



Neutral Citation Number: [2019] EWHC 2665 (QB)

Case No: QA-2019-000058

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 15/10/2019

Before :

MR JUSTICE PUSHPINDER SAINI

Between :

GREGG BINDING
- and -
PAUL PATTERSON

Appellant

Respondent

Chris Royle (instructed by **Feltons Law**) for the **Appellant**
Paul Patterson (Litigant in Person) for the **Respondent**

Hearing date: 9 October 2019

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

.....
MR JUSTICE PUSHPINDER SAINI

MR JUSTICE PUSHPINDER SAINI :

This judgment is divided into 7 sections as follows:

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I. Overview

1. This is an appeal about the regulation of certificated enforcement agents (formerly known as “certificated bailiffs”). The appeal is brought by Gregg Ashley Binding (“Mr. Binding”) against two Orders of HHJ Bloom (“the Judge”) made on 14 February 2019 and 22 February 2019, respectively, in the Hertford County Court. The claim in which these orders were made was a complaint under Regulation 9 of the Certification of Enforcement Agents Regulations 2014 (“the CEA Regulations”).
2. At the time the proceedings were commenced in the County Court, Mr. Binding was a certificated enforcement agent under section 64 of the Tribunals, Courts and Enforcement Act 2007. The proceedings concerned a complaint of serious misconduct made against Mr. Binding by the Respondent to the appeal, Mr. Paul Patterson (“Mr. Patterson”).
3. I will return to the detail of the complaint below but, in brief outline, Mr. Patterson alleges he was assaulted by Mr. Binding when he sought entry to Mr. Patterson’s personal residence in Looe on 12 April 2018. The allegations are contested by Mr. Binding.
4. Relying on his allegations above, Mr. Patterson says that Mr. Binding is not a “fit and proper person” (within the meaning of the CEA Regulations) to hold a certificate as an enforcement agent and sought to put that issue before the County Court under the procedures I set out below.
5. The main issue in this appeal does not concern the merits of the claims of misconduct but is a question of law concerning the scope and application of the CEA Regulations in circumstances where an enforcement agent has, before disposal of those

proceedings, voluntarily surrendered his certificate to the County Court. In short, Mr. Binding says that this act puts an end to proceedings while Mr. Patterson argues to the contrary.

6. As will appear below, the case has an unfortunate procedural history and with respect to the Judge there is no reasoned judgment from the Court below as to what the Judge's decision was on this core issue of law. One can infer however from the recitals to a number of orders made (without hearings) what the Judge considered the answer to be. It appears that originally the Judge decided that the proceedings were indeed at an end following surrender of the certificate, but she later reversed that decision and reinstated the proceedings with directions for a full trial of Mr. Patterson's complaint.
7. Aside from the main issue of law (which is Ground 1), there are further grounds of appeal (Ground 2) and an application for permission to raise a new ground of appeal (Ground 3) which concern the procedural propriety of the Judge's orders by which she reinstated the proceedings.

II. Statutory Framework

8. The role and intrusive powers of certificated enforcement agents demand a form of regulatory control over their conduct. Parliament has sought to achieve such control by creating a judicial forum for complaints to be made against such agents in the County Court. That has been achieved by way of the CEA Regulations (in addition to processes for ensuring only "fit and proper" persons are in the first instance authorised to act as such: see Regulations 3 and 4).
9. A number of provisions of the legislation are material to the appeal and I will set those out below in full because of the issues of construction which arise. The material parts of the CEA Regulations are as follows:

“9. Complaints as to fitness to hold a certificate

(1) Any person who considers that a certificated person is by reason of the certificated person's conduct in acting as an enforcement agent, or for any other reason, not a fit person to hold a certificate, may submit a complaint in writing to the court.

(2) No fee is payable for submitting a complaint under paragraph (1).

(3) A complaint submitted under paragraph (1) must provide details of the matters complained of and explain the reason or reasons why the certificated person is not a fit person to hold a certificate.

(4) No complaint submitted under paragraph (1) may be considered by the judge until the certificated person has been provided with a copy of the complaint and given an opportunity to respond to it in writing.

