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Case No: CO/2918/2018

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 23/10/2020

Before :

MRS JUSTICE ELISABETH LAING

Between :

DR DAVID ANTHONY WAGHORN
(PER PRO CPR ABLATIONS PLC)

Claimant

- and -

DIRECTOR OF PUBLIC PROSECUTIONS

Defendant

-and-

VERILY LIFE SCIENCES LLC

First Interested
Party

-and-

PLYMOUTH CITY COUNCIL

Second
Interested
Party

Dr David Anthony Waghorn appearing in person
Miss Beth Collett (instructed by **Mewburn Ellis LLP**) for the **First Interested Party**

Hearing date: 15 October 2020

Approved Judgment

Covid-19 Protocol: This judgment was handed down remotely by circulation to the parties' representatives by email, release to BAILII. The date and time for hand-down is deemed to be 10:30am on 23 October 2020.

The Hon. Mrs Justice Elisabeth Laing :

Introduction

1. This is my decision after a hearing which was listed by the Court to consider whether or not a general civil restraint order ('GCRO') against the Respondent, Dr Waghorn ('R'), should be extended. The GCRO was made on 28 October 2018 for a period of two years by Andrews J in CO/2918/2018.
2. R represented himself. Verily Life Sciences LLC ('VLS') was represented by Miss Collett of counsel. I am grateful to both for their written and oral submissions. None of the other parties who might potentially have been interested in the continuation of the GCRO attended the hearing,
3. I also have to decide whether I should hear an application by VLS ('application 2'). Application 2 is for a claim form issued in the Intellectual Property Enterprise Court ('the IPEC') in claim IL-2018-000164 to be struck out. Swift J had decided in principle that application 2 should be decided at a separate hearing. I asked R during the hearing whether he was content for me to decide application 2. He indicated that he was. I consider, notwithstanding the decision of Swift J to which I have just referred, that, especially as the parties agreed that I should deal with application 2, it would further the overriding objective for me to do so, with the result that costs and court time will be saved.
4. One requirement of the GCRO (in short) is that R must apply to the designated civil judge for Wales (HHJ Robert Harrison QC) for permission to bring or continue any claims. R issued an application notice on 4 December 2019 for permission to bring or to renew certain claims ('application 1'). Application 1 was refused on the papers by HHJ Robert Harrison QC. R then appealed against that decision to Andrews J, in accordance with the terms of the GCRO. I will say more about application 1 in due course. The ground covered by application 1 and by application 2 overlaps to some extent, which is a further reason why I should deal with application 2.

The background

5. R and his son, James Waghorn, were charged by the Crown Prosecution Service ('the CPS') with fraudulent evasion of Value Added Tax ('VAT') contrary to section 72(1) of the Value Added Tax Act 1994 ('the VAT Act'). The case was listed for trial at Plymouth Crown Court on 17 September 2018. R was alleged to have evaded tax by means of businesses set up or controlled by R which trade in the medical or quasi medical field, in particular in the field of cancer treatment. I understand that in due course R was convicted of at least one count on the indictment.

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6. On 18 July 2018, R issued an application for judicial review in the Administrative Court. He challenged the decision of the Director of Public Prosecutions ('the DPP') made on 27 June 2018 not to include a count of common assault in an indictment. He added the Chief Executive of Plymouth City Council as an Interested Party. It is not clear why, as it is not obvious that he/she was affected by the claim in any way.
7. R wrote to the DPP on 18 June 2018 asking for consent for a count of common assault to be added to the indictment. The DPP replied on 27 June 2018. The charges were

correct. There was no evidence in the relevant papers which supported a charge of common assault.

8. A bad character application was served by the prosecution in the criminal proceedings. It related to a previous conviction of R in 2011. It may be that R wanted the DPP to charge the conduct on which that conviction was based.
9. The grounds in that application for judicial review are difficult to follow, and do not describe any error of public law.
10. On 18 October 2018, Andrews J refused R's application for permission to apply for judicial review. She certified that the application was totally without merit. She considered it to be an abuse of process of the court.

