Neutral Citation Number: [2018] EWHC 913 (Admin)

Case Nos: CO/1607/2017, JR/9023/2017
and CO/6422/2016

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT
(Lady Justice Sharp and Mr Justice Green)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 26/04/2018

Before :

LADY JUSTICE SHARP
MR JUSTICE GREEN

- -

Between :

CO/1607/2017

The Queen on the application of GOPINATH SATHIVEL	***Claimant***
- and -	
SECRETARY OF STATE FOR THE HOME DEPARTMENT	***Defendant***

JR/9023/2017

The Queen on the application of DARUDOLA AJANI	***Claimant***
- and -	
SECRETARY OF STATE FOR THE HOME DEPARTMENT	***Defendant***

CO/6422/2016

The Queen on the application of OTILA NCUBE	***Claimant***
- and -	
SECRETARY OF STATE FOR THE HOME DEPARTMENT	***Defendant***

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Mr R Parkin (instructed by **David Wyld Solicitors**) for the **Claimant**
Mr M Rana (instructed by **Sabz Solicitors**) for the **Claimant**
Mr S Ogbonna and Ms J Obodoefuna (instructed by **Topstone Solicitors**) for the **Claimant**

Hearing date: 13th March 2018

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Approved Judgment

MR JUSTICE GREEN :

A. Introduction

1. This is the judgment of the court.

2. There are before the court three cases referred because of concerns that the legal professionals acting in these proceedings have in their professional behaviour fallen far short of the standards required of those conducting proceedings on behalf of clients. The Court has an inherent jurisdiction to govern its own procedure and this includes ensuring that lawyers conduct themselves according to proper standards of behaviour: See *R (Hamid) v Secretary of State for the Home Department* [2012] EWHC 3070 (Admin) ("*Hamid"*). When a Judge concludes that a lawyer has acted improperly that may be recorded in a court order. The papers are then referred to the High Court Judge having responsibility for this jurisdiction. A "Show Cause" letter may then be sent to the lawyers concerned who are invited to respond addressing the matters of concern raised in the Show Cause letter. If the Judge in charge considers the response to be inadequate the case may be referred to the Divisional Court. In the event that the Court finds that the conduct in question falls below proper standards the Court can admonish a practitioner. Alternatively, the Court can refer the file to the relevant regulatory authority, usually the Solicitors Regulation Authority ("SRA"), for further investigation and if appropriate the imposition of sanctions. The Court is aware that in relation to previous references to the SRA solicitors have been struck off the roll.

3. In the three cases before this court the conduct of the professionals involved amounts, in our view, to a serious and persistent failure to adhere to proper standards. We have decided that in each case it is proper to refer the file to the SRA.

B. The problem facing the courts and tribunals in the field of immigration and asylum

4. The conduct of practitioners in the field of immigration and asylum poses a particular problem for the courts and tribunals. It is for this reasons that the Courts have been forced to exercise their inherent jurisdiction to govern proceedings before them to hold to account the behaviour of lawyers whose conduct of litigation falls below the minimum professional and ethical standards which must be demanded of *all* lawyers appearing before the Courts. The *Hamid* jurisdiction applies to all those dealing with clients in proceedings. The overwhelming majority of problem cases seen by the High Court, however, concern solicitors.

5. In *Hamid* in 2012 the President of the Queen's Bench Division, later to be Lord Chief Justice, expressed the hope and expectation that with that judgment the problem of professional misconduct amongst immigration and asylum practitioners would come to an end. It has not. It remains in 2018 an issue of deep concern.

6. In 2018 the present Lord Chief Justice has expressed concern at the lack of the exercise of the duty of candour on the part of practitioners in the context of last moment applications for injunctions to restrain removals. He also reiterated the importance of the *Hamid* jurisdiction. See paragraph [20] below.

7. There are of course many highly professional practitioners in this complex and difficult field who successfully reconcile the need to act in their client's interests with their duties to the Court. However, there is also a substantial cohort of lawyers who consider that litigation is a tactic or strategy that can be used to delay and deter removal proceedings.

8. We describe below some of the situations that too frequently confront the courts and tribunals.

9. First, most of the practitioners in this area do not have legal aid franchises. The clients are privately funded, and they are frequently vulnerable and desperate. We sought information as to the level of fees demanded by the solicitors in the cases before us. The sums vary; but they invariably run into multiples of thousands of pounds. To raise funds to pay for legal assistance clients must often seek support from family and friends. The solicitors will not generally act unless they are placed in funds beforehand. Some lawyers promise the highest quality of representation and we have no doubt that there are solicitors and other representatives who do provide excellent services. But there are other solicitors who having promised high quality specialist services then instruct paralegals and unqualified persons to draft what would ordinarily be viewed as complex and specialised pleadings and court documents (often prepared by counsel). The cases that are then advanced may be wholly lacking in merit. Judges are presented with lengthy pleadings much of which is irrelevant and has been cut and paste from template documents, often available on the internet.

10. Second, the incentive of some practitioners in initiating court or tribunal proceedings is simply to delay the immigration process. They do this by exhausting every judicial or tribunal opportunity, irrespective of the merits of the case. Buying time is valuable. Even a hopeless application or appeal takes time to determine and whilst that is ongoing there is the possibility of lodging repeat "*fresh material*" applications to the Home Office with a view to generating new Home Office decisions (rejecting the contention that there is fresh material relevant to the applicants case) which then generates even more (unmeritorious) appeals which take up even more time to resolve and allowing (yet again) yet more fresh material applications, and so on. It is commonplace for such cases to continue for many years, and in extreme cases decades. And the longer the case goes on the more scope there is for an applicant to begin to develop an Article 8 "*private life*" claim, for example by getting married (sometimes through a sham process) or having (or claiming to have) children. Where an applicant is detained pending removal the longer that detention persists (which may be a consequence of the applications and appeals being pursued on the individual's behalf) the greater the scope for the detained person to then argue on well-known "*Hardial Singh*" grounds that it is no longer lawful to maintain detention. If a bail application succeeds the applicant might abscond. Sometimes the applicant re-appears years later, and the process then starts again.