(5) If on considering the complaint and the certificated person's response the judge is satisfied that the certificated person remains a fit and proper person to hold a certificate, the complaint must be dismissed.

(6) If—

(a) the certificated person fails to respond; or

(b) on considering the complaint and the certificated person's response the judge is not satisfied that the certificated person remains a fit and proper person to hold a certificate,

the complaint must be considered at a hearing.

(7) If a complaint is to be considered at a hearing under paragraph (6)—

(a) the certificated person must attend for examination and may make representations; and

(b) the complainant may attend and make representations, or may make representations in writing.

(8) If after a hearing the judge is satisfied that the certificated person remains a fit and proper person to hold a certificate, the complaint must be dismissed.

(9) No appeal lies against the dismissal of a complaint under paragraph (5) or paragraph (8).

10. Cancellation or suspension of certificates

(1) If, following consideration of a complaint at a hearing, the judge is satisfied that the certificated person is not a fit and proper person to hold a certificate, the judge may—

(a) cancel the certificate; or

(b) suspend the certificate.

(2) If the certificate is cancelled, the judge may order that the certificated person must, before making any further application to be issued with a certificate, have fulfilled such conditions as to training or any other conditions as the judge considers necessary for the certificated person to be a fit and proper person to hold a certificate.

(3) If the certificate is suspended the judge may order that the suspension is not to be lifted until the certificated person has fulfilled such conditions as to training or any other conditions as the judge considers necessary for the certificated person to be a fit and proper person to hold a certificate.

(4) The court must, whether the certificate is suspended or cancelled, consider whether to make an order under regulation 13(2).

11. Application of security after consideration of complaint at a hearing

(1) When a complaint has been considered at a hearing, the judge may, if satisfied that the complaint was well founded, order that the security be forfeited either wholly or in part, and that the forfeited amount be paid, in such proportions as the judge considers appropriate—

(a) to the complainant by way of compensation for failure in due performance of the certificated person's duties as an enforcement agent or for the complainant's costs or expenses in attending and making representations; and

(b) where costs or expenses have been incurred by the court in considering the complaint at a hearing, to Her Majesty's Paymaster General by way of reimbursement of those costs or expenses.

(2) The judge may make an order under paragraph (1) whether or not the certificate is cancelled or suspended.

(3) If an order is made under paragraph (1) but the certificate is not cancelled, regulation 6(4) applies.

(4) If the certificate is cancelled, the security must, subject to the making of an order under paragraph (1), be cancelled and the balance of any deposit, following payment of any amounts ordered to be forfeited, returned to the certificated person.

12. Surrender of certificate

(1) When a certificate is cancelled or expires, it must be surrendered to the court, unless the judge directs otherwise.

(2) If a certificated person ceases to carry on business as an enforcement agent, the certificated person must unless the judge orders otherwise surrender the certificate to the court, and the certificate will be treated as if it had expired on the date on which it was surrendered.

- (3) The security must be cancelled and the balance of any deposit returned to the certificated person following surrender of a certificate”.
10. It is clear that under the procedural regime of Regulation 9, once a complaint has been submitted in accordance with the requirements of Regulation 9(3) (as was the case here) and (pursuant to Regulation 9(4)) the certificated person has been given an opportunity to respond there are only two forms of further order available to the Judge: (a) a form of summary dismissal on the basis that the written materials submitted satisfy the Judge the person remains a fit and proper person to hold a certificate (Regulation 9(5)); or (b) reference of the matter for an oral hearing if the certificated person has not responded or the Judge considers he is not satisfied the person remains a fit and proper person to hold a certificate.
11. The procedure for making complaints is provided for by CPR 84.20 which is in the following terms:
- “84.20 Complaints as to fitness to hold a certificate
- 84.20-(1) This rule applies to a complaint under regulation 9(1) of the Certification Regulations.
- (2) The complaint must be submitted to the County Court hearing centre at which the certificate was issued, using the relevant form prescribed in Practice Direction 4.
- (3) A copy of the complaint must be sent to the applicant within at least 14 days before the hearing, and the applicant may respond both in writing and at the hearing.
- (4) The complainant is not liable for any costs incurred by the certificated person in responding to the complaint, unless paragraph (5) applies.
- (5) The court may order the complainant to pay such costs as it considers reasonable if it is satisfied that the claimant-
- (a) discloses no reasonable grounds for considering that the certificated person is not a fit person to hold a certificate; and
- (b) amounts to an abuse of the court’s process.”

