The Respondent appealed to the High Court (Administrative Court) against the Tribunal's decision dated 4 October 2017 in respect of findings, sanction, and costs. The appeal was heard by Lord Justice Irwin and Mr Justice Lane on 15 March 2018. The Divisional Court's Judgment was handed down on 26 April 2018. The Respondent's appeal was dismissed in its entirety. Ip v Solicitors Regulation Authority [2018] EWHC 957 (Admin). The Respondent sought permission from the Court of Appeal to appeal against the Divisional Court's decision. Permission was refused on 27 December 2018.

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 — Case No. 11615-2017

BETWEEN:

SOLICITORS REGULATION AUTHORITY — Applicant

and

VAY SUI IP — Respondent

Before:

Mr J. C. Chesterton (in the chair)
Miss H. Dobson
Dr S. Bown

Date of Hearing: 21 - 24 August 2017

Appearances

Mr Benjamin Tankel, counsel, of 39 Essex Chambers, 81 Chancery Lane, London WC2A 1DD, instructed by Mr Mark Rogers, solicitor, of Capsticks LLP, 1 St George's Road, London SW19 4DR for the Applicant.

Mr Billal Malik, counsel, of Erimus Chambers, Christchurch House, 40 Upper George Street, Luton LU1 2RS for the Respondent, who was present.

JUDGMENT

Allegations

1. The allegations made against the Respondent, in a Rule 5 Statement dated 23 February 2017, were that, in his conduct of the matters of SLMT ("Ms T") and/or PZ ("Ms PZ") and/or AZ ("Ms AZ") and/or GL ("Mr GL") and/or MW ("Mrs MW"), (together, "the Matters") were that:

1.1 The Respondent brought judicial review applications which were totally without merit and an abuse of process. This was contrary to Principles 1, 2 and 6 of the SRA Principles 2011 ("the Principles") and he failed to achieve Outcomes 5.1, 5.2, 5.3 and 5.6 of the SRA Code of Conduct 2011 ("the 2011 Code");

1.2 The Respondent engaged in a systematic course of conduct designed to undermine the immigration system, amounting to a persistent abuse of the process of the Court. This was in breach of Principles 1, 2, 3, 6 and 8 of the Principles and the Respondent failed to achieve Outcomes 5.1, 5.2, 5.3 and 5.6 of the 2011 Code;

1.3 The Respondent failed to act in accordance with the duty of candour owed by legal representatives upon a without notice application for interim relief and failed to place the full facts before the Court. It was further alleged that by so acting he was reckless (although recklessness was not pleaded as a necessary element of this allegation). This was contrary to Principles 1, 2 and 6 of the Principles 2011 and he failed to achieve Outcomes 5.1, 5.2, 5.3 and 5.6 of the 2011 Code;

1.4 The Respondent failed to follow correct Court procedures by failing to pursue judicial review claims and/or serve a Notice of Discontinuance following the grant of interim relief. This was contrary to Principles 1, 2, 6 and 7 of the Principles and he failed to achieve Outcomes 5.1, 5.2, 5.3 and 5.6 of the 2011 Code;

1.5 The Respondent failed to co-operate with the Court by not responding to correspondence in a timely manner and not being able to answer specific queries in relation to the relevant files at the hearing of 18 May 2015. This was contrary to Principles 1, 2, 6 and 7 of the Principles and the Respondent failed to achieve Outcomes 5.3 and 5.6 of the 2011 Code;

1.6 The Respondent misled the Court at the hearing of 18 May 2015 by stating himself, and through his representative, that the reason for Mr Javid's non-attendance at that hearing was Mr Javid's ill health. This was contrary to Principles 1, 2 and 6 of the Principles and the Respondent failed to achieve Outcomes 5.1 and 5.2 of the 2011 Code.

2. Dishonesty was alleged with respect to the allegation at paragraph 1.6 although dishonesty was not pleaded as an essential ingredient to prove allegation 1.6.

Documents

3. The Tribunal reviewed all of the documents submitted by the parties, which included:

Applicant:-

- Rule 5 Statement dated 23 February 2017, with exhibit "LPT1"
- Schedule of costs as at 23 February 2017
- Witness statement of Stephanie Young dated 21 July 2017 (with forensic investigation report exhibited)
- Witness statement of Mohammed Imran Javid dated 21 July 2017 with exhibits "MJ1" to "MJ4")
- Skeleton argument dated 14 August 2017, with annexes
- Bundle of authorities
- Schedule of costs dated 11 August 2017
- Copy Hoodless and Blackwell v FSA [2003] ("Hoodless")

Respondent:-

- Respondent's Answer to Rule 5 Statement/statement dated 18 April 2017 with exhibits
- Witness statement of Jian Chao Liu dated 12 April 2017
- Civil Evidence Act Notice (undated) re statement of Jian Chao Liu
- Respondent's personal financial statement dated 25 July 2017
- Respondent's second witness statement dated 11 August 2017, with exhibits
- Respondent's skeleton argument dated 14 August 2017
- Bundle of authorities

Other:-

- Tribunal's standard directions issued on 27 February 2017
- Order varying standard directions, dated 17 March 2017
- Memorandum of Case Management Hearing on 25 April 2017

Preliminary Matter (1) – Documents

4. At the beginning of the hearing, the Tribunal reviewed the documents it had available. Mr Tankel for the Applicant referred to an Order made by Swift J in the matter of Mrs MW which was appended to his skeleton argument; the other Orders made by Swift J were within the Rule 5 bundle but this one had been omitted. Mr Malik for the Respondent told the Tribunal that he had not seen that document, and would need to read it and take instructions. The Tribunal rose so that Mr Malik could do so.

5. On resuming the hearing, Mr Malik told the Tribunal that the Respondent objected to the inclusion of this Order in evidence. Mr Tankel told the Tribunal that the email which had sent the Applicant's skeleton argument to the Respondent had attached this document (and the other annexes), but when he had emailed the skeleton to Mr Malik it had not been appended. Mr Tankel told the Tribunal that he had thought Mr Malik would have received the document from his client. Mr Tankel told the Tribunal that it was pleaded in the Rule 5 Statement that the relevant case had been totally without merit and an abuse of process, but the Order stating that had not been put into evidence. Mr Tankel could not tell the Tribunal whether the Order had been found on the Respondent's client file or had been received from the Court.

6. Mr Malik told the Tribunal that his client was a litigant in person, instructing him under the Direct Access Scheme. The Applicant's dealings with the Respondent had been impeccably fair save for this matter.

7. Mr Malik referred to the directions order made by the Tribunal at the Case Management Hearing ("CMH") on 24 April 2017, which provided that any statements which had not already been served should be served no later than 21 days before this hearing (i.e. by 31 July 2017). The Respondent had served his extra statement dated 11 August 2017 by email and on 14 August 2017 the Applicant's solicitors had confirmed that they had no objection to him relying on it, and would not require any formal application to the Tribunal for such permission.

8. The Tribunal noted that, and formally admitted the Respondent's second witness statement into the evidence which could be considered.

9. Mr Malik told the Tribunal that Mr Tankel had indicated that the Applicant would apply to amend part of the allegation relating to Mr GL. The Respondent had no objection to this, as the Respondent had prepared his case and his Answer on the basis that the case included the matters which the Applicant now sought formally to add into the Rule 5 Statement. However, the introduction of the Order relating to Mrs MW was different; the Respondent had prepared his case on the basis that this Order would not be in the evidence. The Applicant had not drawn to the Respondent's attention that this was an extra document, which had not previously been served, when it sent him the skeleton argument by email.

10. Mr Malik submitted that introducing this document would cause real prejudice to the Respondent. He would need to take detailed instructions, possibly for an hour or so. Mr Malik submitted that in such a document-heavy case as this it was understandable that his client, who had been under great pressure because of these proceedings, had not noted this document. Mr Malik asked the Tribunal to adjourn for at least an hour as there would be irreparable prejudice if the Tribunal proceeded without allowing full instructions to be taken, particularly as there was significant inequality of arms between the Applicant and Respondent.