11. Third, when the Home Office sets a date and arrangements for removal a different dynamic sets in. Last minute applications to restrain removal are made to the High Court, and often to the "out of hours" duty Judge literally hours or even minutes before the removal flight departs the runway. Frequently the day before, or even the day of, removal lawyers serve a new "*fresh material*" claim upon the Home Office and then argue before the duty Judge that removal is unlawful pending determination

by the Home Office of that new application and/or an appeal therefrom. It is of the nature of these cases that the applicant may have been engaged in a Home Office and/or appeal process for some years. There is often a lengthy history. However, what happens is that at the last moment the applicant changes solicitors. The new solicitors draft the last-minute application seeking the restraining of removal and they explain to the Judge that they have been instructed late on and that they have had no time to obtain instructions (the client will be in detention). Frequently, the new lawyers do not have access to the prior documentation and they have not (because of lack of time they argue) sought or obtained the documentation from previous solicitors or the Operational Support and Certification Unit ("OSCU") of the Home Office. For this reason, arguments advanced to the Judge are based on details provided by the client who being in detention can give only the barest of instructions over the phone. Judges complain that all too often the version of events provided to them is materially inaccurate and/or incomplete. It is almost unheard of for the Defendant to be notified of the application or to have a chance to advance submissions, even in writing.

12. All of the above scenarios are reflected in various ways in the facts of the cases before us. In the midst of all of this it is crucial that the courts and tribunals retain the integrity of their processes. It is unacceptable that they should be used as part of a continuing game played between applicants and the Home Office. If the processes of the Court and tribunals are abused in this manner then those individuals who do, genuinely, have proper cases to advance (and there are many) find that they sit in a long queue waiting to be heard. The judges who should be devoting their time to resolving genuine and important disputes are distracted dealing with abusive cases. Justice is delayed and can be denied.

13. This is the broader context to the *Hamid* jurisdiction and to the cases which are before the Court.

C. <u>The importance of adherence to proper standards</u>

14. The importance of demanding adherence to proper standards is, or should be, obvious. In *Hamid* Sir John Thomas, then President of the Queen's Bench Division, stated as follows:

> "10. These late, meritless applications by people who face removal or deportation are an intolerable waste of public money, a great strain on the resources of this court and an abuse of a service this court offers. The court therefore intends to take the most vigorous action against any legal representatives who fail to comply with its rules. If people persist in failing to follow the procedural requirements, they must realise that this court will not hesitate to refer those concerned to the Solicitors Regulation Authority.
>
> 11. That is a warning for the future. We hope it will be unnecessary to have to have any further hearings of this kind or to refer anyone to the Solicitors Regulation Authority, but we will not hesitate to do so where there is a failure to comply with the court's requirements."

15. In *R (Butt) v secretary of State for Home Department* [2014] EWHC 264 (Admin) Sir Brian Leveson, President of the Queen's Bench Division, reiterated the importance of the statements made in *Hamid*. He then added as follows:

> "3. it remains equally critical that solicitors who work in this field make applications only when based upon a proper consideration of the evidence, having assembled appropriate proof and taken care to ensure that the time of the court is not being wasted. If a firm is called to show cause in the future, the first occasion may very well be met with an opportunity to address failings. That opportunity will have to be seized and is likely to consist of a requirement for training and a report back to the Administrative Court of steps taken in that regard. Normally a second, and even more so a third, reference to this court is likely to lead to the papers being dispatched to the Solicitors Regulation Authority.
>
> 4. In these days of austerity, the court simply cannot afford to spend unnecessary time on processing abusive applications; still less is it a proper use of the time of out-of-hours and overnight judges, hard pressed at the very best of times, to deal with such applications. All those who practise in this field ought to be warned, because the most serious failings will not necessarily lead to this stepped approach but may lead directly to reference to the Solicitors Regulation Authority."

16. In *Okondu v Secretary of State for the Home department* [2014] UKUT 377 (IAC) the Upper Tribunal (Mr Justice Green and Upper Tribunal Judge Gill) stated that the principle in *Hamid* could apply equally to the Upper Tribunal (Immigration and Asylum Chamber) ("UTIAC"). At paragraph [86] the Tribunal observed:

> "…the mere fact that legal representatives advance an application that fails on paper, or on a renewed oral basis, is not in and of itself a reason for the Tribunal to impose any sanction. Applicants with weak cases are entitled to seek to advance their case and have it adjudicated upon; that is a fundamental aspect of having a right of access to a court. But there is a wealth of difference between the advancing of a case that is held to be unarguable in a fair, professional and proper manner and, which is what we have been concerned with in these cases, the advancing of unarguable cases in a professionally improper manner."

17. In paragraph [88] the Tribunal underscored the importance of the observations made by Sir John Thomas in *Hamid*. Given the assumption by the Upper Tribunal of much of the jurisdiction of the High Court when dealing with judicial reviews in the field of immigration and asylum it was stated that the Tribunal would adopt a similar procedure where it considered it appropriate so to do.

18. In *R (Adil Akram) v Secretary of State for Home Department* [2015] EWHC 1359 (Admin) Sir Brian Leveson, PQBD, once again reiterated the importance of adherence

by legal representatives to proper standards. He referred to the "*pressing need*" for legal representatives to conduct themselves in a professional manner both towards their clients but also towards the court "…*bearing in mind that the paramount duty of all legal representatives acting in proceedings before courts is to the court itself. The need for this warning to be taken seriously increases as the resources available to the Courts to act efficiently and fairly decreases. If the time of the Court and its resources are absorbed dealing with utterly hopeless and/or unprofessionally prepared cases, then other cases, that <u>are</u> properly advanced and properly prepared, risk not having devoted to them the resources to them that they deserve"* (ibid [2]). In that case the facts concerned what the President described as:

> "…an all too familiar and depressing pattern in which the legal representatives demonstrate a remarkable lack of knowledge and/or regard for the substantive and procedural rules governing claims for judicial review." (ibid paragraph [3])

19. At paragraph [30] the President identified a feature which is characteristic of many of the cases in which concerns about professional misconduct arise:

> "Persons seeking to avoid being removed from the jurisdiction in the position of the Akram brothers are frequently extremely vulnerable. They are subject to the rigours of the immigration system. They may well be in detention facing imminent removal. If not in detention, they may be destitute and unable to work. They are likely to be desperate. They are thereby at risk of being easy prey to those who would extract fees upon the promise of experienced counsel being instructed to fight the case vigorously. When (or if) they discover they have been misled, it may be too late and they may well have long departed these shores, often through coercive removal."

