer's unattended purse and placing it in her pocket before attempting to leave the premises. She was taken to Cardiff Bay Police Station, where she was released on bail. In the event, she was not prosecuted. On 16 February 2015, she was dealt with by way of a Community Resolution under which, having accepted responsibility for the offence, she agreed to participate in the Women's Pathfinder Diversion Scheme.

3. As a result of the incident, the Appellant was referred to the Bar Standards Board ("the BSB"). On 13 May 2015, the BSB's Professional Conduct Committee ("the PCC") referred her to the Bar Tribunal and Adjudication Service, because it decided that "there

was a realistic prospect of a finding of professional misconduct being made in relation to the relevant issue… and that the regulatory objectives would be best served by pursuing disciplinary proceedings". At the same meeting, the PCC decided that "having regard to the likely sentence on a finding of misconduct, the light of the nature of the breach and the barrister's previous disciplinary history, referral to a 5 person Disciplinary Tribunal was appropriate".

4. A single charge was drawn, as follows:

> "Juliana Dorairaj, on 14 February 2015, behaved in such a way likely to diminish the trust and confidence which the public places in the profession in that you committed an offence of dishonesty namely theft contrary to Section 1 of the Theft Act 1968, in that she stole a purse belonging to another person and therefore acted in breach of the requirements of Core Duty 5 of the Handbook (1st Edition)".

Core Duty 5 is in the following terms:

> "You must not behave in a way which is likely to diminish the trust and confidence which the public places in you or in the profession"

5. On 18 February 2016, a five-person tribunal chaired by His Honour Judge Curl ("the Panel") heard the charge. Mr Beaumont of Counsel, who appears for the Appellant before us, also appeared before the Panel, where he relied upon two primary submissions. First, he submitted that, there having been no conviction, the Panel had no jurisdiction to determine whether a theft had occurred; and, second, in the circumstances of this case, if a theft did occur, then this was not behaviour that was likely to diminish public trust and confidence in the profession. The Panel rejected those submissions, and found the charge proved.

6. In terms of sanction, the general starting point for any finding of dishonesty is disbarment (see paragraph 6.2 and section B4 of Bar Tribunals and Adjudication Service Sentencing Guidance (Version 3 January 2014 as revised). However, in considering sentence, having heard the mitigation on the Appellant's behalf, the Panel noted that the offence involved a single, "heat of the moment" incident, and the Appellant was of previous good character and had shown genuine remorse. Although the behaviour involved dishonesty, the Panel considered it was "one of those rare cases where disbarment would be disproportionate". It determined that the appropriate sanction would be a 12 month suspension and a fine of £3,000 payable over 12 months.

7. The Appellant duly served the suspension and paid the fine. She also successfully completed the Women's Pathfinder Diversion Scheme.

8. However, on 24 May 2018, the BSB wrote to the Appellant explaining that it had recently come to appreciate that, under the rules applicable at the time, the PCC did not have power to direct her case be heard by a five-person tribunal. It should have been referred to a tribunal of three persons, and "left it to such a panel to determine whether it needed to escalate the case to a five-person tribunal for sentencing", a three-person tribunal being restricted in its sentencing powers. The letter accepted that the decision

to direct the matter to a five-person tribunal was "not valid": but it indicated that the BSB considered that this was a procedural irregularity and not a matter of jurisdiction, the question of the power to refer to a tribunal arising from different rules than those dealing with the constitution of the panel. It therefore did not consider the issue rendered the findings against the Appellant invalid.

9. After further correspondence, on 23 July 2018, pursuant to section 24 of the Crime and Courts Act 2013 and regulation rE236.1 of the Disciplinary Tribunals Regulations 2014 ("the Tribunals Regulations"), the Appellant lodged this appeal against the decision of the Panel to find the charge proved and to impose the sanction that it did. The appeal was lodged out of time, a matter to which I shall return.

10. There is essentially a single ground of appeal, namely that the decision was null and void: it is said that the Panel had no jurisdiction to make it, as the PCC had no power to commit the Appellant as an unregistered barrister to a five-person panel.

The Legal Background

11. The BSB has no separate legal entity, being the regulatory arm of the Bar Council. It has regulatory functions delegated to it by the Bar Council, which is an approved regulator under paragraph 1 of Part 1 of Schedule 4 to the Legal Services Act 2007 ("the 2007 Act"); and it performs that function, in part, through the PCC. The BSB thus investigates disciplinary complaints against members of the Bar and, if considered appropriate, prosecutes disciplinary charges before a panel of the Disciplinary Tribunal of the Bar Tribunal and Adjudication Service set up for the purpose by the Council of the Inns of Court. It has the power to regulate its own procedure.