III. Facts and Procedural Chronology

12. As indicated above, Mr. Patterson’s allegations against Mr. Binding of misconduct are serious and disputed. In order to provide a broad flavour of what is alleged, I will refer to the witness statement of Mr. Patterson (provided to HHJ Bloom on 26 September 2018) which he states (in relevant respects) as follows:

“...I opened the door, there were two males all dressed in black, I later discovered they were called Gregg BINDING and Stefan WACKETT. Mr. Wackett who was stood behind Mr. Binding stated that they had a liability order for Jamie Patterson. I stated that no Jamie Patterson lives here. Mr. Binding said they were here to enforce a court order. At this point they were standing in my porch. I asked them several times to leave but they wouldn't. I told them to get outside and I would talk to them, but they refused. At this point I told my daughter to keep filming while I get them both out, I put my hands up to try to push them out. Before I made any contact with Mr. Binding, he pushed me backwards down onto the stairs. I got up and went into the kitchen adjacent to the stairs and called the police 999. Whilst I was talking to the police Mr. Binding started to go through a pile of letters on the windowsill in front of me. These were letters about my daughter's doctor's appointment. I grabbed the letters off Mr. Binding as he had no right to them. My daughter is vulnerable and epileptic. He then shouted out that I assaulted him, which I hadn't, at no time did I ever assault Mr. Binding. Mr. Binding while I was still talking to the police immediately kicked out at my stomach and grabbed me by the throat, Mr. Binding pushed me backwards a number of metres into the back passage leading to the back door of the house. I ended up against the passage wall with Mr. Binding still tightly holding me by the neck, I was struggling to breath and I was really frightened and fearing for my life, the pressure was so great I thought I was dying. As I was sliding down the wall Mr. Binding kept on saying “STOP RESISTING”. I was not resisting at all I didn't have any strength. Mr. Binding not only stopped me from breathing, he put pressure on the blood vessels to my head. My daughter Toni had tried to fight Mr. Binding off me from the time he grabbed me by the throat, at no time did Mr. Wackett try to help Toni get Mr. Binding to realise his grip on my throat. Mr. Binding finally let go and I slumped into a seating position. Mr. Wackett then stated that we should all calm down and that he was recording it all”.

13. Although it was not apparently before the Judge at the time of the original 5 July 2018 Order (referred to at paragraph [19] below), there was produced to me during the appeal a document entitled Enforcement Agent Report dated 8 May 2018 where Mr. Binding says in response (identifying the most material aspects):

“Upon attendance I read a notice in the front window regarding enforcement agents. This stated along the lines that any attendance would be charged at a certain amount per hour. We proceeded and knocked on the door. There was no reply and I noticed the door was not locked and therefore we entered peacefully, as per legislation. I then knocked on the inner door and just a few seconds later a male came to the door and asked us to hang on, which we did. I explained we were looking to speak to Jamie Patterson. Whilst inside of the premises waiting I noticed there were several court related papers pinned onto a notice board which seemed very strange to me. The door was then answered by a male who was immediately aggressive and was swearing at us. He had a small video recorder in his hand at this time. He stated that there was no Jamie Patterson living at the address. Under normal circumstances if the person answering the door had either simply engaged with us and told us that there was no such person at the address or had slammed the door then we would no

doubt at all have just left the address and written up the notes to that effect and that would have been the end of the matter. Instead, the male handed the video recorder to a female called Toni and immediately assaulted me. He grabbed hold of me and pushed me backwards, so much so that my back hit the open outside doorway. I was forced to defend myself and had to push him backwards. I am totally satisfied that this is within the law as the male had already assaulted me. My actions were only because of his violence towards me and not only necessary but justified. Following this the male then went into the kitchen and rang the police, whilst I stood in the hallway. It is normal that if anybody does ring the police for any reason that the police will ask to the speak to the enforcement agent and I will always explain the reasons for my attendance. The police will expect me to do so”.