11. The Tribunal noted that as it was an expert Tribunal, if it decided not to accept the document, it could be "forgotten" and not taken into account. The Tribunal indicated that rather than adjourn at this stage, Mr Tankel should open the case for the Applicant without reference to the document. In the meantime, the provenance of the document could be checked and Mr Malik could take instructions at a convenient point in the day. If the Tribunal later decided to admit the document, Mr Tankel would be given the opportunity to address the Tribunal about it before closing the Applicant's case. Mr Malik confirmed that he was content with this approach.

12. After the lunch adjournment, before the Applicant's witness evidence was called, Mr Tankel told the Tribunal that the Applicant did not seek to admit the document into evidence. On enquiry, it appeared that the Order had been produced from a Court file and sent to the Applicant. It had not been on the Respondent's client file and it was possible he had not seen that Order until shortly before this hearing.

13. The Tribunal noted this, thanked Mr Tankel for his indication and directed itself to take no account of the Order of Swift J in the matter of Mrs MW.

Preliminary Matter (2) – Amendment of Rule 5 Statement

14. Mr Tankel applied to amend paragraph 84.1 of the Rule 5 Statement, which paragraph related to Mr GL. Whilst allegation 1.1 generally referred to all of the Matters, including that of Mr GL, in alleging that the judicial review applications were totally without merit and an abuse of process, this had not been set out specifically in relation to Mr GL; it was stated as being the allegation in the sections dealing with the other client Matters.

15. Mr Malik had submitted that the Respondent did not object to this amendment, as he had prepared the case on the assumption that it was part of the Applicant's case that the case of Mr GL had been totally without merit and an abuse of process.

16. The Tribunal noted that no prejudice would be caused to the Respondent, for the reason submitted by Mr Malik, and gave permission to amend paragraph 84.1 of the Rule 5 Statement to include a statement that the judicial review application on behalf of Mr GL was certified by Swift J as totally without merit and an abuse of process.

Factual Background

17. The Respondent was born in 1976 and was admitted as a solicitor in 2009. At the material time, the Respondent was a partner at Sandbrook Solicitors ("Sandbrook" or "the Firm"), practising from offices in Manchester, in partnership with Mr Mohammed Imran Javid ("Mr Javid") between 3 November 2011 and 31 December 2015, at which time the Firm ceased trading. The Respondent's work including dealing with immigration matters.

Re *Hamid*

18. By 2012 the Administrative Court had concerns about what was understood to be a substantial and increasing number of last-minute applications in respect of pending removals (of illegal immigrants/"overstayers"), many of which applications were found to be entirely baseless. The Administrative Court in R. (on the application of Hamid) v Secretary of State for the Home Department [2012] EWHC 3070 (Admin) ("Hamid") indicated that representatives not abiding by the procedural requirements of such applications would be required to account for their conduct before the court. Sir John Thomas (then President of the Queen's Bench Division) stated the Court's concerns and approach as follows (paragraph 10 of Hamid):

> "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"

19. Since 2012, a number of hearings of this type (commonly known as *Hamid* hearings) have been held. The Court has emphasised the importance of compliance with professional obligations and the need for appropriate scrutiny by qualified lawyers, particularly in relation to applications on an ex parte basis (see Awuku (No 2) v Secretary of State for the Home Department [2012] EWHC 3690 (Admin)) ("Awuku"). The approach was restated by the current President of the Queen's Bench Division, Sir Brian Leveson, in the leading case of Butt v Secretary of State for the Home Department [2014] EWHC 264 (Admin) ("Butt"):

> "It should not be thought that the approach which the then President initiated has in any sense fallen into desuetude following his appointment as Chief Justice. In my judgment, 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."

The Respondent's *Hamid* Hearing

20. In May 2015, following a review of a number of its cases by Swift J, Sandbrook was required to attend a *Hamid* hearing. In a letter to Sandbrook dated 6 May 2015 the Clerk to the Upper Tribunal wrote to Sandbrook in relation to the Matters as follows:

> "The above cases were referred to Mr Justice Green by Mrs Justice Swift DBE.
>
> Mr Justice Green has decided that it will be necessary for you to appear before the Divisional Court at the Manchester Civil Justice Centre on Monday 18th May 2015 at 9.45am.
>
> The caseworker and solicitor with conduct of these cases, including Mr Imran Javid, as the managing partner, are required to attend on that date to show cause why you should not be dealt with in accordance with the principles set out in Hamid [2012] EWHC 3070 (Admin), and Awuku [2012] EWHC 3298 (Admin), recently reiterated in Butt [2014] EWHC 264 (Admin)"

21. Sandbrook did not respond to this letter.

22. On 13 May 2015, the Court sent a follow-up email urgently requiring Sandbrook to indicate whether the Firm would be attending the hearing and whether it would be represented by counsel. This email expressly stated that an immediate response was required. On the same day, a member of Court staff telephoned Sandbrook. He was

informed that no-one was available to speak to him, but was assured that a representative would email or return the call later in the day.

23. In response to the Court's email, Mr Javid emailed the Respondent on 13 May 2015, stating:

> "Can you draft a letter in response explaining non-attendance for me due to prior commitments; however, you as partner and as supervising solicitor will be in attendance.
>
> Make sure this does not relate to more than one application??
>
> Let me check letter before faxed out today."

24. Later that day, the Respondent sent an email to the Court which stated:

> "I write further to your email of today's date and also your telephone call. I have tried to call the Court on a number of occasions today but could not get through.
>
> I confirm that I will be in attendance next Monday to speak to the respectful judge and I have not instructed counsel to attend."

25. The Respondent's *Hamid* Hearing was held on 18 May 2015 before Green J and HHJ Raynor QC in the Upper Tribunal (Immigration and Asylum Chamber) sitting in Manchester ("the Court"). Sandbrook was represented by a Mr Nauman Hanif, who was recorded by the Upper Tribunal as being a solicitor advocate (who is recorded as a solicitor in the Applicant's records). Mr Hanif was instructed by the Respondent (who was present at the hearing). The Court handed down judgment ("the *Hamid* Judgment"). A transcript of the hearing was also produced ("the *Hamid* Transcript") and exhibited to the Rule 5 Statement.

26. The purpose of the hearing, as recorded in the *Hamid* Judgment, was to address, "a concern that [Sandbrook] has engaged in a systematic course of conduct designed to undermine the immigration system which amounts to a persistent abuse of process of the Court". The nature of the concern was expressed as:

> "In particular, the cases which are before us exhibit a pattern whereby injunctions to restrain imminent removal, invariably upon a without-notice basis, are being sought in immigration cases but, when granted, are not pursued by the service of proceedings. The pattern emerging suggests that a strategy or tactic is being deployed whereby without-notice injunctions are sought and then when granted the case is permitted to fade away from sight with the consequence that the failed asylum seeker or immigrant remains in the United Kingdom below the radar. It is typical of such case that the person subject to removal is in detention pending removal but that once interim relief is granted the individual is released from detention. In many such cases the individual then absconds. In some cases, when the Secretary of State for the Home Department ("SSHD") has finally caught up with the applicant and seeks, yet again, to remove the person from the UK, further without-notice

> applications for injunctive relief are then sought and obtained without informing the Judge hearing the application of the prior history to the case. The stratagem is also facilitated by the legal representative simply refusing to respond to requests from Court officials or the Home Office or Treasury Solicitors."

27. The Court observed that no-one before it at the hearing was able to assist with its questions, given that:

27.1 Mr Javid had not attended the hearing. Mr Hanif told the Court that he had received apologies from Mr Javid. When the Court asked for further information, Mr Hanif stated that the reason for Mr Javid's absence was that he was ill, about which he had been notified that morning. The Court then asked the Respondent about this – see paragraph 28 below. In the *Hamid* Judgment, the Court observed that:

> "no medical note was provided and no one was able to explain what medical ailment had suddenly overcome Mr Javid which was so serious that it prevented him from coming before the tribunal."

27.2 As stated in the *Hamid* Judgment, "Mr Hanif also told us that he has been instructed the previous Thursday but had not reviewed any of the files referred to in the letter of 6th May 2015. He was thus unable to afford us any assistance on those files";

27.3 It was further stated: "We were also informed that [the Respondent] had only the broadest knowledge of those five files and equally would not be able to answer specific questions in relation to them"; and

27.4 "[W]e were informed that each of the files had been dealt with by a junior caseworker (a Mr H) but that he had been suspended on 11th May 2015 and was not available even though the letter from the Court had indicated that the relevant caseworker should attend".