12. The current rules are set out in the Bar Standards Handbook ("the Handbook"), which incorporates the Code of Conduct, the Complaints Regulations and the Tribunals Regulations. The Handbook applies to all barristers, including unregistered barristers (regulation rI7).

13. Section A3 of the Complaints Regulations concerns "Procedure for dealing with complaints to be handled by the PCC – general". Regulation rE37 sets out the action the PCC must or may take following the completion of an investigation. The relevant paragraphs are rE37.4 and rE38 which, at the relevant time and so far as relevant to this appeal, read:

> "rE37 When any investigation is complete, the PCC must consider the complaint, together with the results of any investigation thereof, and may conclude (having regard to the enforcement strategy and any other published BSB policy that appears to the PCC to be relevant) in respect of complaints made against an applicable person…
>
> .4 that (i) the conduct may constitute a breach of the Handbook; and (ii) if such breach were to be proved, that an administrative sanction… would not be appropriate in all the circumstances, in which case rE38, rE41, rE42 and rE56 to rE66 apply;…

> rE38 Where the PCC has concluded that rE37.4 is applicable, it must refer the complaint to a Disciplinary Tribunal, subject to rE40, provided that no complaint shall be referred unless the PCC is satisfied that:
>
> .1 there is a realistic prospect of a finding of professional misconduct being made or there is a realistic prospect of the disqualification condition being satisfied*;* and
>
> .2 that it is in the public interest, having regard to the regulatory objectives to pursue disciplinary proceedings."

14. A tribunal panel must comprise three or five persons (regulation rE131 of the Tribunals Regulations). A five-person panel must have, as its chair, a judge: a three-person panel may have, as its chair, a Queen's Counsel or judge (regulations rE132-rE133).

15. Regulation rE57 provides:

> "At the same time as the PCC directs that a complaint shall form the subject matter of a disciplinary charge and/or disqualification application before a Disciplinary Tribunal, the PCC must also decide whether a three-person panel or a five-person panel is to be constituted."

16. Regulation rE60 of the Complaints Regulations, again so far as relevant to this appeal:

> "The PCC:
>
> .1 shall direct that a five-person panel is to be constituted if the PCC considers that:
>
> .a the BSB authorised person would be likely to be disbarred or suspended from practice for more than twelve months;…"
>
> Otherwise, the PCC must direct that a three-person panel is to be constituted."

Part 6 of the Handbook defines "BSB authorised persons" in terms of "BSB authorised individuals", which it defines as:

> "… all individuals authorised by the [BSB] to carry on reserved legal activities including:
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> (a) practising barristers;
>
> (b) second six pupils;
>
> (c) registered European lawyers".

Unregistered barristers, such as the Appellant, are therefore not included in the scope of regulation rE60.1.a.

17. Regulation rE160 of the Tribunals Regulations provides that a three-person panel must not "disbar a barrister or suspend a barrister's practising certificate for a period longer than twelve months…"; but, by regulation rE161, if a three-person panel considers that a case before it warrants such a sentence it must refer the case to a five-person panel for it to sentence. For these purposes, Part 6 of the Handbook defines "barrister" as follows:

> "barrister has the meaning given in section 207 of the [2007 Act] and includes
>
> (a) practising barristers;
>
> (b) pupils; and
>
> (c) unregistered barristers;…".

An unregistered barrister therefore does fall within the scope of regulation rE160.

Jurisdiction: The Issue

18. The issue in this appeal is narrow. Mr Beaumont contends that the five-person tribunal panel which found the Appellant guilty of the charge she faced, and then imposed the suspension sentence and fine that it did, did not have jurisdiction to deal with the matter because regulation rE60 of the Complaints Regulations mandated that, where the barrister facing a charge was unregistered, the panel must be of three.

19. Ms Padfield for the BSB submits that that fails to take into account the modern jurisprudence as to the nature and consequences of procedural failures in proceedings.