14. There has been no judicial resolution as to whose account is accurate but it is fair to observe that the nature and type of allegations made by Mr. Patterson raised a serious case to answer as to Mr. Binding’s fitness to remain entitled to a certificate. His Counsel rightly did not suggest to the contrary. This is clearly not a case which could have been summarily dismissed by the County Court Judge under Regulation 9(5) on the basis of the merits of the written allegations and written response.
15. I will now turn to the rather confused procedural chronology which I have sought to piece together from the documents as supplemented with information requested by me of the parties during the hearing of the appeal.
16. On 24 April 2018, Mr. Patterson submitted a complaint (“the Complaint”) concerning Mr. Binding’s conduct to the County Court. It contained essentially the allegations I have summarised above.
17. There is no dispute that this was properly a complaint within the terms of Regulation 9(1) of the CEA Regulations. No response to the Complaint (as provided for by Regulation 9(4)) was in the appeal bundle before me but after making a request of the Appellant’s representatives during the appeal the document (Enforcement Agent Report) to which I make reference above was helpfully produced to me in court. This may well be the document to which the Judge below made reference in the recitals to the Orders under appeal (see paragraph [25] below).
18. At some point after the submission of the Complaint on 24 April 2018 and before 29 June 2018, Mr. Binding voluntarily surrendered his certificate to the County Court (presumably under Regulation 12(2)). I have been able to identify from the Enforcement Report that his certificate was in fact not to expire for some time (12 August 2019). This was a very early surrender. I draw no conclusions from that but it is fair to observe that Mr. Patterson saw this as a deliberate tactic from Mr. Binding to avoid the Complaint going forward.
19. On 29 June 2018, at a sitting of the County Court at Hertford, HHJ Bloom dismissed the Complaint. It is common ground that this Order was made without any application by Mr. Binding, without a hearing and without any notice to the parties. The Order recording that dismissal (itself dated 5 July 2018- the date I will use below to refer to this Order) stated that this dismissal was “Upon Mr. Binding having surrendered his certificate and the certificate therefore [sic] being treated as having expired on 9th June 2018”.

20. There are no further reasons before me as to the basis for HHJ Bloom's Order of 5 July 2018 but it appears clear from the recital that she decided to dismiss the complaint not on the merits but solely because Mr. Binding had surrendered his certificate.
21. In my view, and as will be clear from my comments on the statutory framework above, this was not a determination under Regulation 9(5), namely a judicial decision that the complaint fell to be dismissed because the Judge was satisfied Mr. Binding remained a fit and proper person to hold a certificate. It was a dismissal which was not on any legal basis one can find in the CEA Regulations. Doing the best I can, it seems that the Judge decided that it was implicit in the regime of the CEA Regulations that surrender of a certificate (provided for by Regulation 12) would put an end to extant proceedings concerning the fitness of an enforcement officer. I will return to this matter when I consider Ground 1 below.
22. Mr. Patterson told me at the hearing of the appeal that he received the 5 July 2018 Order of HHJ Bloom shortly after it was made and sought legal advice. He is a person of limited means. He also said he was unwell at this time. There was a substantial delay of over 2 months before he took any relevant action.
23. That action was on 26 September 2018 when Mr. Patterson (acting in person) applied to have the Order of 5 July 2018 (in his words) "quashed" on the basis that Mr. Binding was not a fit and proper person and complaining that by reason of the dismissal of his complaint "there is no redress". Mr. Patterson provided a witness statement supporting this application. It is not clear in the Application Notice what jurisdiction Mr. Patterson was asking the Judge to exercise in "quashing" the 5 July Order. He also asked for the application to be dealt with without hearing. His Application Notice identified the correct address for service on Mr. Binding but it regrettably appears that Mr. Binding did not receive the application (it being the responsibility of the County Court to send it to him). Nothing then happened for about 5 months. That was not Mr. Patterson's fault.
24. On 14 February 2019, HHJ Bloom set aside her Order of 5 July 2018 as requested by Mr. Patterson in his application and made various directions for the hearing of the substantive complaint together with the complaint made by Mr. Patterson against Mr. Wackett. Again, there was no hearing before this Order was made (no hearing having been requested by Mr. Patterson) and the delay in the making of this Order is explained on the face of the Order of 14 February 2019. It was because, regrettably, Mr. Patterson's application had not been put before HHJ Bloom until 28 January 2019.
25. It is to be noted that the Judge recorded in a recital to the Order of 14 February 2019 that Mr Binding had filed a response to the complaint and she expressly said "...the complaint must proceed pursuant to Regulation 9(6). This appears to be a determination not to dismiss the Complaint and to proceed to a hearing (the second of the options I refer to in paragraph [10] above). The Judge also expressly provided in paragraph 9 of the 19 February 2019 Order for a liberty for either party to apply within 7 days of service to have the Order set aside. That is important for reasons to which I will return under proposed Ground 3.