20. Notwithstanding these many warnings the lessons which the Courts and the Upper Tribunal have been at pains to see observed, have not been taken on board. In *SB (Afghanistan) v Secretary of State for the Home Department* [2018] EWCA Civ 215 ("*SB Afghanistan*") Lord Burnett of Maldon, Lord Chief Justice, gave judgment in yet another case concerning an extremely tardy, and thoroughly misleading, application to the out-of-hours judge to restrain removal of an erstwhile asylum seeker. The facts recorded in detail in the judgment are not by any means atypical. They involved the instruction of different firms of solicitors with the second set being instructed only after the first solicitors had conspicuously failed to obtain any relief for the applicant. The second solicitors were instructed to issue a "*fresh claim*" and advance a last moment application for injunctive relief to restrain removal. The Judgment records the multiple applications made to successive judges, all of whom were misled by the provision of inadequate and incomplete information. It also records the serious failure to serve the Defendant. Lord Burnett, in his Judgment, reiterated the importance of the guidance given in *Hamid*. He also drew attention to the Administrative Court Judicial Review Guide 2017 which, likewise, reminds practitioners of the guidance given in *Hamid*. Particular emphasis was attached to paragraph [16.3.5] of the Guide which highlighted the duty of candour:

> "The fact that a judge is being asked to make an order out-of-hours, usually without a hearing, and often without any representations from the Defendant's representative and in a short time frame, means that the duty of candour (to disclose all material facts to the judge, even if they are not of assistance to the Claimant's case) is particularly important…"

21. With these observations we now turn to the facts of the present cases.

D. Gopinath Sathivel

22. The Solicitors whose conduct has been referred to the Court are David Wyld & Co Solicitors, South Woodford, London. Their client, the Claimant in the proceedings which gave rise to the *Hamid* Order, was a citizen of Sri Lanka born on 22nd April 1979.

23. On 3rd August 2009 the Claimant made an application for entry clearance as a Tier 4 (General) Migrant. The application was granted until 31st January 2011. Having entered the United Kingdom on 7th January 2011 the Claimant made an application for leave to remain which application was granted until 9th February 2013.

24. On 25 January 2013 the Claimant made an application for leave to remain as a Tier 1 Entrepreneur. This application was refused on the 26 March 2013. On 12th April 2013 the Claimant lodged an appeal against the refusal. On 12th April 2013 the Defendant agreed to reconsider her decision and the Claimant's appeal was withdrawn.

25. On 10th September 2013 the Defendant completed her reconsideration and refused the Claimant's application. An appeal was lodged on 24th September 2014 and was dismissed by the First tier Tribunal on 26th February 2014. An application for permission to appeal was refused by the First tier Tribunal. The Upper Tribunal refused an application for permission to appeal on 28th April 2014. The Claimant's appeal rights were exhausted by 28th April 2014. The Claimant's application for permission to the Court of Appeal was refused on 10 November 2014.

26. Further "*fresh*" submissions were lodged by the Claimant on 16th September 2014, 15th October 2015, and 2nd October 2015. Now the Claimant alleged that he had married a French national. An Immigration Officer conducted a marriage interview with the Claimant and concluded that the marriage was a sham. The Claimant was served with an enforcement notice as an over-stayer on 16th March 2016.

27. On 12th April 2016 the Claimant lodged an application for permission to apply for judicial review of this decision. This application was settled by consent on 26th August 2016 upon the basis that the Claimant had now made an application for an EEA Residence Card thus overtaking the old application. That application was however refused with no right of appeal on 4th December 2016.

28. On 22nd December 2016 the Claimant lodged an appeal. On 20th January 2017 he was detained pending removal to Sri Lanka. On that same day the Claimant submitted yet further submissions. These were refused on the 6th February 2017 with no right of appeal. He was, that same day, released from detention.

29. However, he was re-detained to facilitate removal on 23rd March 2017. His removal failed as he was disruptive. On the same day, 23rd March 2017 OSCU sent a short letter to Nag Law Solicitors, then acting for the Claimant. This set out in concise and accurate terms both the relevant statutory provisions and the applicable case law. It was accepted that the Claimant had a right of appeal in relation to the refusal of a residence card; but it was also explained why, on the facts of the case, that right of appeal was not suspensive of removal. There is no challenge before us to the correctness of the analysis set out in this letter.

30. At about the same time the applicant instructed new solicitors, David Wyld. We have not had explained to us how this change came about. At the hearing before us we were left with the impression that the new instructions had been given at the very end of March. However, following the hearing, and in order to comply with a direction we made to the solicitors to provide details of the fee arrangement with the client we were provided with a letter from David Wyld Solicitors to the client dated 24th March 2017 which confirmed that on that day the solicitors entered a conditional fee arrangement with the client whereby payment was contingent upon removal being deferred and the client being released from detention. David Wyld Solicitors were thus instructed at the latest on the 24th March. The instruction recorded in the letter was to "*go for injunction to stay removal and further file for judicial review on the basis that detention and removal was unlawfully authorised by the Home Office."* The advice was also recorded in the letter: "*An urgent out of hours injunction followed by Judicial Review to be filed against unlawful enforcement."*

31. The client has personally signed the client engagement letter and it is dated the 24th March 2017. It is now clear that the solicitors had direct contact with the client at about the same time as OSCU sent its explanatory letter (see paragraph [29] above). It is also now clear that an out of hours application was made on 24th March, the same day as the new instructions were given. The application was refused by Mr Justice Lavender. It is an inevitable inference that we draw (and this was not disputed by the solicitors) that the lawyer making the out of hours application did not place the OSCU letter before the Judge. The application was nonetheless refused. There is a lack of clarity as to which firm of solicitors actually advanced the application for an injunction. David Wyld Solicitors deny that they made the application: see paragraph [45] below. But at the same time (see paragraph [30] above) it was their advice that the application be made.

32. On 31 March 2017 David Wyld Solicitors, acting for the Claimant, lodged an application for judicial review in the High Court, not UTAIC (where in principle it should have been lodged). The Claim is said to concern unlawful detention, but the Grounds focus only upon the issue of the alleged suspensive effect of the appeal upon detention. An application on these Grounds should have been lodged with the Upper Tribunal, not the High Court. The Grounds are cursory and provide scant background or history to the Claimant. Various documents are appended to the Claim Form, including documents which relate to the period when Nag Law Solicitors acted for the Claimant. No mention however is made of the OSCU letter of 23rd March which, it is common ground, sets out the correct position and would be dispositive of the judicial review, against the Claimant.

33. On 10th April 2017 the Claimant was informed of removal direction rescheduled to take place on 11th April 2017. On that same day the Claimant submitted yet further

"*fresh*" representations opposing removal. On 11th April 2017 the Claimant's removal failed due to administrative error.