28. The explanation given to the Court was that Mr Javid was ill. This explanation was first provided by Mr Hanif, as set out above. By email dated 10 January 2016 Mr Hanif confirmed that his instructions on this point were provided by the Respondent. The Respondent also spoke directly to Green J in the course of the *Hamid* hearing as follows:

> "GREEN J: Mr Ip, when were you told that Mr Javid was ill?
>
> MR IP: I was told this morning, sir.
>
> GREEN J: At what time?
>
> MR IP: Around, I believe around 8.30.
>
> GREEN J: Do you know what illness? I mean, it's most unsatisfactory since he was instructed to appear and suddenly he's gone ill.

MR IP: Yeah, I'm not too sure what illness, sir."

29. There was a letter from Mr Javid to the Applicant dated 4 December 2015, which stated that the Respondent was the solicitor with sole conduct of the relevant matters and that Mr Javid had taken the view at the time that it was not necessary for both him and the Respondent to attend. Mr Javid stated in this letter:

> "Mr Ip was the solicitor and partner with sole conduct of all the matters. Notice of attendance was not provided to me personally and I have not had sight of the letter dated 06.05.2015; I did receive an email on 13.05.2015 to the generic email address of the firm that was passed on to Mr Ip to action. As I was not personally involved in any of the 5 matters and Mr Ip was the solicitor and partner in charge I took the view it would not be necessary for both of us to attend the hearing and I had asked for a letter to be sent to court explaining the reason for my non-attendance. In hindsight, I should have accompanied Mr Ip to the hearing."

30. In a letter of response to the Applicant dated 24 January 2017, the Respondent stated as follows:

> "I recall having a conversation with Mr Javid regarding the Court order and the request for our attendance. The conversation became slightly heated. I recall Mr Javid suggesting that he should not need to attend Court as I had conduct of the files which were being reviewed and that I should inform the Court of this.
>
> I recall advising Mr Javid that the Court Order was also addressed to him and it was, therefore, his responsibility to inform the Court if he planned not to attend at the hearing. The conversation was left this way. I cannot recall if Mr Javid followed this up with an email, however, given that his attendance had been specifically requested, I assumed that he would ultimately be in attendance at the hearing.
>
> I made the office aware on the Friday prior to the hearing that myself and likely Mr Javid would not be in attendance on Monday morning. I arranged cover for the office and charged Mr Jian Chao Liu (also known as Kevin), who was on work experience with us, with responsibility for taking calls and messages for the day.
>
> When I attended at Court on the morning of the hearing there was no sign of Mr Javid. It occurred to me that he may not be attending the hearing, in which case I expected that he would be at the office.
>
> During the course of the morning whilst waiting for the hearing I received a call from Mr Liu who had a message from a property client for Mr Javid. Mr G Lau [sic] had assumed that Mr Javid was at Court with me and as he did not have Mr Javid's mobile number he had phoned me to speak with Mr Javid.

> I informed Mr Liu that Mr Javid was not with me. I expressed surprise that Mr Javid was neither at Court nor in the office. I cannot recall the exact wording used but Mr Liu mentioned that he may be unwell. The conversation was not long as I was anxious about the hearing.
>
> I met with my legal representative, Mr Hanif, at Court prior to the hearing to go over matters briefly. I recall Mr Javid's attendance was briefly mentioned and I advised Mr Hanif that I understood that Mr Javid would not be attending due to illness."

31. On 7 February 2017 Mr Javid wrote to the Applicant stating:

> "I can confirm that as far as I can recall I was not ill on the date of the hearing (18.05.2015)."

32. The Court considered the matters on the basis of the relevant papers and recorded its concerns in the *Hamid* Judgment as follows:

32.1 Each of the cases was "hopeless and […] found by a High Court Judge to be "totally without merit"", and it appeared that "Sandbrook had been prepared to advance virtually any ground however tenuous or hopeless, simply to provide a platform for the interim relief application which then ensues";

32.2 Despite the duty of candour owed by a legal representative making a without-notice application, Sandbrook "have not placed full facts before Judges hearing applications for interim relief […] Judges have not been appraised of the fact that previous claims have been made for judicial review which, in some cases, have been rejected or not pursued";

32.3 The Court expressed serious concerns about Sandbrook having sought and obtained interim relief but not pursued the underlying judicial review proceedings. It indicated: "It is, in our view, a serious breach of professional conduct rules to obtain the relief and then fail to pursue the substantive claim for judicial review […] attempts to undermine the process by not pursuing proceedings amount to an attempt to undermine the integrity of the Court process and is, as Mrs Justice Swift observed, an abuse of process. There is a very important wider context to this as well to which we have already made reference above. It is well known that once interim relief is granted persons subject to removal directions are then released from detention. It is also a notorious fact that many of those persons then abscond. As such, a strategy designed to obtain interim relief but not pursue hopeless applications thereafter strikes at the very heart of the system of immigration control which Parliament has instituted";

32.4 Attempts to persuade Court officials that claims for judicial review are "academic" are "improper" and "a most disquieting aspect of the present case";

32.5 The Matters revealed, "repeated failures to respond to queries and requests from Tribunal officials and from the Defendant";

32.6 Although, "There may well […] be an economic incentive for the legal representatives to "play the system", legal representatives owe their primary duty to the court or tribunal and, "to the extent that representatives place the interests of clients above those of the Court or Tribunal then that may constitute evidence of the representative failing in his or her professional duties"".

33. Mr Justice Green and HHJ Raynor QC stated that, "We maintain serious concerns that the conduct of the legal representatives has fallen materially below the bare minimum standard that we consider it proper for a solicitor to adopt in relation to its duty to the Court and Tribunal". The Court referred Sandbrook to the Applicant for further investigation.

The Matters referred to in the *Hamid* hearing

Re Ms T

34. Ms T instructed Sandbrook to act in relation to her application for leave to remain ("LTR"). The solicitor responsible for this matter was the Respondent. Sandbrook was first instructed on 4 August 2014, on which date it submitted an application for LTR.

35. The application for LTR stated, "Our client is settled in the UK having resided her [sic] for 20 years without a break". In the Firm's telephone note of 4 August 2014, it was recorded in relation to Ms T, "She married a British citizen in 1995 but in 1997 she returned to Hong Kong. She applied for entry clearance in 1998 but it was refused. She re-entered the UK in or around oct/nov 1999".

36. During Ms T's detention, an Immigration Factual Summary ("IFS") had been served, which set a removal date of 16 August 2014. By a letter of 11 August and a telephone call of 14 August 2014 Sandbrook contacted Immigration Enforcement and the National Removals Command ("NRC") asking that Ms T's removal directions ("RDs") be cancelled.

37. On 15 August 2014 Sandbrook advised Ms T to make an injunction application. The basis for this stated in a file note was, "to prevent our client's removal so the Home Office can reach a decision on her FLR case in a timely manner and for us to respond to the decision".

38. A judicial review ("JR") claim form and application completed by Sandbrook on Ms T's behalf (and naming Sandbrook as her solicitors) was served on the Treasury Solicitor ("TSol") and sent to other interested parties on 15 August 2014.

39. Sandbrook wrote to the NRC and TSol enclosing the application. The letter to the TSol stated, "Please also note that if the judge grants the injunction, it would be academic for both parties to continue with the JR claim in light of the fact that our client's objective is to achieve an injunction in order to enable your client to consider her FLR application. We trust the above concludes matters and please also note that we will be writing to the court to withdraw the JR, if the respectful judge grants our client's injunction".

40. HHJ Raynor QC granted the injunction by order dated 15 August 2014. The reasons stated for the order were, "Her [Ms T's] removal prior to consideration and determination of the representations dated 4 August 2014 would be contrary to IR 353A". The order stated that Ms T's removal should not take place, "until final determination of the Applicant's application for permission to proceed with her claim for judicial review or until further order in the meantime".

41. A note on Ms T's file, dated 27 August 2014, stated, "The Judge has already granted the injunction and it would prove futile to continue with the JR claim. The purpose of the JR is to prevent the Home Office from removing our client so they can continue with reaching a decision on our client's case." A note of a telephone conversation with Ms T states, "I explained to her that because the judge has granted the injunction then there would be no point in continuing with it because it serves no value in the sense that all we wanted was for the Home Office to decide on her FLR."