26. For reasons which are not clear, HHJ Bloom varied the Order of 14 January 2019 by a further Order dated 22 February 2019 which specifically recorded in the recital as follows: "...Upon the court considering the complaint and the response and the judge not being satisfied the certificated person remains a fit and proper person to hold a certificate and that there must be a hearing to resolve the complaint under Regulation 9". The Judge clearly had in mind here the terms of Regulation 9(5) and wanted to make it apparent she was making a formal determination insofar as the earlier order had not made that clear. The balance of the procedural directions in the 22 February 2019 remained essentially the same as those in the 14 January 2018 Order (including the liberty to apply to set aside).
27. No application to set aside was made by Mr. Binding. Instead, he appealed to the High Court. On 3 April 2019, Thornton J refused permission to appeal (on the papers) against the 14 and 22 February 2019 Orders of HHJ Bloom. Lang J granted permission to appeal following an oral renewal on 7 May 2019.
28. I am informed that the Appellant did not receive the Application Notice and witness statement of Mr. Patterson (which led to the making of the 14 and 22 February 2019 Orders) until after Lang J had granted permission to appeal. That matter is relevant to the application to pursue a new ground of appeal (proposed Ground 3).

IV. Ground 1

29. It was persuasively argued by Counsel on behalf of Mr. Binding that there was no jurisdiction to proceed with a complaint against him because a complaint under the CEA Regulations may be brought only against a certificated person. Counsel accepted that at the date of the complaint Mr. Binding was a certificated person but it was argued that because he was permitted to surrender his certificate, having ceased to carry on his business as an enforcement agent, the definition of 'certificated person' necessarily implies that person continues to hold a valid and unexpired certificate. It was argued that the effect of surrender of a certificate upon ceasing to carry on business as an enforcement agent is to treat the certificate as having expired on the date of surrender (Regulation 12(2)) with the result that the previously certificated person's certificate is no longer valid and unexpired and he is thereby no longer a 'certificated person' and there is no jurisdiction under Regulation 9 to proceed with a hearing.
30. In support of this submission it was argued that the remedies (in cases where the respondent is not fit and proper) under the CEA Regulations are not capable of being granted or would be of no effect where a certificate has expired or been surrendered. Those remedies are cancellation or suspension of the certificate: Regulation 10(1), and/or forfeiture of security: Regulation 11(1). Security is returned to the previously certificated person on expiry or surrender of the certificate: Regulation 12(3). Thus, it is argued, there is nothing to cancel, suspend or forfeit. Further, it is said that those remedies apply only to a 'certificated person', which Mr. Binding was not (at the time of these grounds), and will not be at the time of any hearing.