34. On 27th April 2017 Mr Justice Holgate refused the application for permission. He considered the application to be totally without merit. He pointed out that the claim was bound to fail upon the basis of well established case law. The Claim Form purported to challenge detention, but it was clear from the grounds that the real challenge was removal from the United Kingdom. The challenge to detention was no more than a device to bring the matter within the High Court as opposed to the Upper Tribunal. Throughout the proceedings the Defendant had clearly explained the relevant case law to the Claimant. However, at no point did the new solicitors ever engage with the well-established case law on the issue. The Judge considered that the proceedings were an abuse of process and the current solicitors should be considered under the *Hamid* jurisdiction.

35. On 2nd May 2017 a Show Cause letter was sent to David Wyld Solicitors seeking an explanation of: Why the claim was not commenced in the Upper Tribunal; and, why the Claimant had failed to engage with the clear position as explained by the Home Office.

36. By letter dated 12th May 2017 David Wyld & Co solicitors responded, on a "*without prejudice*" basis. They agreed that the claim was not likely to succeed. They did not however consider that it was "*so poor as to be unworthy of proper advancement*". The client had been advised that his prospects of success were "*very low*" but he gave firm instructions to proceed regardless. The solicitor's duty required them to advance the best possible case on his behalf. The client's instructions were "*firmly"* that his detention and removal were unlawful. The challenge to detention had been reserved to the High Court under paragraph 3(2) of the Lord Chief Justice's Direction of 21st August 2013 but the solicitors accepted that the client's priority was the challenge to the lawfulness of removal. That did not mean that the challenge to the lawfulness of his detention was inappropriate. The solicitors were unaware of any earlier proceedings. If they existed, they were prepared by a different firm of solicitors and David Wyld Solicitors had no knowledge of them and the old solicitors must have deliberately withheld information about them:

> "We were aware that an out of hours application for a stay of removal was prepared by another firm, though of course this application did not generate an acknowledgment of service from the Respondent, or certainly none that we have ever seen.
>
> If there were such proceedings, with regret, it is likely it was deliberately withheld, from us by the client. This was not a matter which could have been readily anticipated or avoided. As such, it was not possible for us to respond to the earlier Acknowledgment of Service as we did not know it existed and had not seen it."

37. So far as the law was concerned the point arising was not one which the solicitors could have "*anticipated*". They had extremely limited instructions and they were unclear as to what if any decision had been taken by the Home Office leading to proposed removal.

38. The conclusion was as follows:

> "An apology for any inconvenience for the Court is, of course, offered. Our position is that although the situation was regrettable and is regretted, we did not act in a professionally inappropriate manner in the circumstances as they were believed by ourselves to be, even if, in hindsight and in full knowledge of the facts a different approach would have been more appropriate. Nevertheless, it is clear that inconvenience was caused and there is some scope for reducing the risk of similar incidents occurring in the future. While it is unlikely we can avoid deceptive/last minute instructions, we comment as follows: the application was filed by admin staff to Court and grounds prepared by a consultant solicitor… qualified 2013. No unqualified staff members were involved. We do not consider that the present events arose as a result of any defect in out systems for supervision of work. However, additional training would be appropriate in relation to (1) the High Court's jurisdiction in immigration judicial review; (2) recognising prospective claims which are of such little merit that they ought not be filed. It is anticipated that this training can be incorporated into the firm's usual CPD requirements over the next 2 – 4 weeks."

39. Mr Parkin who appeared at the hearing before us for David Wyld Solicitors is a consultant to the firm but is now a member of the Bar. He is instructed on a case by case basis to prepare and pursue applications of various kinds. He appeared on behalf of the solicitors in question to address the concerns expressed about the conduct of the case by David Wyld Solicitors, but he <u>also</u> acted as an advocate in the case in question, instructed by David Wyld solicitors.

40. His position as explained to us can be summarised as follows. His conduct of the case could not be criticised. He accepted instructions from the client and the firm (on behalf of the client) which were "*extremely short*" and amounted to little more than that the client was detained but had informed the solicitors that he had an outstanding appeal which operated to suspend removal and that the solicitors should apply for injunctive relief. He described his instructions as a "*handful of lines*".

41. He did not seek clarification or elaboration of those instructions. He did not contact the Home Office or OSCU. He did not seek to contact the previous solicitors (Nag Law Solicitors). He did not consider that his duty lay in doing anything other than assuming that these most cursory of instructions were true and accurate and then reflecting those instructions forcefully in the application to the court.

42. In response to questions from the Court he accepted that *had* he known the true facts (as set out in the OSCU letter) then his drafting would have been very different and that he could not properly have advanced the arguments that he did. He also therefore (necessarily) accepted that the actual application drafted by him and then served by the solicitors was in fact false and presented an inaccurate and misleading picture to the Court.

43. In our judgment the approach adopted was seriously lacking. We accept of course that an advocate owes a duty to his or her client to advance, fearlessly, that client's position. But any lawyer appearing before the courts and tribunals owes a *paramount* duty to the Court.

44. In the present case the Claimant had a history with the Home Office dating back to 2009 and had been engaged in litigation for over 4 years. It is difficult to comprehend how a lawyer who inherits such a case can give proper advice and act professionally unless aware of the background. In this situation an advocate or lawyer must take *all* due steps to ensure that he or she has the fullest possible information before drafting any sort of an application to the Court or tribunal. This is a duty of enquiry. It is an important duty and it exists to ensure that the advocate can furnish the Court or tribunal with the most accurate version of events possible and thereby avoid misleading the Judge. There can be no proper basis for arguing that there was no time to speak to the Home Office or OSCU or the previous solicitors. For instance, as set out above, either the day of, or the day before, the change of solicitor OSCU sent to Nag Law Solicitors a short letter which set out the actual basis of the client's position. This seems to have triggered the change of solicitors. Had Mr Parkin ensured that he had possession of even this short letter he could not conceivably have drafted the application that he did. He could have obtained that letter from OSCU or the previous solicitors or the client. But he made no effort so to do. He did not contact anyone but simply relied upon the barest of bare instructions communicated from the client to him via the solicitors. The same goes for David Wyld Solicitors since they were instructed by the client on 24th March and simply must have known of the existence of the old solicitors. We infer that the change of solicitors was connected to the OSCU letter. The timings are not explicable by coincidence.

45. We remain troubled at the lack of clarity as to which firm actually pursued the out of hours application for an injunction on 24th March. The letter of instruction indicated that David Wyld Solicitors were instructed to make the application (see paragraph [30] above). We were left with the impression from Mr Parkin that he had made the application in question yet in their reply to the Show Cause Letter David Wyld Solicitors deny that they did in fact make the application (see paragraph [36] above). If this is correct, then on 24th March two firms of solicitors were acting simultaneously for the client and the argument that David Wyld Solicitors could not contact the other set of solicitors rings hollow. If it is not correct however then the reply to the Show Cause letter was inaccurate and misleading.