42. On 27 August 2014, Sandbrook wrote to the Upper Tribunal indicating that the JR application would not be pursued, stating.

> "We […] understand that there is no currency of the claim since the respectful President of the Upper Tribunal has granted the interim relief"

and

> "For the sake of clarity, please withdraw the judicial review application since it is now academic".

43. On 11 September 2014, the Upper Tribunal wrote to Sandbrook reminding the Firm that within 9 days of making an application for permission to bring JR proceedings it must provide a copy of the application and accompanying documents to each respondent or interested party, and must provide the Upper Tribunal with a written statement of the same having been done. The Upper Tribunal required the written statement to be provided within 7 days of its letter. By letter dated 12 September 2014 Sandbrook responded to this letter stating, "We have kindly requested permission to withdraw our client's JR application since it is now academic".

44. On 4 March 2015 Swift J made an Order refusing permission to apply for Judicial Review as being totally without merit and an abuse of process. The Order stated as follows:

> "In August 2014, following her detention, [Ms T] made a claim for Judicial Review and secured an injunction restraining her removal. Having got the injunction, she made no effort to progress her permission to apply for Judicial Review. It appears from the letter of her Solicitors dated 27 August 2014 that, having obtained the Injunction, they have chosen to treat the Judicial Review proceedings as at an end, stating that there is now 'no currency in the claim'. It is clear that the claim was made with the sole intention of obtaining an injunction to stop her removal and was therefore an abuse of process."

45. Stephanie Young, the Applicant's Investigation Officer, ("Ms Young") interviewed the Respondent on 16 June and 30 July 2015**.** During this interview, the Respondent explained that he had not pursued this JR application because, "There is nothing that we need to do because they have just granted it. Even if both parties go to courts there is nothing to agree because, my request is for [the] Judge to cancel ticket in order to allow Home Office to look at the case. The judge has accepted my argument and it is for that reason the injunction was granted. I was seeking an injunction not a review of the Home Office decision. Because granted Home Office [they] cancelled the ticket. It's futile for both parties to proceed with it".

46. The Respondent indicated that he had not obtained the papers from Ms T's previous representatives, stating: "No, I can if I wanted but I chose not to and liaise with the Home Office. They tell me what I need to know, saves time. Certain Chinese clients don't like you contacting previous representative. Sometimes clients do not want you to contact previous representative – like to keep it low key". The Respondent went on to say: "Since 2002 there would have been decision for leave to remain. Yes, they would have said at some point she doesn't have leave. On factual summary, no reference to 2002. All I need is date of entry and today's date. Argument is right to private life. Entered 1999 and [at] date of our application [the] client has resided for about 15 years. It's a strong basis to argue her case".

47. When asked if he had made enquiries as to the outcome of previous applications, the Respondent stated: "Not required. Question is subjective. Depends on [the] type of lawyer you are. For me I don't need to find out. Using fresh basis, [using] grounds outside immigration rules. Fresh evidence because Home Office would not consider old grounds. If I wanted to I can."

48. When asked who was responsible for preparing the IFS, the Respondent indicated that this was the Home Office. When asked if he had to check this document, the Respondent stated "cross reference [Factual Summary] sheet with client's recollection. Home Office not always correct. It's happened when Home Office got the details wrong."

Re Ms PZ

49. Sandbrook, with the Respondent as the responsible fee earner, was instructed by Ms PZ from 21 March 2014 onwards and represented her in respect of her application for LTR in the UK.

50. Prior to Sandbrook having been instructed, Ms PZ had submitted an application for LTR which was refused. In a letter dated 14 March 2014, the Home Office set out the basis on which it considered that there were insufficient factors justifying allowing Ms PZ to remain.

51. A note on the Respondent's client file of a telephone conversation dated 24 March 2014 recorded: "Client called. She said that she is nervous and that the home office is about to remove her from the UK. I told her that I am aware that the removal is on the 26 March 2014 at 5.40 and that we still have time to cancel it".

52. On 26 March 2014, a JR Claim form and Application completed by Sandbrook on Ms PZ's behalf, and accompanied by a Statement of Grounds and Facts, were lodged at the Upper Tribunal.

53. On 26 March 2014 HHJ Stephen Davies issued an order granting the interim relief sought. The reasons for the order recorded, "doubts as to whether or not the further submission can, even arguably, amount to a fresh claim". The injunction restrained the defendant from removing Ms PZ "pending the final determination of this case or further order in the meantime".

54. On the same day, the Upper Tribunal wrote to Sandbrook requiring the Firm to provide a copy of the application and documents to the other parties and a written statement to the Upper Tribunal confirming when and how this had been done.

55. By letter of 28 March 2014 Sandbrook wrote to TSol. The letter stated as follows:

> "The respectful judge has granted our client's request for an injunction and it would appear academic to continue with the judicial review application. We propose to the withdrawal of the JR application and will inform court of our intention since it not serve the overriding objective of the CPR to litigate this matter so as to save costs.
>
> We are mindful of the costs implications of the continuation of a JR application and in order to dispose of this matter, we propose that we withdrawal the above JR application as it serves no value for both parties to continue with the same if the respondent is prepared to formulate a decision on our client's immigration case in a timely fashion".

56. The JR proceedings were not pursued. In October 2014, the claim was concluded for non-service and the injunction was discharged. In November 2014, Ms PZ was again detained and served with removal directions. In the meantime, Sandbrook had submitted further submissions to the Home Office on 3 April 2014, which were refused.

57. At that time Ms PZ was still represented by Sandbrook. An attendance note on the Respondent's client file recorded that on 12 November 2014 Ms PZ's partner attended the Firm and enquired as to the prospects of a further JR application. The note indicated he was advised that, "its at his discretion because applicants are entitled to make a JR in order to allow the judge to peruse the case" but, "there needs to be a change in circumstances before a JR application will be accepted by a Judge otherwise the Judge is at liberty to reject his JR application".

58. A further application for JR was lodged on 14 November 2014. This purported to be submitted by Ms PZ alone (without the assistance of solicitors), but, as was noted by Mr Justice Green and HHJ Raynor QC, in the *Hamid* Judgment it was, "a detailed document running to 23 pages replete with references to case law and legal analysis". This application referred to previous removal directions having been "successfully deferred" but made no reference to Ms PZ having previously secured interim relief and not pursued the related application for JR. The Grounds stated: "I have made no application for Judicial Review in the last three months". It was the Applicant's

contention that the application for JR lodged on 14 November 2014 was in fact drafted by the Respondent.

59. The following day (15 November 2014) HHJ Sycamore granted an injunction restraining the removal of Ms PZ, "until the court has determined her application for permission to apply for judicial review or further order in the meantime". The order stated: "The injunction is not open-ended and, after the Acknowledgement of Service has been filed, a judge will decide whether to continue or discharge the injunction".

60. On 4 December 2014, Sandbrook made further submissions on behalf of Ms PZ. On 21 January 2015, Sandbrook contacted Ms PZ and informed her that, "the Home Office has not been in touch". An application for LTR was submitted on Ms PZ's behalf on 9 February 2015. The Firm's client file did not reveal any communications between the Firm and the Home Office after that application.

61. On 4 March 2015, an Order was made by Swift J refusing permission to apply for JR as the application was totally without merit and an abuse of process and the Order restraining removal was revoked. The Order stated: "The Claimant's repeated conduct in lodging a Judicial Review claim and, having secured a stay of her removal, failing to serve the claim constitutes an abuse of process".

Re Ms AZ

62. Sandbrook represented Ms AZ in her application for LTR in the UK, with the Respondent as the fee earner responsible for the matter. Ms AZ initially contacted Sandbrook on 4 December 2014. On 9 December 2014, Gulbenkian Andonian Solicitors ("Gulbenkian"), Ms AZ's previous solicitors, provided their client file to Sandbrook.

63. In removal directions of 22 November 2014, Ms AZ's removal date had been set for 3 December 2014. On 2 December 2014, Gulbenkian had made an application for JR and had obtained an injunction preventing Ms AZ from being removed. This JR application was outstanding upon Sandbrook taking over the case. Further submissions had also been made on 2 December 2014 by Gulbenkian, but had been rejected.