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11. On 6 June 2018, R and his son filed a further application for judicial review in the Administrative Court. They challenged a decision of the DPP on 23 July 2018 to apply to amend the indictment and to make ancillary hearsay and bad character applications. It appears that this is the same prosecution as was the subject of CO/2918/2018.
12. Again, the grounds were difficult to follow and did not describe any error of public law. From the grounds it seems as though R was challenging the entire prosecution, not just the decisions communicated in the letter of 23 July 2018.
13. R added the Bar Standards Board (which had refused R a regulatory exemption to instruct counsel directly) and Plymouth Crown Court as interested parties.
14. That matter was dealt with by Andrews J at the same time as the application for permission to apply for judicial review in CO/2918/2018. She refused permission to apply for judicial review on the papers and certified the application as totally without merit.
15. She said that the court had no jurisdiction to entertain a claim for judicial review of any matter relating to a trial on indictment (section 29(3) of the Senior Courts Act 1981). She also said that the application for judicial review, while appearing to challenge a relatively recent letter, was, in substance, a challenge to a much earlier decision to charge.
16. Andrews J referred to this application for judicial review in the recitals to the GCRO (see below).

Claim IL-2018-000164

17. On 31 August 2018, R issued claim IL-2018-000164 in the IPEC against VLS. R objected to 'patent specification EP3145428A1'. R, 'a person with practical knowledge and experience of the kind of work in which the invention is intended to be used and skilled in the relevant art' objected to the 'patentability of the ...invention pursuant to section 4A(1)(a) of the Patents Act 1977'.
18. R contended that the invention represented a substantial 'physical intervention on the body' which 'requires professional medical expertise to be carried out and which entails a substantial health risk'. It was excluded from patentability pursuant to Article 53(c) of the European Patent Convention ('the EPC').

19. As appears from a witness statement dated 4 December 2019 by Mr Johnson, for VLS, the claim form was sent to VLS's San Francisco office. R did not comply with the Civil Procedure Rules which apply to the service of process out of the jurisdiction. R did not, in any event, pursue the claim. The claim form expired before it was ever properly served.
20. The claim form did not enclose particulars of claim. Mr Johnson considered it with two other solicitors. It appeared that R was challenging the validity of a pending patent which was the subject of a European patent application. There was also a claim for misrepresentation. On 1 October 2018, VLS's solicitors wrote to R, pointing out that he could not bring an action for revocation of a pending patent, and he had not pleaded the elements necessary to make out a cause of action in misrepresentation.

The GCRO

21. On 18 October 2018, Andrews J made the GCRO. That order lasts for two years. It prevents R personally or by his servants or agents from 'issuing any new proceedings against any Defendant in the High Court of Justice or in any County Court in England and Wales or from issuing any application, appeal, or other process in CO/2918/2018 or in any other action in any other court without first getting the permission of the Designated Civil Judge for Wales' (HHJ Robert Harrison QC).
22. The recitals to the GCRO referred to the two applications for permission to apply for judicial review, both arising from the same prosecution, and both of which had been refused and certified as totally without merit. The recitals also noted that bodies who had no real interest in the claim had been joined to both claims as interested parties. They noted that R had sought, in the criminal proceedings, a reference to the Court of the European Union, which the trial judge had described as 'of no merit whatsoever', and had served a defence case statement which bore 'almost no relation to the case brought against' either defendant.
23. It appeared to Andrews J that unless he was restrained, R was likely to issue further applications and/or appeals which were without merit.
24. Paragraph 2 of the GCRO explained how R was to apply to HHJ Robert Harrison QC for permission to issue further proceedings. Paragraph 3 explained how R was to appeal from any decision by HHJ Robert Harrison QC to refuse such permission.
25. Paragraph 5 of the GCRO provided that if any application or proceedings of any kind which were within the scope of the GCRO were purportedly issued, filed or served on any party without such permission, that party would not be required to respond, and the purported application/proceedings 'shall stand struck out without being heard'. No such process would be issued by the court. It also provided that any such step would be a breach of the GCRO and a contempt of court.