20. These are matters which have been considered by the Court of Appeal and House of Lords in a series of criminal cases. In R v Soneji [2005] UKHL 49; [2006] 1 AC 340 (which concerned confiscation orders made more than six months after sentence, despite the requirement of sections 71 and 72A of the Criminal Justice Act 1988 that, absent exceptional circumstances, such an order must be made within that time), the House of Lords held that the correct approach to an alleged failure to comply with a provision prescribing the doing of some act before a power was exercised was to ask whether, objectively considered, it was a purpose and intention of the legislature that an act done in breach of that provision should be invalid (see, e.g., the speech of Lord Steyn at [15] and [23]).

21. That chimed with the observation of Lord Woolf LCJ in R v Sekhon [2002] EWCA Crim 2954; [2003] 1 WLR 1655 (a case again concerned with procedural failures in confiscation proceedings) at [29]:

> "We would expect a procedural failure only to result in a lack of jurisdiction if this was necessary to ensure that the criminal justice system served the interests of justice and thus the public or where there was at least a real possibility of the defendant suffering prejudice as a consequence of the procedural failure."

22. R v Ashton [2006] EWCA Crim 794; [2007] 1 WLR 181 concerned irregularities in the manner in which Crown Court judges had exercised the powers of a district judge.

Fulford J (as he then was), giving the judgment of the court, summarised what he described as "the central issue of principle", as follows:

> "4. The outcome of each of these cases essentially depends on the proper application of the principle or principles to be derived from the decision of the House of Lords in R v Soneji…, together with the earlier decision of this court in R v Sekhon…. Indeed, these three applications demonstrate how far-reaching the effect of those authorities is likely to be whenever there is a breakdown in the procedures whereby a defendant's case progresses through the courts (as opposed to the markedly different situation when a court acts without jurisdiction). In our judgment it is now wholly clear that whenever a court is confronted by failure to take a required step, properly or at all, before a power is exercised ('a procedural failure'), the court should first ask itself whether the intention of the legislature was that any act done following that procedural failure should be invalid. If the answer to that question is no, then the court should go on to consider the interests of justice generally, and most particularly whether there is a real possibility that either the prosecution or the defence may suffer prejudice on account of the procedural failure. If there is such a risk, the court must decide whether it is just to allow the proceedings to continue.
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> 5. On the other hand, if a court acts without jurisdiction – if, for instance, a magistrates' court purports to try a defendant on a charge of homicide – then the proceedings will usually be invalid.
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> …
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> 9. In our view Mr Perry, for the respondent, is correct, therefore, in arguing that the prevailing approach to litigation is to avoid determining cases on technicalities (when they do not result in real prejudice and injustice) but instead to ensure that they are decided fairly on their merits. This approach is reflected in the Criminal Procedure Rules and, in particular, the overriding objective. Accordingly, as indicated above at [4], absent a clear indication that Parliament intended jurisdiction automatically to be removed following procedural failure, the decision of the court should be based on a wide assessment of the interests of justice, with particular focus on whether there was a real possibility that the prosecution or the defendant may suffer prejudice. If that risk is present, the court should then decide whether it is just to permit the proceedings to continue."

23. Mr Beaumont also properly drew our attention to R v Clarke [2008] UKHL 8; [2008] 1 WLR 338, which concerned trials in the Crown Court in which (contrary to sections 1 and 2 of the Administration of Justice (Miscellaneous Provisions) Act 1933) the indictment had not been signed. Lord Bingham said:

> "17. Mr Perry [Counsel for the Crown] drew attention to the approval of R v Ashton expressed by a number of distinguished academic authorities, who saw it as a victory of substance over formalism. It is always, of course, lamentable if defendants whose guilt there is no reason to doubt escape their just deserts, although the present appellants, refused leave to appeal (on other points) by the single judge in 1977 and the full court in 1998, have now served the operative parts of their sentences. Technicality is always distasteful when it appears to contradict the merits of a case. But the duty of the court is to apply the law, which is sometimes technical, and it may be thought that if the state exercises its coercive power to put a citizen on trial for serious crime a certain degree of formality is not out of place….
>
> 18. What did Parliament intend the consequence to be, when it enacted sections 1 and 2 of the 1933 Act, if a bill of indictment was preferred but not signed by the proper officer? That, as I think both parties agree, is the question to be answered in this case. The answer to the question now is... inescapable: Parliament intended that the bill should not become an indictment unless and until it was duly signed by the proper officer.
>
> 19. It is necessary to ask a second question. What did Parliament intend the consequence to be if there were a bill of indictment but no indictment? The answer, based on the language of the legislation and reflected in 70 years of consistent judicial interpretation, is again inescapable: Parliament intended that there could be no valid trial on indictment if there were no indictment….
>
> 20. The decisions in R v Sekhon and R v Soneji are valuable and salutary, but the effect of the sea-change which they wrought has been exaggerated and they do not warrant a wholesale jettisoning of all rules affecting procedure irrespective of their legal effect. This indeed the Court of Appeal recognised in R v Ashton, as earlier in R v Sekhon…".