46. We recognise that there might be (rare) circumstances where time is so much of the essence that there is limited opportunity to conduct inquiries. What is the situation if, for entirely genuine reasons, it is simply impossible for the lawyer to obtain full instructions? In such a case the lawyer still has a powerful duty of candour to ensure that the Court is made fully aware of the limitation of the evidence that is then placed before the Court. This is essential so that the Court can make a measured assessment of the probative value of the evidence. The lawyer will have to set out exactly why no steps have been taken to seek out and obtain the full background documents and facts. This might very well weaken the client's case, because, by the very nature of the explanation, the Court might not be able to attach great weight to the facts relied upon. But this is the necessary price that must be paid.

47. What is unacceptable is for the lawyer to advance a case based upon incomplete and inaccurate instructions and present them to the Court (by commission or omission) as true when no steps have been taken to obtain the full file and to verify the facts.

48. Context is important. There are two points we would make. First, it is evident to Judges hearing these cases in the High Court and in the tribunals that instructions are switched around for strategic reasons and it is often highly convenient for new solicitors or representatives to be able to prey in aid, ignorance. If the Courts were to condone the argument advanced to this court, that there is no obligation upon lawyers to ensure that they put full facts before the courts and to verify their client's instructions, then this is tantamount to creating a system where through the convenient device of a late change of instruction, lawyers can mislead the courts with impunity. The second point arises from the argument advanced by Mr Parkin that he was entitled to take his clients instructions at face value. We do not accept this. Clients in this field rarely have perfect recall of the facts and they cannot be assumed to know the law. For example, on Mr Parkin's own account his client gave instructions about a legal point (the right to appeal and its alleged suspensive effect upon removal) and this was simply assumed by him to be correct without the law being checked. Any lawyer given such instructions must start from the proposition that it is the lawyer and not the client who knows how the legal system operates. Lawyers in the position of David Wyld Solicitors and of Mr Parkin should have been put on immediate notice that the instructions could very well be wrong. Lawyers will (or should) know that not all appeals are suspensive and a bald statement by a lay client that the appeal suspended removal simply cannot not properly be taken at face value.

49. We are also of the conclusion that the decision to bring proceedings in the High Court instead of the Upper Tribunal was nothing more than a deliberate device to avoid the Upper Tribunal. There was no substance in the claim that this case concerned detention and the Grounds as drafted clearly reflected this truth since they do not in any material form addresses unlawful detention. In *Ashraf v Secretary of State for the Home Department* [2013] EWHC 4028 (Admin) at paragraphs [31] – [36] Cranston J observed that: " … *it could well be an abuse of process to file a judicial review in the Administrative Court, on the ground that it falls within the detention exception in the Lord Chief Justice's Direction on transfer of asylum/immigration judicial reviews to the Upper Tribunal, when there is no obvious distinct merit to that aspect of the claim*" (ibid paragraph [31]). He went on to explain that the purpose behind the transfer of work to the Upper Tribunal was: "… *to reduce pressure on the Administrative Court so that it can properly consider the most serious cases, and to ensure that the more routine immigration cases, including challenges to removal directions, are determined by the specialist judges in the Upper Tribunal*": (ibid paragraph [34]). He then observed that the abuse of process which would arise if a meritless application concerning detention was brought in the High Court so as to avoid the Upper Tribunal could be addressed under the *Hamid* jurisdiction (ibid paragraph [35]). We conclude that the present case is just such an illustration of a deliberate abuse of process.

50. In our judgment the solicitors in this case have failed in their duty to ensure that a full and accurate account was placed before the Court. They have failed in their duty to make proper enquiries to ensure that they are fully informed before taking any steps to

pursue proceedings and in their duty of candour to the Court because they failed to set out fully the serious limitations in the evidence that they were presenting as true. They have also failed in that they considered that it was appropriate to describe a Claim as being based upon detention whereas in fact it was not and they did this with a view to avoiding having to bring judicial review proceedings in the Upper Tribunal.

51. Fault applies to *all* those concerned with the case. This includes the solicitor with conduct of the case and the instructed advocate. As to the former it is the duty of those instructing an external advocate to ensure that they obtain as full, comprehensive and accurate an account of the facts to put in front of the advocate then instructed as they can. They cannot hide behind the fact that they did not draft the false application in question (when in fact they took responsibility for serving it). And the instructed advocate has a duty to prepare court documentation only upon the basis of information that he or she knows has been verified.

52. These were serious failings. They have led to the immigration and asylum system being undermined and the High Courts' scarce resources being taken up with a wholly unsubstantiated case that was totally without merit.

53. We observe that when responding to the Show Cause letter the solicitors declined to serve witness statements, prepared by a member of the firm with responsibility for the case, and with a statement of truth signed. Instead the firm responded in letter form, signed by the firm as a whole. No individual has assumed responsibility. Further, the letter did not provide adequate details or respond in substance to the matters raised in the Show Cause letter or in the Judge's order.

54. The Show Cause letter was sent to David Wyld Solicitors, and not Mr Parkin. We refer the conduct of David Wyld Solicitors in this case to the SRA for full investigation. We will send the entire court file to the SRA for their consideration.

E. <u>Daru Dola Abraham Ajani</u>

55. The solicitors in this case are Sabz solicitors, with offices in Manchester, London and Birmingham. They are experienced in immigration matters.

56. In the case referred to this Court they acted on behalf of Daru Dola Abraham Ajani, a Nigerian national, who was at the relevant time held in immigration detention at Immigration Removal Centre Dungavel in Scotland. The Applicant sought to challenge the Defendant's decision dated 22nd April 2017 refusing the application for leave to remain on human rights grounds, and the decision of the 26th October 2017 to set removal directions for the Applicant's return to Nigeria on a flight leaving Heathrow Airport at 15:25 hours on 31st October 2017.

57. The application for permission to apply for judicial review was lodged at the Upper Tribunal Manchester on 30th October 2017. The Applicant sought interim relief in the form of an order preventing the Defendant from removing the Applicant pending determination of the claim for judicial review.

58. In the Urgent Application form the Applicant's solicitor acknowledged that they had become aware of the need for urgency at 17:00 hours Thursday 26th October 2017.