Events since the GCRO

The VAT appeals

26. Four appeals were brought in the First-tier Tribunal Tax Chamber ('the FTT') in TC/2017/07387, TC/2017/0739, T/2017/07389 and TC/2017/07390. Those appeals concerned liability to value added tax ('the VAT appeals'). One was brought by R, it is not clear when. However, I infer from their case numbers that all the appeals were brought in the course of 2017.

27. In an order of 2 April 2019 made after a hearing in March 2019 Judge Charles Hellier ordered that three appeals, including the appeal by R, to be struck out. Judge Hellier stayed an appeal by James Waghorn until 21 days after the judgment by the Court of Appeal (Criminal Division) in James's appeal against his conviction at Plymouth Crown Court on September 2018 against count 2 on the indictment. James was ordered, within 21 days of that date, to notify the FTT and HMRC whether he intended to pursue his appeal to the FTT.
28. Judge Hellier explained in paragraphs 2-4 of his order why he had struck out R's appeal. R had complained of HMRC's failure to give him credit for input tax he had claimed in various VAT returns. R told Judge Hellier at the hearing that the input tax claim related to supplies made to a company which then provided those supplies to third parties. No supplies were made by him personally as a sole trader using the supplies made to the company. Section 24 of the VAT Act defines 'input tax' as VAT on the supply to a person of any goods or services ...being goods or services used or to be used for the purposes of any business carried on or to be carried on by him'. The amounts claimed by R were not his 'input tax' since the goods or services were not supplied to him and not used by him in any business he carried on. The appeal had no prospects of success.
29. In paragraphs 12-15, Judge Hellier explained that R's reason for bringing his appeal was to establish what is the proper treatment for VAT purposes of particular cancer treatments. He asked for his appeal to be re-classified as complex, transferred to the Upper Tribunal and for a reference to the CJEU.
30. Judge Hellier explained that none of those issues arose, because the claim for input tax did not depend on whether the cancer treatment was liable to VAT; it turned, rather, on section 24 of the VAT Act. Section 24 meant that the appeal was doomed to failure.
31. He also explained that HMRC's policy, in suitable cases, was to give a decision whether a certain supply was subject to VAT. If R was given such a decision and disagreed with it, he could appeal to the FTT (paragraph 16).

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32. On 29 July 2019, a claim form making an application for judicial review, signed by R (as 'Company Employee') was issued on behalf of his company, CPR Ablations PLC ('CAP') against Lloyds Banking Group PLC ('LBG') in claim number CO/2991/2019 ('claim 3'). CAP was incorporated in December 2018.
33. HM Treasury and Daniel Scavino Jr were joined as interested parties.
34. Mr Scavino was, at that stage, the White House Director of Social Media and Assistant to the President. It is not clear, at all, why he was joined in the proceedings. Nor is it clear why HM Treasury was joined.
35. Claim 3 challenged a refusal to open a bank account. The refusal was communicated in a letter dated 3 May 2019 from a Local Business Manager, employed in a local branch, not by LBG (the parent company), but by Lloyds Bank Plc (see LBG's acknowledgement of service in claim 3). The refusal was based on 'the conduct of an account you were a director of which was held by us previously'.
36. The grounds for the claim alleged breaches of articles 2 and 8 of the European Convention on Human Rights ('the ECHR'). The claim therefore depended, in part, on

whether, in refusing banking facilities to a private company, LBG (or Lloyds Bank Plc) was exercising a public function for the purposes of the Human Rights Act 1998 ('the HRA'). It is clear from R's explanation of this claim at the 15 October 2020 hearing that the theme of this argument is linked with the arguments he tried to raise in his VAT appeal before Judge Hellier, and which, according to the GCRO, he raised in the course of his trial at Plymouth Crown Court.