Lord Rodger made observations to similar effect. At [28]-[29], he put it in terms of whether the procedural requirement was a condition precedent to the tribunal having any jurisdiction.

24. However, whilst cautioning against the abandonment of the distinction between procedural errors which go to validity and those which do not, R v Clarke endorsed and reinforced the principle established by the earlier case, namely that, where there is a failure to comply with a procedural requirement for the doing of some act before a power is exercised, the question to consider is the purpose and intention of the relevant provisions. Although made in the context of criminal cases – and bearing in mind the need for caution in drawing analogies between criminal and tribunal procedures (see the observations of Warby J in Khan v Bar Standards Board [2018] EWHC 2184 (Admin) at [16], albeit in a very different context) – there is no reason why the same

principle should not apply to all "litigation" including disciplinary proceedings such as those before a Disciplinary Tribunal panel. Indeed, the legal analysis in the cases equally applies. It is, of course, well-established that tribunals, which are ultimately creatures of statute, have no inherent powers over and above those which, expressly or impliedly, arise from the instruments under which they operate (Virdi v The Law Society [2010] EWCA Civ 100; [2010] 1 WLR 2840).

25. In this case, in the exercise of deriving the purpose and intention of the draftsman, the focus must therefore be upon the procedural rules as set out in the Handbook. It is uncontroversial that, by virtue of regulations rE37-rE38, the PCC was entitled to refer the Appellant's case to a tribunal. The issue is whether regulation rE60, properly construed, makes the constitution of a Disciplinary Tribunal panel as being of three persons in certain circumstances (including those of the Appellant, as an unregistered barrister) a condition precedent to that tribunal having any jurisdiction.

Jurisdiction: Discussion and Conclusion

26. In considering that issue, I do not find the many authorities to which we have been referred and which turned on their own facts to be of any substantial assistance. Most are clearly distinguishable, e.g. where proceedings had taken place in the wrong court altogether (e.g. Coeme v Belgium [2000] (Application Nos 32492/96 and others)), or where the tribunal made findings entirely outside the scope of their enquiry (e.g. R (Stenhouse) v Legal Ombudsman [2016] EWHC 612 (Admin); [2016] 2 Costs LR 281).

27. Nor do I find R (Gorlov) v The Institute of Chartered Accountants in England and Wales [2001] EWHC 220 (Admin), upon which Mr Beaumont particularly relied, of any real assistance. This was a case in which Mr Gorlov appealed against a decision of his professional body's Appeal Panel not to award him his costs of an appeal where that panel had concluded that the Disciplinary Tribunal below had no jurisdiction to deal with the particular complaint because that complaint had not been preferred by the Investigating Committee as required by its rules. Mr Beaumont submitted that that case was indistinguishable from the case before us. However:

    i) Jackson J made no determination on whether the Disciplinary Tribunal had acted without jurisdiction: it was not in issue before him.

    ii) The case resembled Stenhouse, in that the Disciplinary Tribunal had determined a matter not properly before it. The case can be analysed in Soneji terms: Jackson J held that the referral of a matter by the Investigating Committee was a condition precedent to the Disciplinary Tribunal having any jurisdiction over it. The approach of Jackson J was not different from the later cases. Gorlov is not inconsistent with the later cases. The facts of that case and this are clearly different. Here, there was a referral to a tribunal, but to a tribunal panel wrongly constituted.

    iii) In any event, insofar as the approach might differ – and I make clear that I do not consider that it does – with respect to Jackson J (who was particularly experienced in this field), his was a first-instance judgment that must give way to the later endorsement of the Soneji approach by both the Court of Appeal and the House of Lords.

Gorlov does not assist Mr Beaumont's cause.

28. Thus, I do not find any of these cases of any great assistance: the purpose and intention of the draftsman so far as the consequences of a breach of a procedural requirement is concerned must be derived from the wording used in the particular instrument(s).