59. However, the claim for urgent relief was not lodged until the following Monday 30th October 2017. In section 5 of the Urgent Application form which was the section in which details of service of the application on the Defendant's solicitors should have been given, the Applicant's solicitor ticked the box stating that the application had been served by fax but in relation to the fax machine number stated "TBC".

60. The application was considered and permission to apply for judicial review was refused by Mr Justice Kerr on 30th October 2017. In his reasons the Judge noted the following. First, the documents with the application omitted the Applicant's application on family and private grounds made on 15th March 2016 and the documents rejecting that application dated 17th November 2016. The application also omitted the original application for leave to remain of the 5th and 6th March 2012. Second, the solicitors confirmed to the Judge that, contrary to the indication in the Urgent Application form they had not in fact attempted to serve the application on the Defendant, the Secretary of State. The reason given was that there had not been sufficient time before the flight was due to leave. However, the flight was not scheduled to depart until 15:25 hours on the following day so this explanation was unsustainable. The Judge concluded that there was a deliberate attempt to deceive the Court into believing that the Defendant had been served. A deliberate decision not to serve had been taken in the hope that interim relief would follow prior to service on the Defendant. The Judge made these observations in the context of his conclusion that the merits of the Applicant's case were unarguable. The Judge considered that the case should be referred for consideration under *Hamid* jurisdiction.

61. A Show Cause letter was sent to the Applicant's solicitors on 6th December 2017. Sabz Solicitors were invited to explain why documents had been omitted from the papers submitted to the Tribunal; why no attempt had been made to serve the urgent application on the Defendant; and why the solicitors had indicated on the urgent application form that they had, in fact, served papers on the Secretary of State when they had not in fact done so.

62. On the 18th December 2017 Sabz Solicitors replied seeking an extension of time due to the Christmas vacation. On the 12th January 2017 the solicitors served a number of statements, signed with statements of truth.

63. The answers to the questions posed can be summarised as follows. As to the omission of papers from the application it is said that all the available documents were provided, and the papers omitted were not available at the time. Every attempt had been made to provide essential available material and no information was intentionally withheld. The client was held in detention at the time and was not in possession of the previous applications or documentation. In relation to the failure to serve the application on the Defendant or the Government Legal Department it is stated that an administrative staff member of the firm took all three copies of the application to the Administrative Court counter at Manchester Registry. The employee was advised to leave all three applications with the Court. It had been the solicitor's intention to serve upon the Defendant. However, they were unable to do this as a result of the Court office retaining the relevant documents. Thereafter no one in the office considered that it was necessary to effect service. As to why the urgent application form indicated that service had been made this was merely an error which arose because the application had been completed by an immigration paralegal. The

statement that there had been service was (said the supervising lawyer) a "*genuine error that was overlooked by me at the time of reviewing the form*".

64. Before turning to our conclusions on this matter we observe that Sabz Solicitors have been referred under the *Hamid* jurisdiction on a number of previous occasions.

65. On the 12th September 2016 Sabz Solicitors were required to show cause in relation to two separate cases: *Betty Luz Garcia Maghanay v Secretary of State for the Home Department*; and *Joseph Marie Ndanga Badel v Secretary of State for the Home Department*. In both of those cases Mrs Justice Andrews described in detailed Orders a series of failings by Sabz Solicitors in relation to immigration cases including the provision of incorrect and misleading information to the Court. In *Maghanay* Mrs Justice Andrews stated as follows:

> "I have marked this claim as totally without merit because it falls within that category of claims that is so patently unarguable that one would expect any solicitor practising in this area of the law to advise the *Claimant* that there was no legitimate basis for making it. This is but one of a number of different claims for judicial review in the immigration context handled by this particular solicitor that I have certified as totally without merit in the space of the past week. Two of them, including this one, have included unmeritorious applications for expedition. I have concluded from this that there is a very serious question mark over his professional judgment as to what can be properly brought before this Tribunal, and consequently I have made the direction that this matter be placed… for consideration as to whether it is an appropriate case for invoking the *Hamid* jurisdiction."

66. In the *Badel* case Sabz Solicitors wrote letters on their client's behalf which the Judge concluded were "*frankly incredible*" not least because the content of the solicitor's letter "*flew in the face*" of what had been said in earlier correspondence from the same solicitor.

67. On 12th September 2016, as observed, Show Cause letters were sent to Sabz Solicitors. Their responses then adopted a near identical form to the response to the Show Cause letter in the present case. The solicitors emphasised how seriously they took the criticisms made of the firm. They highlighted how they would be engaging in extensive training. They had revisited their training materials. In future the immigration partner would review "*each and every"* judicial review matters and would also be involved in case planning and development. Further, they would obtain an opinion from a specialist counsel in low merit judicial review instructions. They would arrange for extra training for solicitors in the judicial review department. The firm worked very hard to maintain the correct balance between the duty to the client and the duty to the Court.

68. This is the third occasion when Sabz Solicitors have been found by a judge to have fallen substantially below appropriate standards of conduct.

69. The promises made in 2016 have proven to be false. The present case highlights serious failings similar in nature to those identified by Andrews J in 2016.

70. Sabz Solicitors failed to supervise a trainee and they thereby allowed the Court to be misled as to whether the Secretary of State has been served. It is argued that this was not deliberate. We are not in a position to form a final view on this. We do note that it is extremely common for the Defendant Secretary of State not to be served at the point when urgent applications are made, in flagrant disregard of the rules. The present case thus sits within a settled and observable practice of breach of the rules. But at the least it highlights serious failures to supervise an unqualified member of staff who was allowed to draft an important document to the Court.

71. Mr Rana of counsel who appeared before us to make representations on behalf of Sabz Solicitors made a number of submissions to us. In relation to the complaint made by the Judge that documents had been omitted from the application it was pointed out that, notwithstanding, a chronology had been referred to in the Grounds so that the Court would not have been misled. We see the force in the point that in the circumstances the Court would have been aware of the chronology; it mitigates to some degree the failure to ensure that full documentation was before the Court. But it is far from being a complete answer.

72. Mr Rana also pointed out that no last minute out of hours application was made. The application for urgent relief was made in ordinary court hours on the Monday following the previous Thursday when instructions had first been received. In an ideal world the application should have been made on the Friday. We accept that, given the fact that the weekend intervened, there was some explanation for the delay and no attempt was made to exploit the out of hours system. Mr Justice Kerr when referring this case under the *Hamid* jurisdiction did not however raise delay as a concern.