37. LBG contended in its acknowledgement of service that it was the wrong party to the claim (as the application to open an account had been refused by Lloyds Bank Plc), but that, in any event, neither was amenable to judicial review in respect of the refusal. LBG also pointed out that R was struck off the medical register in 2013 (they attached the judgment of Sir James Munby, P, in *In the matter of SW* [2017] EW COP 7).
38. I should add that VLS included the relevant decision of the Medical Practitioners Tribunal Service ('MPTS') in their bundle for the hearing on 15 October 2020. The MPTS found several charges proved, including charges that, at the clinic referred to in the decision, R unnecessarily exposed a patient to serious and unacceptable risks (in 21 itemised, different, respects), that R had been convicted of the offence of carrying on an independent hospital without being registered, that he had dishonestly told an interim hearing of the MPTS that he had only worked at the clinic for two days, that he had dishonestly failed to include details of his employment at the clinic in a form, and had otherwise acted so as to circumvent restrictions on his practice.
39. On 10 September 2019, Lang J made an order. She referred to the GCRO. She ordered that unless the court was notified that R had obtained permission to bring this claim, it would be automatically struck out on 10 December 2019. She also ordered that as neither of the Interested Parties had any interest in the claim, they should be removed from it.
40. I note that this claim was issued in breach of terms of the GCRO, because R had not obtained permission to issue it, in accordance with the terms of the GCRO. Accordingly, by reason of paragraph 5 of the GCRO, it was automatically struck out. Moreover, by issuing the claim, R breached the GCRO and was in contempt of court.

The order discharging R's bankruptcy

41. R was declared bankrupt by the Plymouth County Court on 7 September 2018. His bankruptcy was discharged on 7 September 2019.

R's application notice dated 4 December 2019

42. On 4 December 2019, R asked permission from HHJ Harrison QC 'to bring or renew' claims against (1) LBG (2) VLS and (3) Her Majesty's Commissioners for Revenue and Customs ('HMRC').
43. In a box on the first page of the application notice, R said he was asking permission to bring claims against the parties I have just referred to 'in the issues of access of British Public to innovative & effective medical treatments for advanced Cancer'.
44. I asked R at the hearing about his intended claim against HMRC. I gathered that he intends to appeal, on the grounds set out in paragraph 17 of a draft notice of appeal, against a group of decision notices all dated 11 November 2019 which identify inaccuracies in VAT returns during parts of the period 1 November 2016-30 April 2019.

45. They fall into two groups. The first group concerns sales income for training provided by Dr Jooste to various clinics. It is said that that income is not exempt, but standard rated because neither of the two relevant exemptions applies; Dr Jooste was not a registered medical practitioner, because he had been struck off for misconduct, and he was not providing any medical treatment to those whom he was training. Nor was the service an exempt supply of education.
46. The second group of notices concerns claims which are said to be incorrect because no evidence had been provided to show that the Mobile Ablations Solutions Limited ('MASL') was entitled to recover any input tax. The relevant invoices were addressed, not to MASL, but to Cosmetic Practitioners training network.
47. Paragraph 17 of the draft notice of appeal says that MASL has never made a supply of educational or examination services. Dr Jooste provided private tuition as sole proprietor of Cosmetic Practitioner training network. He sometimes asked his pupils to pay MASL. MASL may not lawfully supply a cancer service in general. The cancer service is promoted via the internet and 'therefore the supply within the UK to the general public is assessable to VAT. The question whether the British Government is in breach of international law by deliberately taxing citizens for 'the life necessity' of 'the essential medical treatment to sustain life – contrary to article 6(c) of the Rome Statute ...is now before the Lord Justices of Appeal (Criminal Division) – In determination of the fundamental legal question:- Can the State raise revenue from the People' fatal disease?'
48. The relief claimed in paragraph 18 of the draft notice of appeal is 'Repayment of VAT and VAT Repayment Supplement by HMRC as declared and duly [sic] decided, at Trial, by HHJ Townsend, sitting at Plymouth Crown Court, of the evasion of VAT by the Company as being totally without merit in R v Waghorn and Waghorn [T20170158]'
49. VLS's patent attorney, Mr Johnson, explains in a witness statement dated 4 December 2019 that it was not clear to VLS, who were served with the application notice on 27 November 2019, what claim R intended to bring against them. VLS had previously been sent the claim form in claim number 1L-2018-00164. That claim was issued before the GCRO was made (see above).
50. Mr Johnson speculated that R might intend to renew that claim against VLS.
51. Mr Johnson said that R had not, in his application, set out the grounds and nature of the application (contrary to Practice Direction 3C.4.5). Further, as of 28 November 2019, the patent had still not been granted. Mr Johnson said that R's application for permission to make claims against VLS was vexatious, and a breach of the GCRO. He asked the court to dismiss R's application and to extend the GCRO for a further period of two years. The up-to-date position is that the patent has yet to be granted, but the European Patent Office has indicated that it will issue a patent, and has further indicated in what form that patent will be issued (see Ms Hart's second witness statement, dated 12 October 2020).
52. On 2 December 2019, the Solicitor's Office at HMRC wrote to R. Ms Taylor, first, asked R not to write to Mr Clarke on this subject again and to stop treating him as HMRC's legal representative for any purpose. He had represented HMRC at a tribunal hearing (I infer that this is a reference to the hearing of the appeals before Judge Hellier), but was not part of the Solicitor's Office, or authorised to reply to