31. So, the essential argument made on Mr. Binding's behalf was that (irrespective of the wisdom of such a legislative choice- a matter to which I return below), the net effect of the provisions of the CEA Regulations to which I have made reference above was that once a person had surrendered his certificate a complaint under Regulation 9 had to be dismissed. The logic of this submission is to my mind that the expiry of a certificate also leads to this consequence.
32. Counsel argues that the original dismissal of the Complaint by HHJ Bloom by the Order of 5 July 2018 was correct in law and the reinstatement of the proceedings by the Orders of 14 and 22 February 2019 was wrong in law because surrendering the certificate ended the ability of the Court to continue with hearing the Complaint.
33. It was rightly and realistically accepted by Mr. Binding's Counsel that this might be a highly undesirable outcome given the public interest (which one sees at play in other professional regulatory contexts) in not allowing persons to escape regulatory scrutiny by resigning or retiring from regulated roles. I should add that there is no evidential basis for suggesting in this case that this is why Mr. Binding surrendered his certificate but on his arguments it will be a result of such action that the events of 12 April 2018 in Mr. Patterson's house in Looe will never be subject to judicial scrutiny under the CEA Regulations.
34. In my judgment, there is a simple answer to the Appellant's arguments under Ground 1:
 - (i) Regulation 9 allows a complaint to be made about a "certificated person's conduct". A certificated person is defined as "a person to whom a certificate has been issued".
 - (ii) The Appellant was (at the time the Complaint was issued on 24 April 2018) a person to whom a certificate has been issued.
 - (iii) That fact establishes the jurisdiction of the County Court over him for Regulation 9 purposes.
 - (iv) In order for the County Court to *lose* jurisdiction, there would need to be some express or implied wording in the CEA Regulations which requires a complaint to be dismissed on the surrender or expiration of a certificate.
 - (v) It is common ground that there is no express wording so providing.
 - (vi) Equally, I see nothing in the CEA Regulations which would justify the submission that Parliament had impliedly provided that complaints must be dismissed when a certificated person ceases to be certificated.
 - (vii) Indeed, for reasons given above, it would be contrary to the public interest and effective regulation for an agent to be able to avoid judicial consideration of his conduct by simply surrendering a certificate (or indeed through the happenstance of his certificate expiring in the period between a complaint being made any disposal of the complaint under Regulation 9). Certificates last for 2 years under Regulation 7.
35. In my judgment, HHJ Bloom's Order of 5 July 2018 was wrong in law and (subject to the further Grounds of Appeal) there was a basis in law under the CEA Regulations to continue to proceedings notwithstanding the surrender of the certificate by Mr. Binding.

36. I should add that the draftsman could easily have made express provision for such a disposal on surrender but it seems to me that for good reasons no such provision was made. Even if a person is no longer certificated (which can happen for reasons including simple expiry or surrender), there are strong public interest reasons why an independent and impartial judicial authority such as the County Court should be able to determine whether, while the certificate was extant, the conduct of the person holding it was such as rendered them no longer fit and proper to hold it.
37. I need also to address the argument made on behalf of Mr. Binding that the regime of sanctions identified in Regulations 10 and 11 apply only to those who at the date of the hearing hold a certificate. That may be so but there is nothing in the CEA Regulations to say that proceedings have to conclude with one of these sanctions. I do not read Regulation 10(1) (which is permissive in specifying the sanctions of cancellation or suspension of a certificate) as denying a court to give a judgment on a complaint where the certificate has expired. A court could simply make a declaration or findings of misconduct. This point is reinforced when one sees that the power of the Court to make financial remedies under Regulation 11(2) can be used whether or not cancellation or suspension is ordered.
38. In short, I do not see anything in the sanctions or remedial regime which impliedly requires an end to the complaints process on either surrender or expiration of a certificate.
39. As identified above, a further argument was made for Mr. Binding by reference to Regulation 12 which essentially provides a regime for surrender of a certificate (on the person ceasing to act as an enforcement officer or on cancellation/expiry of a certificate) with the consequences that the security of £10,000.00 (see Regulation 6(4)) is returned to the former certificated person. It was said that if Regulation 9 proceedings could continue against a person who had surrendered a certificate the “pot” of security which might be the subject of the only possible financial remedy under Regulation 11 would have been paid away before the proceedings would end.
40. I consider this point has a simple answer. The payment back of security is expressly subject to the court’s power not to allow surrender of a certificate (see Regulations 12(1) and 12(2)) and in an appropriate case a court could refuse to allow surrender if Regulation 9 proceedings were extant and it wished to ensure the retention of security pending those proceedings. That was not done in this case and I assume the security has been paid back but I do not read the terms of Regulation 12 as standing in the way of determination of the Complaint even if security has now been paid back to Mr. Binding.
41. The facts of the present case suggest that it would be good practice in future for any County Court which is dealing with expired, cancelled or surrendered certificates under Regulation 12 to ensure that there are no outstanding Regulation 9 complaints against the relevant agent and (if there are) to ensure that the security remains intact pending final resolution.
42. Finally, I should record that it was argued before me that the public interest is protected even if proceedings come to an end on surrender. It is said that if a person applies for a new certificate (having originally surrendered a certificate when facing Regulation 9 proceedings) the Court will have on file the unresolved complaint and