73. Mr Rana also argued that it was apparent from the drafted Grounds that care had been taken to advance a careful and justifiable pleading. We certainly accept that the drafting is of a higher quality than many of the grounds served on the courts and tribunals, which are far too frequently devoid of even a scintilla of merit. We accept that some care had gone into its composition. Again, this was not the core of the concern expressed by Mr Justice Kerr. He did conclude that the grounds advanced were not arguable. He did not say they were totally without merit.

74. Mr Rana also argued that the completion of the form by the trainee with the misleading statement that the Defendant had been served was not deliberate. However, we note that in his Order Mr Justice Kerr states that the reasons given by the solicitors for not serving the Defendant was not that a mistake had been made but "*… that there was not sufficient time before the flight was due to leave at 15.25 tomorrow*". In other words, the reason was not oversight but lack of time and this explanation was self-evidently, unjustified. Mr Rana sought to overcome this by reference to the explanation set out in a statement prepared by the solicitor with conduct of the case. In this statement it is said that because of administrative error all of the copies of the documents had been retained by the Court office (see paragraph [63] above). We do not accept this explanation. It is an entirely different reason to that given to Mr Justice Kerr. Whatever might or might not have happened in the Court office when the papers were lodged does not prevent the solicitors from

ensuring that the Defendant was put on notice of an urgent application to seek an injunction to restrain removal. As the solicitors unquestionably knew it was their express duty under CPR 54.7 to serve the Claim Form on the Defendant. No telephone call was made to the Home Office or Government Legal Department to warn them that the application was on its way and no effort was made to serve a fresh copy of the papers. One way or another it was the solicitor's responsibility to ensure that the Defendant was on notice and had the chance to make representations. We have referred above to the recent judgment of the Lord Chief Justice in *SB Afghanistan* (ibid) (see paragraph [20] above) highlighting the importance of proper service of proceedings on the Defendant and reiterating the point that a failure to do some might well amount to improper conduct under the *Hamid* jurisdiction. In our judgment there are serious failings here.

75. First, there was at the very least a failure to supervise a junior employee whose misleading drafting was then allowed to proceed to mislead the court. Connected to this was a serious failure to ensure that the Defendant to proceedings was put on notice of those proceedings. Whichever solicitor was ultimately responsible for approving actual service of the Grounds and relevant documents permitted a manifestly false averment that the Defendant had been served to be placed before the Judge. Even on the basis that this was merely a mistake it was serious. If, however, as Mr Justice Kerr concluded, it was a deliberate ploy then it is extremely serious indeed.

76. Second, there was a failure to ensure that full documentation was placed before the Court. Between Thursday and the following Monday when the application was made no attempt was made to obtain the relevant documents. The application and Grounds did refer briefly to the prior history, but this is not an adequate explanation for not seeking and obtaining the relevant documentation. This was on any view an extremely weak application and the Court was entitled, and would have wished, to review the background documents.

77. We cannot overlook the fact that this is the third occasion on which a *Hamid* Order has been made and it is evident that the lessons from the first occasions have not been learned. It is relevant that in making his submissions to us Mr Rana had not been informed by his clients that they had been the subject of two earlier *Hamid* Orders. On those occasions the Court accepted that the explanations given were satisfactory and had taken no further action. Mr Rana was taken by surprise by these facts when they were revealed to him by the Court during the hearing. His solicitor clients should have made him fully aware of these matters rather than (so it seems to us) hoping that the Court would not itself be aware.

78. We refer this case to the SRA for full investigation. We will send the entire court file to the SRA for their consideration

F. Otilia Ncube

79. The solicitors whose conduct has been referred in this case is Topstone Solicitors, London.

80. Their client, the Claimant, entered the United Kingdom from Zimbabwe with a false identity and claimed asylum on 13th April 1996. On the 5th June 1996 her claim was refused, and she absconded.

81. On the 28th June 2011 the Claimant contacted the Home Office and provided her real identity. She was placed upon reporting conditions. On the 24th April 2012 the Claimant submitted futher submissions in support of an application for leave to remain. On the 17th August 2015 her further submissions were refused with a right of appeal. On the 1st September 2015 she lodged an appeal. On the 12th May 2016 she withdrew her appeal and subsequently became appeal rights exhausted. On the 18th October 2016 the Claimant was detained on reporting and was served with removal documents. On the 24th October 2016 the Claimant's removal was set for the 19th December 2016.

82. On the 7th November 2016 the Defendant refused the Claimant's application for temporary release from detention. On the 9th November 2016 the Defendant once again refused her application for temporary release. On the 10th November 2016 the Claimant lodged further submissions. On the 11th November 2016 the Claimant lodged further submissions. On the 11th November 2016 the Claimant submitted a psychiatric report. The Defendant conducted a review of the Claimant's detention and the decision to detain was maintained.

83. Further submissions made by the applicant and were refused on the 21st November 2016. On the 13th December 2016 the Claimant's detention was, again, reviewed and maintained. On the 18th December 2016 the Claimant made a yet futher application for temporary release.

84. On the 19th December 2016 the Claimant requested that her removal directions be deferred as she was unwell. That same day removal directions were maintained, and she was removed. On the 19th December 2016 the Claimant lodged an application for *habeas corpus*.

85. The solicitors then informed the Court that they wished to withdraw the application but shortly afterwards they decided to re-pursue the Claim. On the 12th January 2017 the Defendant was served with the sealed application.

86. The application to apply for judicial review was refused by Mr Justice Holgate on 25th April 2017. The Judge recorded that a number of solicitors had acted for the applicant over the years. The first firm of solicitors, David Benson Solicitors, had acted for the applicant in 2016. At the end of 2016 Duncan Lewis Solicitors apparently acted for the applicant. It appears that at the same time a further application was made by Topstone Solicitors. In his detailed order Mr Justice Holgate stated as follows:

> "In addition at some point on 19/12/16 the present application for Habeas Corpus was made by yet another firm of solicitors, Topstone Solicitors. The claim form was only signed by a trainee solicitor. The opening and closing parts of the accompanying witness statement purport to say that that statement was made by the Claimant. But the document was instead signed by the trainee solicitor and fails to explain why the Claimant was unable to make it (CPR 87.2(3)(b)). In any event, the statement simply recites a series of bald, generalised legal propositions and assertions without dealing with the circumstances of the case or explaining any basis upon which in those circumstances the Defendant was acting unlawfully.

> Following the removal of the Claimant from the UK the Solicitors who made the claim advised the ACO that they wished to withdraw the application. On 6/1/17 the Solicitors notified the court that they intended to pursue the application. The reasons for these *voltes faces* have not been explained, and it is therefore a matter for further concern that there is no evidence that the Claimant has given instructions for the application to be pursued."