correspondence on HMRC's behalf. She indicated that from the general description in R's application, she simply did not understand what proceedings he intended to bring against HMRC. There was nothing in the documents which suggested that R had any cause of action against HMRC. She added, 'Indeed, all they show is your persistence in bringing unmeritorious legal proceedings'.

53. On 23 January 2020, HHJ Harrison QC ('the Judge') made an order on the papers refusing permission to R to bring the claims against LBG, VLS, and HMRC. He said that the application did not set out a logical explanation of why permission was being sought, or why the proceedings were directed at the various defendants. Instead, R had produced bundles of documents which, he said, were relevant to each claim.
54. The Judge referred to letters which R had sent, in similar terms to the people the Judge identified in paragraph 5 of the reasons for making his order. The letters referred to the general purpose of the proceedings: to encourage innovation in medical treatment and to enable a medical doctor to provide a treatment what is available abroad. Article 2 of the ECHR was referred to.
55. As far as Judge could tell from the papers, the claim against LBG was an application for judicial review concerning a decision not to open a business bank account. The decision was not a decision of a public body and it was 'difficult to see how that decision can form the basis of any proceedings'.
56. The Judge then referred to the claim issued in the IPEC which I have described above. He assumed that R was applying in some way to resurrect that claim. He said that there was no evidence that the claim form had been served on VLS, who were outside the jurisdiction. He assumed that the validity of the claim form had expired. 'The claim form does not really explain the cause of action'. In any event, VLS had responded, pointing out that no patent had yet been granted. VLS had reviewed the claim form. Their point was that 'it is not at all clear what [R] envisages his proposed claim to be'. The Judge agreed with that. R was obliged to set out his claim in a clear and comprehensible way and had not done so.
57. The Judge then considered the claim against HMRC. R's application did not make it clear what permission was being sought. The Judge referred to a letter dated 25 November 2019 to Judge Hellier, which mentioned an application for a declaration of incompatibility between the Cancer Act 1939 and the ECHR. The Judge also referred to the decision notices I have described above. He also referred to paragraph 18 of the draft notice of appeal. It seemed that R was seeking leave to appeal against the letters dated 11 November 2019. The Judge concluded, again, that it was not clear what proceedings against HMRC were proposed. The court could not give permission in such circumstances.
58. He directed that any application for permission to appeal should be made to him on the papers within 28 days. It could then be renewed on the papers to Andrews J.
59. He also directed that the papers be referred to Andrews J for her to consider whether to extend the GCRO.
60. On 14 February 2020, R applied for permission to appeal against the order of 23 January 2020.
61. On 27 February 2020, Andrews J made an order. The recitals referred to the proposed claims which R had sought permission to make. Those were the proceedings in

CO/2991/2019, in the name of CAP, a claim in R's name in the IPEC against VLS (IL-2018-000164) and the VAT appeals. The recitals recorded 'that to the extent that it was possible to discern what the claims were...they were either fundamentally misconceived or otherwise totally without merit' and that there was evidence that once the GCRO expired, R was likely to persist in bringing claims that were totally without merit either in his own name or in the name of companies with which he had an association.