64. On 24 December 2014, Sandbrook applied to the Home Office for "temporary release/admissions in light of the special circumstances surrounding [Ms AZ's] case". This application was refused by the Home Office on 29 December 2014.

65. By an Order of 2 January 2015, Upper Tribunal Judge McGeachy refused Ms AZ's outstanding application for permission to bring JR proceedings. The Order recorded that the application was totally without merit ("TWM"). On 12 January 2015, the Home Office issued a Notice of Deportation Arrangements directing that Ms AZ was to be removed from the United Kingdom on 31 January 2015.

66. A file note of 13 January 2015 recorded that Sandbrook advised Ms AZ's husband that, "they do have the option of doing JR". The note recorded that "Mr C [Ms AZ's husband] advised that he will do the JR himself but would need some assistance in the preparation of it".

67. Sandbrook made further submissions on Ms AZ's behalf on 26 January 2016. These further submissions made no reference to Ms AZ's previous application for permission to bring JR proceedings, or to that application being refused as totally without merit. When later asked (by Ms Young, on 30 July 2015) why this was the case the Respondent stated "Not mentioned – on application form no question that asks if application made in [the] past. Completed application and did Grounds […] Don't need to. Home Office has it, everyone has it – TSOL. Not duty bound to inform the Home Office. Secondly they are our opponent". The Respondent also stated that this information was included in the IFS provided by the Home Office and that he would "tend not to repeat facts again to save time".

68. On 29 January 2015, Sandbrook spoke to Ms AZ. The file note recorded: "Reminded client that if no response by tomorrow, husband will have to do JR to get an injunction".

69. By 30 January 2015, no response to the further submissions had been received. Sandbrook sent three letters to the NRC one of which stated: "We will now proceed with our Judicial Review application since you are not prepared to withdraw the removal directions". This letter made no reference to any previous applications for JR or associated Orders.

70. On the same day (30 January 2015) a JR Claim form and application for urgent consideration were submitted, along with a Statement of Grounds and IFS. The application appeared on its face to be made by Ms AZ in person (not Sandbrook). It was the Applicant's position that the application was in fact drafted by the Respondent at Sandbrook. No mention was made in the Claim Form of Ms AZ's previous application being refused and declared to be totally without merit, nor did the Firm draw that fact to the Court's attention thereafter. By Order of 30 January 2015, HHJ Platts stayed the removal directions and restrained Ms AZ's removal, "until the conclusion of these proceedings or further order".

71. The Secretary of State for the Home Department ("SSHD") issued an application to discharge the Order of HHJ Platts. An Acknowledgement of Service and Summary Grounds of Defence were served on Ms AZ personally on 12 February 2015. The Summary Grounds of Defence drew attention to Ms AZ's previous JR application, submitting that the present application was "clearly an abuse of process". On 24 February 2015, Sandbrook wrote to the court office indicating that this application would be contested and requesting that the matter be listed for a hearing.

72. On 4 March 2015 by Order of Swift J, permission to apply for JR was refused on the basis that the Grounds were totally without merit and an abuse of process, and the Order of HHJ Platts was revoked. The Order recorded:

> "When making her application for Judicial Review on 30 January 2015, the Claimant failed to disclose the fact that a similar application made by her on 2 December 2014 had been refused by Upper Tribunal Judge McGeachy on 2 January 2015 and declared totally without merit. There has been no significant change in her circumstances since then and she has failed to establish any good reason why she should not be deported. Her latest application was an abuse of process."

73. On 8 May 2015, Sandbrook submitted an application for LTR and a biometric immigration document.

74. On 1 June 2015, Sandbrook wrote to the NRC expressing concern that removal directions had been issued. The letter stated: "Due to the fact that you served our client with removal directions on Tuesday 9 June 2015 without any previous notice, we will proceed with an injunction application if you fail to revert to us".

75. A file note of 5 June 2015 recorded a telephone conversation between the Respondent and Ms AZ as follows: "HO has received the application, acknowledged the application but has not processed or made a decision on it. Told her that this is ground for JR".

76. When asked by Ms Young why he had advised the client's husband that he could bring a JR application, the Respondent stated: "Completed application form and Grounds and included [IFS]. TSOL – there [sic] job is to put things against us. Irrespective…" When asked about the previous JR application the Respondent indicated: "For this would do JR again because client's partner is English, son born in UK, grandparents, aunts, uncles all live in UK. If [they] deport [the] client to China [she will be] liable for automatic ban. So clear breach of private and family life […] This case is far from abuse of Court process, far from it. Judge granting injunction on balance of convenience because applicant will be subject to automatic 10 year ban. Also. client still in UK".

Re Mr GL

77. Sandbrook represented Mr GL in his application for LTR in the UK, with the Respondent as the fee earner responsible for the matter.

78. Mr GL had previously filed submissions on 27 September 2010, which were rejected on 20 October 2010. Removal directions were fixed on 9 April 2013, effective on 14 April 2013.

79. On 11 April 2013, Sandbrook made further submissions on behalf of Mr GL. The next day, applications for JR and for an urgent injunction to prevent removal were made. These applications were brought in Mr GL's name only with no ostensible reference to solicitors. It was the Applicant's position that the Firm drafted the documents, and were acting in the case.

80. By Order of 14 April 2013, HHJ Graham Wood QC restrained the removal of Mr GL. Further submissions were rejected on 12 May 2013, and on 12 June 2013 a JR application was refused by HHJ Stephen Davies on the basis of having no real prospect of success. The injunction was to be discharged unless Mr GL served a request for reconsideration within 7 days. An oral permission hearing was held on 21 June 2013, at which permission was refused.

81. In the interview of 30 July 2015, the Respondent was asked by Ms Young whether Sandbrook had dealt with Mr GL's case in 2013, which was referred to in Mr GL's IFS. He replied, "I don't think so. No". When asked if he had details of who did deal with those appeals, he stated, "not sure". When asked if he had the relevant papers,

he stated, "just what's there". Ms Young asked whether Sandbrook acted in an appeal of 12 April 2013, and the Respondent replied, "Don't think so, no. It's whatever I've given you".

82. By removal directions of 16 January 2015, Mr GL's removal date was set for 24 January 2015. Further submissions were submitted by Sandbrook on Mr GL's behalf on 20 January 2015 and followed up in letters of 21, 22 and 23 January 2015.

83. On 23 January 2015 applications for JR and urgent consideration were brought**.** These were brought in Mr GL's name only with no reference to Sandbrook. It was the Applicant's position that Sandbrook drafted the documents, and were acting in the case. The *Hamid* Judgment stated: "It appears that the Judge was not informed of the detailed history to the case". HHJ Pelling QC granted an Order preventing the removal of Mr GL from the UK. The Order stated: "Although I consider the further submissions that have not apparently been responded to by the Defendant are unlikely to take matters further, the fact remains that IRs r 353A make it unlawful for removal to take place while further submissions are outstanding".

84. The Claim form was not served on the Defendant and no notice of discontinuance was issued or served.

85. On 6 March 2015 Swift J refused permission to apply for JR on the basis that it was totally without merit. The Order of HHJ Pelling QC was revoked. The Order of Swift J recorded:

> "The Claimant made an application for Judicial Review on 23 January 2015, the day when he was due to be removed from the United Kingdom. Having secured an injunction, restraining his removal, he failed to serve the Defendant with his application, thus ensuring that he was able to remain in the UK. He had made a JR application in 2013 and had again obtained an injunction restraining his imminent removal. Admission had been refused and the injunction revoked. The Applicant's position has not changed materially since his appeal rights were exhausted and it is clear that his latest application was made solely with the intention of stopping his removal and is an abuse of process."

Re Mrs MW

86. Sandbrook represented Mrs MW in relation to her application for LTR, with the Respondent as the fee earner responsible for the matter. A letter of authority was sent on 4 June 2014.

87. On 2 July 2014, Sandbrook submitted an application for LTR on Mrs MW's behalf.

88. On 4 July 2014, Mrs MW's husband made contact with the Firm to request an explanation of the position. A telephone note set out that Sandbrook: "Explained option of doing JR" and it was agreed that "Mr Z [Mrs MW's husband] will speak to client first and will prepare JR and take it to Court to seal".