will be able to take it into account when considering a new application. I accept that Counsel for the Appellant has substantial experience in this area of the law and that this may well be the practice. That practice does not seem to me however to provide an attractive or reassuring answer. First, there is no legislative obligation I have seen requiring a County Court to keep on file such unresolved matters. Second, the new application may come many years after the unresolved complaint and it is difficult to see how a court could easily resolve what may be a historic dispute.

43. For all these reasons I reject Ground 1 and hold that a CEA Regulation 9 complaint can be heard by the County Court even if a person has surrendered his certificate or it has expired. The Judge was right to reconsider her original order and to reinstate the proceedings (subject to the further procedural complaint which I will now address).

V. Ground 2

44. The argument under this ground is that there was no jurisdiction to re-open the question of dismissal of the complaint as the Judge did by way of her Orders of 4 and 22 February 2019 following Mr. Patterson's application of 26 September 2019. It was submitted on behalf of Mr. Binding that in law there was no jurisdiction in the County Court to list the Complaint for a hearing having previously dismissed the Complaint on paper.
45. It is said that this order was a final order. Reliance is placed on Kaminski v Martin [2018] EWHC 3800 (QB). It is further argued that the Orders amounted to allowing an appeal against the Court's own order and/or without jurisdiction because the overall effect of the Orders that the Judge set aside or varied her order of 5 July 2018 without hearing further argument and without any change in circumstances or other grounds to do so. To change a final order in those circumstances amounted, it is argued, to allowing an appeal against the Judge's own earlier Order (or to do that which can only be done by way of appeal). That is said to be wrong in law because (i) the Court has no power to allow an appeal against itself and/or (ii) in any event no such appeal lies by virtue of reg. 9 of the 2014 Regulations.
46. In my view, these arguments miss their target. As I have indicated above, I do not consider the Order of 5 July 2019 was in fact or in law a Regulation 9(5) dismissal on the merits. It was in fact an order which the Judge had no power to make for the reasons I have given above.
47. Further, unlike the position before Soole J in the Kaminski case, there was no lawful Regulation 9(5) dismissal and it is obvious for the reasons given by Soole J why such a dismissal cannot be reopened consistently with the regime under Regulation 9. That is not this case. The Kaminski case is not on point.
48. Further, I do not consider the Order of 5 July 2019 to be subject to the very tight restrictions on reopening final orders identified in the case law under CPR 3.1.(7).
49. In my view, the Order of 5 July 2019 was (on the evidence before me) made by the Judge of her own motion and without notice to the parties. It accordingly fell within

CPR r.3.3. The Order made none of the provisions informing Mr. Patterson he could apply to set it aside. It is worth setting out CPR r.3.3 in full to emphasise how it requires important safeguards for those who are subject to the order including an ability to ask the court to reconsider. It provides

“Court’s power to make order of its own initiative

3.3—(1) Except where a rule or some other enactment provides otherwise, the court may exercise its powers on an application or of its own initiative.

(Part 23 sets out the procedure for making an application)

(2) Where the court proposes to make an order of its own initiative—

(a) it may give any person likely to be affected by the order an opportunity to make representations; and

(b) where it does so it must specify the time by and the manner in which the representations must be made.

(3) Where the court proposes—

(a) to make an order of its own initiative; and

(b) to hold a hearing to decide whether to make the order,

it must give each party likely to be affected by the order at least 3 days' notice of the hearing.

(4) The court may make an order of its own initiative without hearing the parties or giving them an opportunity to make representations.

(5) Where the court has made an order under paragraph (4)—

(a) a party affected by the order may apply to have it set aside, varied or stayed; and

(b) the order must contain a statement of the right to make such an application.

(6) An application under paragraph (5)(a) must be made—

(a) within such period as may be specified by the court; or

(b) if the court does not specify a period, not more than 7 days after the date on which the order was served on the party making the application.”