62. The Order gave directions to enable a hearing to be listed at which the court could consider whether the GCRO should be extended. Andrews J did not reserve the case to herself. Swift J made a further order on 26 March 2020, which, among other things, provided that the claim should be heard in the Royal Courts of Justice.
63. On 9 April 2020, the Judge refused permission to appeal against his order of 15 January 2020.
64. On 27 April 2020, R applied for a review by Andrews J of the Judge's refusal of permission to appeal against his order.
65. On 21 May 2020, Andrews J refused permission to appeal. To the extent that R's application was not an application for permission to appeal, but, instead, an application for permission to bring proceedings on different grounds against someone else, it was not made in accordance with the GCRO, and she struck it out as an abuse of process.
66. On 1 October 2020, VLS filed an application with evidence, supporting the extension of the GCRO for a further two years, and for R's claim number IL-2018-000164 against VLS to be struck out pursuant to CPR 3.4(2). It appears that, at that stage, VLS had not seen the order of Andrews J of 21 May 2020.
67. On 7 October 2020, Swift J confirmed (without making any formal directions) that the application to strike out should still be listed in Cardiff at a separate hearing from the hearing which had been listed to consider whether or not to extend the GCRO.
68. On 8 October 2020, VLS wrote to the Court. They again asked for their application to be heard on 15 October with the application to extend the GCRO. The Court lawyer wrote to VLS with a copy of the order of 21 May 2020, asking VLS to confirm whether they agreed that there were no outstanding claims to be struck out.
69. Miss Collett confirmed at the hearing on 15 October 2020 that VLS wished to pursue the application to strike out claim IL-2018-000164. R's position was that the claim form had not been properly served, and had expired.

The application for judicial review in 'CO/587/2020'

70. VLS's solicitors referred, in a letter to the Court dated 8 October 2020, to 'an appellant's notice and grounds of appeal' apparently in further proceedings issued by R, in CO/587/2020, against the DPP, served on 25 February 2020. I have asked the Court Lawyer about this claim. It is not a new claim; the claim number was given by mistake to R's Appellant's Notice of 14 February 2020, by which he sought permission to appeal against the order of the Judge made on 15 January 2020.

The position of the CPS

71. The CPS emailed the Court on 24 September to say that they would not be attending the hearing. The CPS also wrote to the Court on 14 October. The CPS said that it would

be grateful if the Court could consider removing the CPS from the proceedings as it did not appear to be a relevant party.

R's skeleton argument

72. R's skeleton argument for this hearing apparently relates to CO/2918/2018, but includes VLS as an Interested Party; VLS was not an Interested Party in that claim.
73. The skeleton argument is a discursive document. It gives accounts of searches for the Elixir of Life and for the Philosopher's Stone. It describes the discovery of radium, and the enactment of the Cancer Act 1939. Section 4 is the only provision which is still in force. R objects to it. R refers to the Rome Statute of the International Criminal Court. R asserts that the Government is in breach of the Rome Statute. He asks for a declaration that section 4(1)(a) of the Cancer Act 1939 is incompatible with articles 2, 3 and 8 of the European Convention on Human Rights.

The law

74. Practice Direction 3C provides that all types of civil restraint order ('CRO') restrain the person against whom they are made from taking steps in litigation without first getting the permission of the judge identified in the CRO. If proceedings are started in breach of a CRO they are automatically struck out or dismissed. If a person persistently makes applications to bring proceedings which are totally without merit ('TWM'), the decision to refuse permission will be final and the person can only appeal against it with the permission of the judge concerned. Practice Direction 3C provides for three levels of CRO.
75. A limited CRO may be made by a judge of any court. Such an order cannot be made unless that person has made two or more applications which are TWM. It prevents (unless permission is sought) the making of any further applications in the proceedings in which the order is made. It is limited to those proceedings and lasts for the duration of those proceedings unless the court orders otherwise.
76. An extended CRO ('ECRO'), unlike a general CRO, can only be made by a judge in the Court of Appeal, a High Court judge or a designated civil judge or his appointed deputy. It can only be made where a person 'has persistently issued claims or made applications which are' TWM. If such an order is made by a judge of the High Court, it can restrain the issuing of claims or making of applications in the High Court or in the county court (unless permission is sought) 'concerning any matter involving or relating to or touching upon or leading to the proceedings in which the order is made'. An ECRO is made for a fixed period (no more than two years) and must identify the courts in which the person against whom it is made is to be restrained from issuing claims or making applications. The two-year period can be extended. It must not be extended for more than two years on any given occasion.
77. A GCRO can be made where a person 'persists in' issuing claims or making applications which are TWM, 'in circumstances where an extended CRO would not be sufficient or appropriate'. Such an order, if made by a judge of the High Court, restrains a person from issuing any claim or making any application in the High Court or the county court (unless permission is sought). A GCRO is made for a fixed period not greater than two years. The two-year period can be extended. It must not be extended for more than two years on any given occasion.