87. On 11th May 2017 a Show Cause letter was sent. In that letter the solicitors were required to explain: why the case had been lodged as an application for a writ of *habeas corpus*; why copies of correspondence sent by Duncan Lewis Solicitors were omitted from the papers submitted to the court; why the statement of the client was signed by a trainee solicitor without addressing the requirements of the CPR; who drafted the statement of the client and what supervision they had been subject to when so doing; why the court was informed that the solicitors wished to pursue the claim having previously informed the court that they wished to withdraw the claim.

88. On 25th May 2017 Topstone Solicitors sent a short letter by way of response. This can be summarised as follows. No explanation was given as to why there was an application for *habeas corpus* as opposed to an application for judicial review. When Topstone Solicitors was instructed on 19th December 2016 they were informed that Duncan Lewis Solicitors no longer had conduct of the matter. They were not provided with any papers submitted to the court by Duncan Lewis. No explanation given as to why they did not seek and obtain the relevant papers. The statement of the client was signed by the trainee solicitor because the client instructed the trainee to sign on her behalf because of the urgent nature of her instructions. It was not practicable for her to sign and fax back her statement. It is accepted that the statement should have been better drafted to address the requirements of the CPR but the Solicitors "*crave*" the courts understanding of the emergency situation and limited time to take instructions. The trainee solicitor was supervised only *via* the telephone because the supervisor was out of the office on that day. The trainee is an experienced trainee who has prepared and filed several applications on behalf of clients. The change of position in relation to pursuing the matter was due to a change of position on behalf of the client.

89. We do not accept these explanations.

90. First, Topstone Solicitors were the last of a line of solicitors instructed. Indeed, it seems that on 19th December 2016 Duncan Lewis solicitors *and* Touchstone Solicitors were both instructed. Yet despite this when Touchstone made the application they had not obtained any of the very lengthy prior documentation or satisfied themselves as to the factual history of the case, which by this time had run for over 20 years. In Court we were told that Topstones knew that Duncan Lewis were instructed. We were initially told however that no efforts at all had been made to identify and obtain earlier documents. During the hearing this position was reversed, and we were told that in fact someone had tried to contact Duncan Lewis, but these efforts had failed. We are not told why these efforts failed. There was a serious failure on the part of the solicitors to make enquiries. No contact was made with Duncan Lewis who were, as of 19th December, simultaneously instructed. Nothing prevented contact being made with them or with the Home Office or with OSCU, even if it were difficult to obtain

instructions from the client. The net effect was that Topstones proceeded in ignorance of any of the most basic facts about the client or the case.

91. Second, the grounds as drafted and as submitted to the Court were irredeemably bad. No even remotely competent lawyer could ever have countenanced such a document being placed before a court as a proper pleading. It amounts to no more than an inarticulate complaint that the client has suffered injustice and the Defendant has acted *ultra vires* and unlawfully. It is devoid of principle, law or fact. We repeat what we have said in paragraph [49] above about deploying spurious arguments (here in relation to *habeas corpus*) to avoid the jurisdiction of the Upper Tribunal. We are aware that some solicitors feel that they have a better chance of obtaining injunctive relief to restrain removal from an out of hours High Court judge who may be less familiar with this area of practice than a specialist Tribunal Judge.

92. Third, that same pleading was prepared by an unqualified trainee in breach of the CPR. We are told that the trainee is "*experienced*" and has completed similar applications before. On the basis of the evidence that we have seen this itself gives rise to serious misgivings, not least because the inference is that a standard of work that is unacceptable comes from an employee who is trusted more generally to plead cases before the courts and tribunals and whose work is considered by the firm to be acceptable.

93. We were told, in response to questions, that the client was privately funding the application. On 19th December 2016 the client faced imminent removal. A significant sum was thus paid by a desperate and vulnerable person so that an unqualified trainee could, at the drop of a hat, craft an utterly hopeless pleading which the firm then allowed to be placed before the High Court on an equally hopeless application which, of course, failed. In short order the client was removed from the jurisdiction. If the client had wished to seek recourse against the firm that was more or less out of the question.

94. We refer this case to the SRA for full investigation. We will send the entire court file to the SRA for their consideration.

G. <u>Future Hamid applications</u>.

95. Given the failure of lawyers to take heed of the warning given by the President of the Queen Bench Division in *Hamid* in 2012 and the reiteration of those concerns expressed by the present Lord Chief Justice in 2018 in *SB Afghanistan* (ibid), we consider that we should set out some guidelines as to the procedure to be applied in the future.

96. We start though by reiterating that the duty owed by legal practitioners in this area to the Court is paramount. This duty includes an obligation on practitioners to ensure that they are fully equipped with all relevant documentation before commencing proceedings or making applications and this means that practitioners must make real efforts to obtain documents from previously instructed solicitors. It means that practitioners must act candidly and bring to the attention of the Court or tribunal gaps and lacuna in their evidence. It means that practitioners must avoid delaying the bringing of urgent applications. It means that there must be a halt to Grounds which

(objectively) the draftsperson must know are wholly bereft of merit and are being advanced simply as part of an effort to cause delay.

97. In future:

(i) When a Show Cause letter is sent the addressee(s) must respond in way which includes a witness statement drafted by a person who is responsible for the case in question, and the statement of truth must be signed. That person must know that to lie or deliberately mislead in such a statement may be a contempt of court.

(ii) Whilst the response might include anything which the lawyer considers proper a full, candid and frank response to the questions posed in the Show Cause letter and to the issues set out in the Court Order referring the case under the *Hamid* jurisdiction must be given. If there has been a recent change of lawyers, the witness statement must include full particulars of the circumstances giving rise to the change. Relevant documents must be annexed. A full account of efforts made by the solicitor to obtain all relevant documents from the old solicitors must be set out. In future if the Court concludes that the change of instruction is a device or strategy it will consider including in any complaint to the SRA the position of the old solicitor.

(iii) In future the Court will not necessarily refer the matter to a Divisional Court *before* deciding to pass the file to the SRA as a complaint. A complaint might be made to the SRA upon receipt of the response to the Show Cause letter, if that is considered to be an appropriate course to adopt.

(iv) The Court will in future consider referring a case to the SRA on the first occasion that the lawyer falls below the relevant standards.

98. Finally, we make clear for the avoidance of any doubt that although we have expressed our views on each of the cases before us we are not intending our views to be seen as binding upon the SRA. It is an independent body and will form its own conclusions on these matters in accordance with its own rules and statutory obligations.