89. By letter dated 8 July 2014, the Home Office Operational Support & Certification Unit wrote to the Firm confirming that further submissions had been considered. The letter stated that the application was refused and that Mrs MW had no lawful LTR in the UK.

90. On 8 July 2014, Mr Z delivered the sealed JR application and claim form to Sandbrook. An attendance note recorded that Sandbrook, "Advised client to send one copy of the sealed JR to TSOL today as advised by Court". It was the Applicant's position that the Respondent drafted the claim. By order of HHJ Pelling QC, sent to Sandbrook on 9 July 2014, Mrs MW's removal was restrained, "until after final disposal of this claim or further order". The precise timings of the Order and letter were not made clear, but it was understood the injunction was granted before the letter was received.

91. The Claim Form for JR was not served on the Defendant, nor was a Notice of Discontinuance filed. As noted in the *Hamid* Judgment, on 2 October 2014, the case was closed due to non-service and logically the restraining order rescinded and the claim should have been struck out. It did not appear that the Order of HHJ Pelling QC was rescinded, or that the claim was struck out.

92. In removal directions dated 20 October 2014, Mrs MW's removal date was set for 21 November 2014.

93. On 3 November 2014, Sandbrook made further submissions on the basis of new medical evidence. By letter of 10 November 2014, Sandbrook followed up on this correspondence, stating: "We hereby put you on notice that we will have no alternatives but to seek an injunction if you fail to revert to us".

94. On 21 November 2014, Sandbrook brought a further JR claim on Mrs MW's behalf**.** The Claim form referred to Mrs MW having "2 outstanding applications". The Applicant's position was that this was wrong.

95. By order of 21 November 2014, HHJ Bird restrained Mrs MW's removal, "until determination of the present application or sooner order." The Order stated: "The Tribunal notes (from the [IFS]) that permission to proceed with Judicial Review proceedings in respect of previous removal directions was refused on 14 October 2014. This present order is made on the basis that the matters advanced in the claims of 3 November 2014 were not considered by the tribunal when permission was refused and were not before the Respondent when the removal directions were issued. The Tribunal proceeds on the basis that the Applicant's solicitors would have informed the tribunal if such matters were considered when permission was refused". Following the grant of injunctive relief, no claim for JR was served upon the Defendant, nor any application for discontinuance made.

96. On 4 March 2015 by Order of Swift J, permission to apply for judicial review was refused. According to the Hamid Judgment, this Order also stated that the application had been certified as TMW and an abuse of process and revoked the Order of HHJ Bird. (This Order was not considered by the Tribunal for reasons set out in the preliminary matters above).

Explanation of Conduct

97. As set out below, the Respondent was interviewed by Ms Young, the Investigation Officer, on 30 July 2015. The Respondent's comments regarding particular client matters are set out above.

98. During the interview, the Respondent and Ms Young also discussed the alleged failure to co-operate with the Upper Tribunal as commented upon in the *Hamid* Judgment. The Respondent stated: "I just turned up without files. Didn't know them inside out and not able to give response. Judge would ask detailed questions – I would only have broad knowledge. I would have to refer to the file". When asked about Mr H, the paralegal's, involvement, the Respondent indicated that, "He previously use [sic] to assist on the files and I oversee the work. Like a junior person to gain experience – boarding para-legal", and that Mr H was not being paid. The Respondent indicated that Mr H had been suspended to allow the Respondent to have a few days, "to go through all the files by myself" but that, "If I asked him to come back he would come back". When asked if Mr H had been working on the matters in question the Respondent stated, "Mainly me but if anything happens on my head as I'm partner and take responsibility for whatever happens".

99. In relation to paragraph 45 of the *Hamid* Judgment, which referred to the Firm having been prepared to, "advance virtually any ground however tenuous or hopeless, simply to provide a platform for the interim relief application which then ensues", the Respondent stated, "Best response [is to] wait for [the] outcome of cases from [the] Home Office [..] but if subsisting relationship, child, been here for over 15 years, that's not hopeless, far from hopeless".

100. In relation to paragraph 49 of the *Hamid* Judgment, which noted that once Sandbrook had made an application for JR it would tend to, "lie low and hope that a case will go away in the future", the Respondent responded:

> "Once done actual JR, far from laying low, laying high, pursue clients' immigration case with [the] Home Office. [It's] not that [we've] got [the] JR and don't do work: Follow up with the case and pursue until the end to get a decision. Home Office fully aware of [the] situation because [we are] waiting for them to give decision… continue pressing and doing work for the client. I haven't closed these files off, still live. I haven't closed these files off still work in progress. It's in my clients' interests for me to continue pursuing a visa for them which I'm still doing."

SRA Correspondence and Investigation

101. These matters initially came to the attention of the Applicant following the *Hamid* Judgment, by which Green J and HHJ Raynor QC referred Sandbrook to the Applicant. The Applicant's investigation into Sandbrook commenced on 8 June 2015.

102. Ms Young reviewed the file for each of the Matters and on 30 July 2015 interviewed the Respondent at Sandbrook's offices. The investigation culminated in a report dated 6 October 2015 ("the Report").

103. The Report was sent to the Respondent on 27 October 2015, together with a letter sent pursuant to Rule 5 of the SRA Disciplinary Procedure Rules 2011. The letter set out allegations against the Respondent and sought responses to the following questions:

> "a) Did you have conduct of all five of these matters?
>
> b) To what extent was the caseworker [Mr H] involved in these matters?
>
> c) Did any other caseworker have any involvement?
>
> d) Why your partner Mr Javid and [Mr H]/any caseworker involved did not attend the hearing to consider the five matters referred to them, despite being instructed to do so by Mr Justice Green and HHJ Raynor QC? Provide evidence in support of your response/reasons for non-attendance.
>
> e) Please explain how you could identify the new grounds to be considered without considering the previous applications/appeals submitted by previous law firms on behalf of your client.
>
> f) Please confirm the payment received from each of these five clients and provide evidence of the same.

104. The Respondent replied on 1 December 2015 with a document headed "Response to the Final Report of Stephanie Young". In this response, the Respondent:

104.1 Confirmed that he is "the main person in charge of [Mrs MW],[Ms AZ], [Ms T], [Ms PZ] and [Mr GL]";

104.2 Indicated that Mr H was "a volunteer" who "has minimal involvement in these matters and […] is under my supervision";

104.3 Stated that, "although there were technical failures i.e. failing to make the proper application to withdraw the Claims, the firm was never knowingly or recklessly in breach of the code of conduct". The Respondent contended that "all of the claims for leave to remain […] on the facts, were arguably meritorious";

104.4 Stated that, "due to the Home Office delay in reaching a decision, I have no alternative but to make a JR application, not on the grounds of the merits of the case but on Respondent (Home Office) failure/delay in reaching a decision on the further submissions";

104.5 In relation to Mrs MW, stated: "We accept that the proper administration of the claim would have required notifying all parties to the claim that it was no longer being pursued but as above this claim was one being administered by the Applicant (and her family) together";

104.6 In relation to Ms AZ, stated "the Applicant would be subjected to a pre-sentence ban and/or struggle to gain entry into the UK if the Home Office had maintained her

removal directions. It is submitted that this case is not totally without merit on the basis of her human rights and the best interests of her son";

104.7 In relation to Ms T stated, "It would be 'academic' had I continued with the JR application since the underlying reason for the JR was to prevent the removal of the applicant so the Home Office can consider her case" and indicated that the Upper Tribunal had been informed of the same;

104.8 In relation to Ms PZ stated, "This claim follows a similar pattern to a number of the claims above whereby fresh submissions are made, the Respondent makes no decision but sets a removal direction. An injunction is obtained. There is a decision on the submissions meaning any claim seeking to quash removal pending consideration of the submissions is academic. The Tribunal and/or the Respondent's solicitor are informed of this view (without the filing of the appropriate application) and the claim not pursued";

104.9 In relation to Mr GL stated, "The history of the applicant was set out in the paperwork provided with this claim and therefore there can be no suggestion that the firm knowingly or recklessly attempted to mislead the Court in any way";

104.10 In relation to the *Hamid* hearing, indicated, "This is my first time of such a hearing and I was under the understanding that this matter would be listed for a second hearing, following directions in the first hearing. It was for this reason that I was not fully prepared with my files of paper as I was expecting a second hearing".