29. Nor do I find of substantial assistance the evidence recently (and post-Panel hearing) lodged by the BSB, in the form of statements of Paul Pretty (the Head of Investigations and Hearings in the Professional Conduct Department of the BSB) and Ewen MacLeod (the Director of Strategy and Policy at the BSB) both dated 10 August 2018 and the more recent further statements of Mr Pretty dated 15 and 18 October 2018. This evidence seeks to make good the proposition that, whatever the Handbook might have said at the relevant time, the BSB in fact never intended regulation rE60 to exclude unregistered barristers, the exclusion being the result of a mistake. However, we have to focus on the wording of the Handbook as it stood at the relevant time, and whether on its true, objective construction it imposed a condition precedent such that, if an unregistered barrister was referred to a five-person tribunal panel, that panel had no jurisdiction to deal with the matter.

30. In my judgment, no such intention to make the number of persons in the panel a condition precedent to a panel having jurisdiction is evident. In the course of his submissions, Mr Beaumont said that there was no material upon which a determination could be made as to whether a breach of the requirement for a tribunal panel to have a particular number went to jurisdiction or not. If that were true, Mr Beaumont would be in difficulties, given the indication of the authorities that there is an assumption in favour of jurisdiction.

31. But I would not be so defeatist as to say there is nothing in the scheme which assists in its interpretation in this regard. The regulations elsewhere give a tribunal jurisdiction to deal with charges against barristers in the sense of requiring referral to a Disciplinary Tribunal in certain circumstances (see, e.g., eR37-eR38, quoted in paragraph 13 above). Although the Handbook requires the PCC to determine the constitution of the panel "at the same time" as it directs that a complaint be considered by a tribunal (see regulation rE57, quoted in paragraph 15 above), I do not accept Mr Beaumont's submission that the two directions are not severable. In my view, the direction by the PCC to have a matter heard by a tribunal panel is severable from the distinct direction it makes with regard to the constitution of that panel. The rule simply requires the second direction to be dealt with at the same meeting of the PCC, as it was in this case: but, on a true reading of the regulations, there are clearly two analytically distinct and sequential steps. Further, although as R v Clarke emphasises this is not determinative, in my view, justice is clearly not impaired merely because a panel is of the wrong number.

32. The provisions for the constitution of the panel are in my view clearly procedural requirements that do not, if breached, mean that a panel has no jurisdiction. Of course, if the breach is material such that unfairness has resulted, then it might form a ground for an appeal; but that is a different issue from jurisdiction which is the primary issue raised in this appeal.

33. By way of illustration, the regulations prescribe that, for more serious or complex cases, there must be a five-person panel. I will come on to deal with Mr Beaumont's distinct submission that, on the facts of this case, it was unfair upon the Appellant that there

was a five- (rather than three-) person panel; but the requirement for a larger panel in the regulations is clearly because a panel with five rather than three persons, and chaired by a judge, is generally regarded as likely (by dint of numbers) to give better consideration to any matter than a panel of three persons that may not be chaired by a judge; and it is regarded as appropriate to have the "better" panel of persons for more difficult cases. As a general proposition, I do not regard that as capable of sensible contrary argument. If a matter which the regulations require to be considered by a five-person panel is directed to a three-person panel it may well be open to the affected barrister to claim that he has been treated unfairly, because he has been denied a hearing before the larger panel. That, however, is not a question of jurisdiction, but one of procedural fairness.

34. In my judgment, the true construction of regulation rE60 is clear and unambiguous in this regard. Whilst, as I have said, the recent evidence lodged by the BSB does not assist on the point of construction, it is comforting that, if error in drafting this was, it has not had the devastating effect of rendering otherwise perfectly sound and just determinations of five-person tribunal panels invalid.

35. For those reasons, I consider the Panel had jurisdiction to hear and determine the Appellant's appeal.

Fairness

36. Before us today, Mr Beaumont sought to expand his ground of appeal to include a submission that, if we conclude that the Panel did have jurisdiction to deal with the charge against the Appellant, then the fact that the Appellant's case was dealt with by a panel of five rather than three was unfair to her and unjust, for two reasons.

37. First, he submitted that the fact that the charge was heard by a five-person panel increased the Appellant's anxiety, because such a panel had power to disbar whereas, if the charge had been considered by a three-person panel, it would not have had the power immediately to have disbarred her or suspended her for more than 12 months.