50. There is nothing in the CEA Regulations or CPR which disapplies CPR 3.3. None of these CPR 3.3 safeguards and rights were identified in the 5 July 2018 Order. The Judge had power to reconsider the original order having heard representations from Mr. Patterson.
51. Further, in my judgment, the setting aside was not a process which was subject to CPR r 3.1 (7) and the strict limitations on reopening final orders (see Terry v BCS Corporate Acceptances Limited [2018] EWCA Civ 2422 at para. 68 and following). Asking the court to reconsider an order which it made of its own initiative and without any representations having been made does not require an applicant to show any change of circumstances. The process is governed by CPR 3.3.
52. There was admittedly delay in the period 5 July 2018 and 26 September 2018 in Mr. Patterson making the application to set aside (or in his words to “quash” the 5 July Order), but in fairness to him he had not been informed (as he should have been on the face of the order) of his ability to apply to set aside the 5 July 2018 Order, and it would have been manifestly unfair to hold him to time limits which apply to those who have been so informed. I also accept that he needed some time to obtain legal advice and was unwell in this intervening period.
53. I accordingly reject Ground 2. There was clearly a jurisdictional basis for HHJ Bloom to reconsider her original Order of 5 July 2018. I should record that the existence of such a jurisdiction does not depend on the Judge or a party expressly identifying that jurisdiction on the face of an order in an application. Jurisdiction exists or it does not: it cannot be created or said not to be present merely by reason of what is said in an order or application notice.
54. Before leaving this ground and standing back from the unfortunate procedural history I have set out above, it hardly seems consistent with basic principles of fairness or the overriding objective for any party (let alone a litigant in person) to be precluded from asking a judge to reconsider her decision when that decision was made: (a) on the court’s own initiative and without any application, evidence or argument; (b) without any notice that it was to be made; and (c) without any information being provided to the litigant that he had a right to set it aside. There is clearly an important interest in an application to set aside such an order being made as soon as practicable but on the facts before me, the delay by Mr. Patterson was justifiable and caused little prejudice in itself to the Appellant.

VI. Ground 3: permission to appeal

55. Under this proposed new ground of appeal the Appellant wishes to complain that he had no notice of Mr. Patterson’s application of 26 September 2018 (indeed, he did not even have a copy until after permission to appeal was granted). He also wishes to complain that the application was dealt with without a hearing.
56. Permission to amend is required: CPR r.52.17. The test for amendment of an appeal notice is set out in Clarke v Lightning & Lamps (UK) Ltd [2016] EWCA (Civ) 5, per Vos LJ at [32]-[35]. I accept that the amendment was intimated well in advance of the

appeal hearing and there is good reason for it being made after the original grounds were filed (the relevant documents only having been received after Lang J's grant of permission to appeal). However, I do not accept this new ground has real prospects of success (having in fact heard full argument on it).

57. My reasons for refusing permission to appeal for this reason can be shortly stated as follows. First, the application which is attacked was not made by Mr. Patterson on a without notice basis. He correctly identified the name and address of the Appellant and it was not through any fault of Mr. Patterson that the Court failed to properly serve Mr. Binding. Second, I do not regard there as being anything wrong in principle with Mr. Patterson indicating (and the court accepting) that his application should be dealt with on paper. Third, this was not an appeal against the Judge's own earlier decision: it was an application in substance that she reconsider that decision and there was jurisdiction so to do for the reasons I have given above. Fourth, and most importantly, HHJ Bloom expressly and fairly provided the ability to Mr. Binding to apply to set aside her orders of 14 and 22 February 2019. That dealt with any unfairness in the process as a matter of case management. The procedural unfairness complained of could have been ventilated before the Judge under this liberty to apply.
58. There was no arguable error. This was an appropriate case management decision which fairly dealt with the situation which was presented to the Court and provided a mechanism for reconsideration. I refuse permission to amend to include the proposed new ground of appeal.

VIII. Conclusion

59. The appeal is dismissed. The Complaint against Mr. Binding should now be listed for directions and trial as soon as practicable and to be heard together with the existing complaint against Mr. Wackett. It would be regrettable for there to be further delay.