105. Mr Javid replied on 4 December 2015 confirming that: "In hindsight I accept that I should have notified the court personally or should have attended the [Hamid] hearing in person" and that "it was not feasible for both myself and the Respondent to be absent from the office on a working day. I was confident that as the Respondent was the solicitor with conduct of the cases and as a partner of the firm he would be able to address any questions or concerns in respect of the individual cases".

106. On 3 November 2016, a further letter was sent to the Respondent by the Applicant. The letter required the Respondent's response to the following allegations:

> "**Allegation 1**
>
> That you, through your representative Mr Hanif, misled the Upper Tribunal at the Hearing when you stated that [Mr H] had worked on the cases under consideration. In doing so you:
>
> (a) breached Principles 1, 2 and 6 of the SRA Principles 2011 ("the Principles")
>
> (b) failed to achieve Outcomes 5.1 of the SRA Code of Conduct 2011 (the "Code")
>
> […]

Allegation 2

That by deliberately and knowingly provided misleading information to the Upper Tribunal you acted dishonestly."

107. The Respondent replied to this letter on 14 November 2016. In relation to the first allegation, he indicated that "It is right that [Mr H] was a caseworker on the files, but I was at all times the solicitor responsible for the substantive and technical legal work on the file" and that, "What Mr Hanif meant, and certainly what I understood him to mean, in saying that I was aware of the gist of the cases was that I knew the cases but could not answer detailed questions from the Upper Tribunal without reference to the files". The Respondent also stated "I do accept that I should have taken the files with me to the Upper Tribunal, and Green J was right to be dissatisfied that this was not done. I understood that there was to be a further hearing so I was not fully prepared, and I lost the opportunity to persuade Green J and HHJ Raynor QC that the actions of Sandbrook solicitors were not improper".

108. In relation to the second allegation, the Respondent stated: "I accept that there is a reading of the transcript that could show an inconsistency with my Response to the Final Report of Stephanie Young, but when read as a whole I believe that I have been consistent throughout". The Respondent also made the following general concluding comments (headed "Summary"): "I do accept that I should have taken the files with me to the hearing and that I could have been better prepared, but I believed that the hearing was for directions and the substantive hearing would be at a later date. In this respect, I was wrong but I am not and have never been dishonest".

109. On 18 July 2016, an Authorised Officer referred the conduct of the Respondent to the Tribunal.

110. On 16 January 2017, the Applicant wrote to the Respondent requiring responses to allegations concerning the *Hamid* hearing. The allegations put to the Respondent were that he (directly and through Mr Hanif) misled the Upper Tribunal by stating that Mr Javid could not attend the *Hamid* hearing because of his ill health, and that in doing so the Respondent acted dishonestly. The Respondent replied to this letter on 24 January 2017.

Witnesses

Ms Stephanie Young

111. Ms Young, the investigation officer in this matter, gave evidence on behalf of the Applicant. She confirmed that her statement of 21 April 2017 was true, and thereby confirmed that the contents of her investigation report dated 6 October 2015 were true to the best of her knowledge, information and belief. No changes were made to either the statement or report.

112. In cross examination, Ms Young confirmed that she was a solicitor. She had not worked as an immigration solicitor or been involved in many judicial review applications. The investigation began after a referral by the Upper Tribunal; the terms of the investigation were not limited to the five matters referred to in the *Hamid*

Judgment or this case. There had been no concerns about files other than the five referred to in these proceedings. Ms Young could not say without checking how many immigration cases the Firm had had at the time of the inspection, but thought it was about 30. Ms Young agreed that she would have looked at documents such as the *Hamid* Judgment and the Orders of Swift J to inform her inspection of the files. Ms Young was referred to a redacted Order (the date of which was not apparent) appended to the Respondent's first witness statement, in which the Judge stated in his Reasons: "Whilst the current judicial review itself seeks "cancellation of removal directions" and a mandatory order for consideration of the FLR(O) application, and the usual course would be to consider the T480 application for permission in due course, a decision letter would render the current proceedings nugatory, and the Applicant's solicitors (in liaison with the Respondent) should consider whether any object would be achieved in the continuation of these proceedings and the seeking of permission if such a decision is likely in the immediate future." Ms Young told the Tribunal that she could not recall seeing an Order in these terms and stated that if she had she would have discussed its meaning with the Respondent.

113. Ms Young was referred to extracts from the transcript of her interview with the Respondent (on 30 July 2015) in which she had asked the Respondent about the lack of any Notice of Discontinuance on the relevant files. It was now accepted that in the Upper Tribunal there was no Notice of Discontinuance form. Ms Young told the Tribunal that she had been asking the Respondent about his understanding of the correct procedures. She told the Tribunal that she had only learned that there were no Notices of Discontinuance in the Upper Tribunal in the course of preparing for this hearing. Ms Young did not accept that she was ill-equipped to carry out an investigation of this kind.

114. In response to questions about her statements in the report that the Respondent's failure to proceed with the JR applications had taken the decision away from the Court, Ms Young told the Tribunal that she had not been making a value-judgment, but had stated that the Court had not been given the opportunity to consider whether or not the case should proceed. In response to a question about why Ms T had been described in the report as "an absconder", Ms Young told the Tribunal that this was part of the history of that matter. Ms Young accepted that the duty of candour about a client's immigration history was owed to the Court, not the Home Office (which had records). Ms Young again denied that she had insufficient knowledge of immigration law to conduct an investigation of this kind.

115. Ms Young was asked questions about the specific client matters in issue, which evidence is noted, where relevant, in relation to the findings on those matters. Ms Young told the Tribunal that the Respondent's answers to her questions during the investigation were not unhelpful, but he had not known some answers or referred to the files to check.

116. After a break, Ms Young was examined in chief about some documents from her file (not in the hearing bundle) which listed client matters as at 30 April 2015 and an updated list (at 29 July 2015). Based on the descriptions on the client matter listings, Ms Young had estimated the Firm had about 30 immigration cases out of over 300 client matters. Under cross examination, Ms Young accepted that her methodology relied on the client matter listings carrying an accurate and clear description of the

type of case. The figure of about 30 cases had not been cross-referenced with other sources of information, and related only to open files.

117. In response to a question from the Tribunal, Ms Young stated that immigration matters had been within the scope of her investigation. She would identify immigration matters from the client list, then call for the ledger and then the file, if she decided to review it.

118. Ms Young was not recalled to deal with documents which had been considered by the parties overnight (on 21/22 August). From those documents, the Applicant considered that the Firm had had 40 immigration files at the time of the inspection whilst the Respondent considered there were 46 immigration matters at that point. The Tribunal noted that the Respondent could give evidence on these points and that in any event the number of cases simply provided context for the events in issue.

Mr Mohammed Imran Javid

119. Mr Javid's statement dated 21 July 2017 was read, as it was not challenged and the Respondent did not require Mr Javid to give oral evidence.

120. Mr Javid's statement dealt with the *Hamid* Hearing on 18 May 2015 and the period leading up to it. Mr Javid's statement was to the effect that on 13 May 2015 he discussed the forthcoming hearing with the Respondent and had told the Respondent he would not attend; Mr Javid also stated he had not seen the letter of 6 May 2015 which required him to attend. Mr Javid did not comment on whether or not there had been a discussion with the Respondent on Friday 15 May 2015. Mr Javid's evidence was that he had not intended to attend the hearing on Monday 18 May 2015, as he had not considered it necessary to do so, and that he was not unwell at that date although he sometimes suffered with hay fever which might make him appear unwell.

The Respondent

121. The Tribunal noted that due to a medical condition the Respondent needed to take breaks about every 75 to 90 minutes and asked counsel to be alert to noting where topics may be about to change, to enable there to be such breaks at convenient points. On one occasion during the evidence, the Tribunal adjourned for a break, despite the Respondent's assertion that he was well enough to continue, as it was concerned for his health and ability to concentrate.

122. The Respondent confirmed that the contents of his witness statements of 27 July and 11 August 2017 were true to the best of his knowledge, information and belief.