38. I do not consider there is any force in that argument. If the Appellant's charge had been referred to a three-person panel as it should have been, and she had been found guilty of it, then it was all but inevitable that it would have been referred to a five-person panel for sentence given the guidance starting point and the circumstances of the case. The Appellant would have been aware of that likelihood from the outset; and her anxiety would have been extended by the inevitable delay that would have been caused by that transfer.

39. Second, Mr Beaumont submitted that a differently constituted three-person panel may have made different findings from those of this five-person panel, including findings in relation to mitigation. It may have taken a more lenient view. However, for the reasons I have given, a five-person panel is inherently better than a three-person panel; and, insofar as it is said that a differently constituted panel may have come to a different conclusion, that is true irrespective of numbers. It does not undermine the fairness or justice of the findings of this five-person panel.

40. For those reasons, I do not consider that this formulation of the claim is made good.

Conclusion

41. Therefore, subject to the views of Andrews J, I would dismiss this appeal on its merits. In the circumstances, it is unnecessary for me to consider the issue of delay separately.

Postscript: Application for Declaration of Incompatibility

42. Mr Beaumont submitted that, if we were to refuse the appeal, we should make a declaration of incompatibility under section 4 of the Human Rights Act, on the basis that section 24(4) and (5) of the Crime and Courts Act 2013 are incompatible with article 6 of the European Convention on Human Rights ("the ECHR"). By those provisions in the 2013 Act, a decision of this court on an appeal from a BSB Disciplinary Tribunal is final and cannot be appealed further, except where there is a decision to disbar when there is an appeal to the Court of Appeal (Civil Division).

43. Mr Beaumont submits that it is irrational and arbitrary to allow an appeal from this court where the sanction is disbarment, but not where it is (e.g.) a suspension for a lengthy period or large fine which may in practice have a devastating if not fatal effect on a barrister's livelihood. Indeed, he submitted that any sanction – even a reprimand – might have a salutary effect on the career of a particular barrister. Furthermore, he relied upon the fact that second appeals from the Solicitors' Disciplinary Tribunal and other disciplinary tribunals are not limited in this way. He referred to debates in Parliament suggesting that, at least some in that place considered that appeals from these two branches of the legal profession should be brought more closely together. He submitted that by allowing second appeals from all complaints against barristers would not open any floodgate, because they would be required to obtain permission on the basis of the strict second appeals criteria.

44. However, in my view, section 24(4) and (5) is clearly not incompatible with the ECHR. Mr Beaumont did not rely on article 14 (discrimination), quite rightly, as being a barrister in this context does not fall within any of the protected characteristics. Nor it incompatible with article 6. Whilst article 6 guarantees an individual a right to a fair trial, where an article 6-compliant decision is made by a court, it is trite law that article 6 does not guarantee a right of appeal (see, e.g., Porter v United Kingdom [1987] Application No 12972/87). Of course, if a right of appeal is granted, any appeal itself has to be compliant with article 6: Andrejeva v Latvia (2010) 51 EHRR 28 and Delcourt v Belgium (1970) 1 EHRR 355, upon which Mr Beaumont relied, support that different proposition. He attempted to distinguish the cases in which there was no machinery for an appeal, from this in which there is machinery but Parliament has chosen to limit the cases which might avail themselves of it; but in my view they cannot be distinguished.

45. As Ms Padfield submitted, in respect of individuals in the situation of the Appellant (i.e. who have not been disbarred), Parliament has determined that there should be no further appeal from this court; and therefore, the first appeal being article 6-compliant, article 6 is not further engaged. Of course, she did not concede that the differentiation of disbarment cases from those with a lesser sanction is either arbitrary or disproportionate: she submitted that it is in fact principled, understandable and proportionate. In my view, there is force in each element of that submission; but it is unnecessary to make any findings in that regard. I was unimpressed by Mr Beaumont's submission that a suspension of less than 12 months may be more severe that a suspension of more than 12 months. Again, I accept that a suspension of less than 12

months in one case may in practice be more severe than a suspension of more than 12 months in another case; but that is not comparing like with like.

46. For those reasons, I would refuse the application.

Mrs Justice Andrews :

47. I agree that the delay should not preclude this Court from considering the merits of this appeal. However, for the reasons stated by Hickinbottom LJ, I find myself in agreement with him that the appeal should be dismissed and the application for a declaration of incompatibility should be refused.