

The scope of civil restraint orders (Nursing and Midwifery Council and another v Harrold)

11/05/2020

Dispute Resolution analysis: This case provides an outline of the principles to be applied when both considering the making, and the extending, of a civil restraint order (CRO). In appropriate cases, it is clear that such an order may extend to proceedings brought in the Employment Tribunal. However, in the instant case, the judge held that the inherent jurisdiction of the High Court should not be utilised to expand the scope of the general civil restraint order (GCRO) to include complaints made about parties' legal advisors to their professional regulators. There were a number of reasons for this, including the fact that the order sought was not directly concerned with preventing an abuse of the High Court or any inferior court, and the fact that the inherent jurisdiction is said to be 'unlimited' does not mean that judges may do whatever they consider appropriate or desirable in the circumstances of a case. Written by Georgia Whiting, barrister, at 4 King's Bench Walk.

Nursing and Midwifery Council and another v Harrold [\[2020\] EWHC 1108 \(QB\)](#)

What are the practical implications of this case?

This case confirms the applicable principles when both considering the making, and the extending of a GCRO, as well as a consideration of the extent of the inherent jurisdiction of the High Court. In particular, it is clear that the inherent jurisdiction, while allowing in appropriate instances parties to be restrained from bringing proceedings in the Employment Tribunal, the judge declined to extend the scope of the GCRO to include complaints made about parties' legal advisors to their regulatory bodies. There were a number of reasons for this, including the fact that the order sought was not directly concerned with preventing an abuse of the High Court or any inferior court. In addition, there was no evidence to suggest that the regulators in question were not well equipped to deal with any vexatious referrals, and there was also a potential statutory remedy to the legal advisors pursuant to the [Protection from Harassment Act 1997](#) (PHA 1997).

It is clear that, in appropriate cases, judges will refer matters to the Attorney General to consider an 'all proceedings' order without limit of time. The judge in the instant case noted that, while he had no doubt that Mrs Harrold honestly believed herself the victim of a campaign of persecution by the Nursing and Midwifery Council (NMC), the North Bristol NHS Trust (the trust), and their legal teams, there was no foundation in that belief but it had nonetheless hardened into an obsession which had been fuelled rather than dampened by the application for a GCRO. There is a clear advantage in parties seeking that such an order is made in order to negate the need for numerous and costly extensions of civil restraint orders in appropriate cases.

What was the background?

This case concerned two applications, the first being a joint application by the NMC and the trust to extend for a further two years a GCRO made against Ms Harrold pursuant to [CPR PD 3C](#). The GCRO prevented Ms Harrold from issuing any claim or making any application in the Employment Tribunal, the Employment Appeal Tribunal, any County Court or the High Court, without first obtaining permission of the nominated High Court judge. The NMC and the trust also sought to broaden the scope of the CRO to prevent Mrs Harrold from making complaints to legal regulators against the legal teams instructed by them. Mrs Harrold sought an order that the GRCO was discharged.

Mrs Harrold had previously brought a series of claims against the trust and the NMC, most but not all of which failed (one claim against the trust succeeded but all claims against the NMC failed). The series of 15 claims were mostly brought in the Employment Tribunal, including claims for discrimination, victimisation and unfair dismissal. The last of the two claims had been stayed pending the application for a CRO. She also brought appeals and sought reviews of some of the decisions. The present application to extend the GCRO was made after Mrs Harrold informed solicitors acting for the NMC that she intended to bring a further claim in the Employment Tribunal for unlawful direct race

discrimination, victimisation and racial harassment against the trust, the NMC and their legal representatives.

An interim GCRO was made by Blair J on 23 January 2015. The application for a GCRO came before Hamblen J at a hearing on 23 July 2015. Hamblen J outlined that as there had not yet been a totally without merit finding, there may need to be further detail of the background before the court on the next occasion. Hamblen J was not available at the adjourned hearing, and Laing J, made the GCRO on 9 May 2016 for a period of two years, after finding that a number of the claims were totally without merit. The order was extended for six months in May 2018 and extended again by Warby J in November 2018 until May 2020.

What did the court decide?

The key argument put forward by Mrs Harrold was that Hamblen J, when dealing with the application, had effectively made comments about the level of evidence when handing down the decision. When the GCRO was subsequently made, the comments in terms of directions were not made available to Laing J and, if she had known about Hamblen J's direction, she would have realised that she did not have enough information before her to conclude that many of the 15 claims were totally without merit.

The judge found this argument to be without merit. Hamblen J had not given a case management direction, he had simply made a comment that he would expect to see greater detail from the trust and the NMC on the next occasion, leaving them to decide how that detail was provided. Even if Hamblen J had made a case management direction, the exercise for Laing J would have been the same—to consider the evidence before her and decide whether that evidence justified the making of a GCRO. No case management directions could have affected the test that Laing J had to apply.

The judge found that the contents of Mrs Harrold's application to discharge the GCRO were sufficient on their own to establish that she intended to abuse the process of the courts by bringing further proceedings to relitigate matters that had been conclusively determined against her; and that she intended to do so in part by making allegations of fraud and dishonesty against members of the NMC and the trust's legal teams. That meant that Mrs Harrold's application to discharge the GCRO must fail and also that, applying the test in [CPR PD 3C, para 4.10](#), it was 'appropriate' in principle to extend the GCRO.

In terms of the application to extend the scope of the GCRO to restrain Mrs Harrold from complaining to legal regulators without permission of the court, this was rejected. While there was force in the submission that Mrs Harrold used complaints to legal regulators as a means to do what the GCRO prevented her from doing in court, there was no case cited to the judge in which the inherent jurisdiction or [section 37](#) of the Senior Courts Act 1981 ([SCA 1981](#)) was held to empower the making of such an order. The fact that the inherent jurisdiction is said to be 'unlimited' did not mean that the court could do whatever it considered appropriate or desirable in the circumstances of a case. There was also no evidence that the processes of the relevant legal regulators were, as a matter of practice, unable to deal with vexatious complaints. Where there was also a statutory remedy available, such as the [PHA 1997](#), it was also difficult to identify a compelling need to expand the scope of the inherent jurisdiction.

In addition to extending the GCRO, the judge directed that a copy of the judgment be sent to the Attorney General, in order that she could consider whether it would be appropriate to apply to the court under [SCA 1981, s 42](#) for an 'all proceedings' order without limit of time.

Case details

- Court: Queen's Bench Division
- Judge: Mr Justice Chamberlain
- Date of judgment: 6 May 2020

[Georgia Whiting](#) is a barrister at 4 King's Bench Walk, and a member of LexisPSL's Case Analysis Expert Panels. If you have any questions about membership of these panels, please contact caseanalysis@lexisnexis.co.uk.

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