78. In *R (Kumar) v Secretary of State for Constitutional Affairs* [2006] EWCA Civ 990; [2007] 1 WLR 536, at paragraph 60, the Court of Appeal said, referring to the then recently amended Practice Direction 3C, ‘The new language is apt to cover a situation in which one of these litigants [ie a person who persists in issuing claims or making applications which are TWM] adopts a scattergun approach to litigation on a number of different grievances without necessarily exhibiting such an obsessive approach to a single topic that an [ECRO] can appropriately be made against him or her’. The Court of Appeal also said, at paragraph 69, that under the new rules-based regime, the former requirement for vexatiousness has gone.
79. The test for extending a GCRO is in paragraph 4.10 of CPR 3C PD. A court ‘may extend the duration of a [GCRO] if it considers it appropriate to do so’. It must not extend a GCRO for more than two years at any one time.

Discussion

80. The background to this hearing is that, almost two years ago, Andrews J considered that the test for making a GCRO was then met, on the basis of two applications for judicial review which R had issued and which she considered to be TWM.
81. I have to consider whether, on the basis of R’s actions since the making of the GCRO, it should now be extended for a further period of up to two years. The test in paragraph 4.10 is, on the facts of this case, informed, in my judgment, by two questions which were relevant to the initial imposition of the GCRO.
- i. Has R persisted in making claims or applications which are TWM?
 - ii. Are the circumstances such that an ECRO would not be sufficient or appropriate?
82. At the hearing, R did not oppose the extension of the GCRO. He told me that his position was that he was neutral about it. It did not prevent him from making claims. The requirement to get permission to make a claim was a filter on any claims.

Has R persisted in making claims or applications which are TWM?

83. Since the date of the GCRO, R has made the following claims or applications
- i. claim 3
 - ii. application 1 (by which R sought to bring/renew three separate claims)
 - iii. the application for permission to appeal to the Judge against the Judge’s decision on application 1 and
 - iv. the appeal against the Judge’s decision on application 1.
84. R did not issue the VAT appeal after the GCRO was made, but he attended a hearing in March 2019, at which he presented oral arguments in support of that appeal.
85. All the claims and applications have two broad common themes (see paragraphs 29, 36, 43,47, 48, 54, 57 and 73, above). They are that section 4 of the Cancer Act 1939 is incompatible with Convention rights and that it is contrary to international law, that is, the Rome Statute, for the state to tax cancer treatments.

86. I consider that claim 3 was TWM. There is no sensible basis for an argument that, in deciding whether or not to allow a person to open a bank account, a bank is exercising a public function for the purposes of the HRA. Such a claim is bound to fail.
87. This claim was made in breach of the GCRO, and as a result of the terms of the GCRO was struck out automatically. The making of the claim was also a contempt of court. The making of this claim, which is TWM, in the light of the GCRO, and contrary to its express terms, is a sign of great persistence. These matters are exacerbated by the joinder in the claim of two parties who have no discernible connection with the claim.
88. Whether an application for permission to bring a claim (in accordance with the requirements of a GCRO) is TWM depends on the whether the underlying claim for which permission is sought is TWM.
89. I consider that the application for permission to ‘renew’ claim 3 was plainly TWM, for exactly the same reasons as claim 3 was TWM. I have considered whether the absence of any decision on the merits of claim 3 excuses this. I do not consider that it does. The application for permission to renew claim 3 was an application for permission to bring a claim which had been automatically struck out under the terms of the GCRO. On the face of it, it was an abuse of the court’s process.
90. I accept that R might have been prompted to apply for permission to bring claim 3 by the terms of Lang J’s order. But he left it until a few days before the date by which he was, under the terms of that order, to have notified the court that he had permission to bring the claim. Further, the imposition of the GCRO meant that R had a particular responsibility (1) to obey the GCRO and (2) independently to consider whether there was any arguable legal merit in claim 3 (or in any other claim which he sought permission to bring). I do not, therefore, consider that the terms of Lang J’s order in any way excuse the application for permission to renew claim 3.
91. The claim against HMRC, to the extent that it has been articulated, is also TWM. I agree with the Judge that it is difficult to work out from the ‘draft notice of appeal’ what R’s grounds of appeal against the decision notices are. Those notices clearly explain the decisions which they notify. R’s grounds of appeal do not engage with those reasons or explain why they are wrong. The grounds of appeal are one of the many examples of one of the two themes I have described in paragraph 84, above.
92. I turn to the ‘claim’ against VLS. Miss Collett explained in her skeleton argument and orally that there are three main substantive defects in the claim.
93. First, no patent has not yet been granted, so the courts of England and Wales have no jurisdiction over the ‘claim’. Whether or not the patent should be granted is exclusively a question for the European Patent Office (see article 4(3) of the EPC).
94. Second, even if a patent had been granted, and courts of England and Wales had jurisdiction over it, the grounds on which a patent may be challenged are limited (see section 74(1) and (2) of the Patents Act 1977 - ‘the PA’). R’s ‘claim’ does not fall within section 74(1) of the PA and is therefore caught by the prohibition in section 74(2) of the PA.
95. Third, Miss Collett points out that R’s reliance on section 4A(1)(a) of the PA is misconceived. The pending patent does not contain a ‘method claim’. As Ms Hart explains in her second witness statement, when the patent is granted, it will be granted

without any method claims (let alone any which relate to the treatment of the human body).

96. Finally, as she explains in paragraphs 35-50 of her skeleton argument, R has failed to comply with the requirements of the CPR about service out of the jurisdiction (CPR 63.14(1) and CPR 6) and about the time for serving a claim form (CPR 7.5) and R did not comply with PD 63 4.2 which applies to the pleading of challenges to the validity of a patent.
97. I accept Miss Collett's arguments about the substantive defects in the 'claim' against VLS. I therefore consider that it is TWM. It is bound to fail. I also consider that, for the avoidance of doubt, the claim form in IL-2018-000164 should be struck out. It discloses no reasonable grounds for bringing the claim, and R has breached three main groups of provisions of the CPR.
98. Application 1 was therefore TWM. The Judge having carefully explained why he had refused application 1, the application for permission to appeal against the Judge's decision on application 1 was also TWM, as was the appeal against the Judge's decision.
99. Although the VAT appeals were instituted before the GCRO, R argued his VAT appeal after the date of the GCRO. It is clear from Judge Hellier's careful reasons for striking out the appeal that it, too, was TWM.

Are the circumstances such that an ECRO would not be sufficient or appropriate?

100. As I have said, the claims and applications have two broad themes. Those two broad themes do not enable me to identify, however, the exact types of claim which R might make, or the identity of any potential defendant or defendants to those claims. Moreover, R's habit of adding apparently random interested parties to his claims makes it impossible to guess who might be embroiled in any further claims. In those circumstances, I do not consider that an ECRO would be sufficient or appropriate to protect potential future defendants or interested parties, or to protect the wider public interest.
101. R's persistence in attempting to pursue three claims which are evidently TWM gives me no confidence that his enthusiasm for litigating such claims has abated. I therefore consider that the GCRO should be extended and that it should be extended for the maximum available period.

Conclusion

102. For those reasons I extend the GCRO for a further two years, and I strike out claim IL-2018-000164.