123. The Respondent told the Tribunal that he had had very little sleep in the days preceding his evidence. The Respondent told the Tribunal that he had reviewed the ledgers and that the Firm had 46 immigration cases as at April 2015.

124. The Respondent told the Tribunal that he would stay late at his Firm's office on Fridays, to give pro bono and general advice. The Firm's offices were close to China Town in Manchester and he would give advice to clients who dropped in to the open surgery. The pro bono clients were not included in the list of 46 mentioned as

there were no files and ledgers for them. The Respondent told the Tribunal that the Firm had started in late 2011. The Firm did not advertise, but aimed to grow through recommendations from clients e.g. those for whom free advice was provided. It was hoped that they would give the Firm repeat business and/or recommend the Firm to others. The Respondent described "going the extra mile" for the client as being an investment for the future, as clients may then give the Firm commercial property work (which was done by Mr Javid and was more lucrative than immigration work).

125. The Respondent told the Tribunal that there was a large time difference in the work needed to make submissions for LTR and to prepare a JR application. The amount of work that the Respondent was prepared to do for nothing depended on the client and the circumstances. Sometimes, the Firm would offer a "no visa, no fee" deal whereby the client would be charged £500 if the visa application was successful. The Respondent told the Tribunal that if he successfully obtained an injunction for a client, preventing deportation, that client would refer others and there could be immediate referrals of other business, within a week or so. The Respondent told the Tribunal that there would, for example, have been a financial gain to him and the Firm if he obtained LTR for Ms T. Once a client had a visa, they would usually set up a business and want advice about that. It was hard to quantify the financial gains from this business model, but a commercial property transaction could lead to income for the Firm of over £750 plus VAT. Where the £500 "no visa, no fee" arrangement was agreed, the Respondent estimated that about 40% of the fee would go towards overheads and the remainder would be profit. However, it was commercial property work rather than immigration cases which were profitable. The Respondent told the Tribunal about his work within the Chinese community. When he did a "good deed", this would generate positive comments, for example on the social media site WeChat, which in turn would generate recommendations and work. The Respondent told the Tribunal that this was the way he generated work for the Firm. The Respondent told the Tribunal he was quite proud of the work he did for vulnerable members of the Chinese community. The Respondent told the Tribunal that he came to the UK from Vietnam as a small child and he wanted to put help and "put something back". The Respondent told the Tribunal that he wanted to help people and did not mind if there was no subsequent referral of work. The Respondent told the Tribunal that he enjoyed working as an immigration lawyer; he could both help vulnerable people and earn money. The Respondent told the Tribunal that the Firm closed in December 2015, since when he had not worked; the Respondent told the Tribunal that he missed working.

126. The Respondent was cross examined at some length, during 22 and 23 August. Much of the cross examination related to the five client cases in issue; the Respondent's evidence on these points will be noted, where relevant, in the section on findings on those cases.

127. With regard to the *Hamid* Hearing, the Respondent confirmed that he had received the letter of 6 May 2015, which gave notification of the hearing but did not ask for any confirmation of attendance. The Respondent told the Tribunal that he had read the three cases referred to in the letter (Hamid, Awuku, and Butt) at that time. The Respondent told the Tribunal that the procedure for the hearing was unclear and his understanding was that the hearing on 18 May would be a preliminary hearing at which directions for a later hearing would be given. The Respondent told the

Tribunal that he had reviewed the files in issue, but was not able to answer specific questions about them and had told the Judge that he was "aware of the gist" of the cases. The Respondent told the Tribunal that he could tell the Judge wanted details, but the Respondent did not want to say something if he did not have the files (which he had not taken to Court).

128. The Respondent told the Tribunal that after receipt of the letter of 6 May 2015 there had been an email from the Court on 13 May 2015. Mr Javid had told the Respondent to inform that Court that he, Mr Javid, would not attend due to other commitments but the Respondent had made it clear that the letter asked for the managing partner, Mr Javid, to attend. The Respondent told the Tribunal that there had been a heated argument (on 15 May) about attendance. The Respondent told the Tribunal that he had asked Mr Liu to attend the office early on 18 May to deal with telephone calls etc as he and Mr Javid would be at Court. The Respondent met the instructed solicitor, Mr Hanif, at Court on 18 May; Mr Javid was not present. The Respondent told the Tribunal that he had understood that Mr Javid would attend Court, following the discussion on 15 May 2015. The Respondent told the Tribunal that he knew that Mr Javid sometimes suffered with hay fever. The Respondent told the Tribunal that Mr Liu had phoned whilst he was waiting at Court, as he thought Mr Javid was at Court with the Respondent. Mr Liu had suggested that Mr Javid might be ill and the Respondent told the Tribunal that there was no reason to doubt this. The Respondent denied that he should have told Green J that Mr Javid had not wanted to attend and that he might be ill; he had had no reason to doubt what Mr Liu had said. The Respondent told the Tribunal that there had been nothing to gain in misleading a High Court Judge and he had simply said what he knew at the time.

129. In re-examination, the Respondent explained some terminology used in immigration matters. He told the Tribunal that of the 46 immigration cases the Firm had, a high percentage related to "overstayers". Some of these would be granted LTR, either due to exceptional circumstances or under the Home Office's discretion. The Respondent told the Tribunal that Ms Young had not identified any problems on files other than the five referred to in this case.

130. The Respondent was referred to Orders appended to his second witness statement, including one dated 11 June 2014 made by the President of the Upper Tribunal on one of the cases of which the Respondent had conduct. This Order, which refused permission to bring JR proceedings, included the following: "I consider this extant permission application to be a legacy of events which have no currency. By the grant of interim relief the Applicant secured the effective remedy she was seeking. To maintain her challenge to removal directions which were not implemented and have no present impact or effect is pointless. I consider this application academic." The Respondent told the Tribunal that the wording of this Order had a big effect on his approach. The matter of Ms T had followed about two months later and by adopting the position that Ms T's application had become "academic", he was trying to be consistent with the approach taken by the President. The Respondent told the Tribunal that there had been other Orders in similar terms, but as the Firm had closed in December 2015 he did not have access to the files.

Mr Jian Chao Liu

131. The witness statements of Mr Liu, dated 12 April and 27 July 2017 were read. A Civil Evidence Act Notice had been served in respect of Mr Liu's evidence and he was not required to attend.

132. Mr Liu stated that during the week beginning 11 May 2015 he overheard a conversation between the Respondent and Mr Javid in which the Respondent stated that Mr Javid should attend the hearing on 18 May, with which Mr Javid appeared to agree. Mr Liu also stated that on 15 May Mr Javid appeared to be ill, with a runny nose and puffed eyes. Mr Liu stated that on the morning of 18 May Mr Javid was not in the office when he took a call from one of Mr Javid's clients. As Mr Liu did not have Mr Javid's mobile phone number, he telephoned the Respondent (who was at Court) to speak to Mr Javid and was then told by the Respondent that Mr Javid was not there. Mr Liu stated that he then told the Respondent that Mr Javid "must still be ill, as he was ill on Friday".

Findings of Fact and Law

133. The Applicant was required to prove the allegations beyond reasonable doubt. The Tribunal had due regard to the Respondent's rights to a fair trial and to respect for his private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

General

134. Nothing said in these findings should be construed as finding or in any way suggesting that any criminal offence was committed by anyone mentioned, including the Respondent. The Tribunal simply considered the particular allegations and evidence deployed; none of the allegations were understood by the Tribunal to suggest the commission of any criminal offence. The Tribunal also wanted to make it clear that no comments made about individuals other than the Respondent should be taken as findings against those individuals. For example, Mr Javid was not a party to the proceedings and had no opportunity to comment or challenge anything said about him but it was necessary for the Tribunal to comment on some of his actions in order to appreciate the context of the allegations.

135. The Tribunal noted the Respondent's position, made clear in the cross examination of Ms Young, that the investigation had been conducted by an investigator with insufficient knowledge of immigration law and practice. The Tribunal accepted that Ms Young had lacked particular knowledge of procedure in immigration matters, and this had had an impact on the way the allegations had been framed. The Tribunal noted the Respondent's suggestion to the effect that the Tribunal may struggle to deal with the case as it had insufficient knowledge of immigration cases. However, the Tribunal had the benefit of very helpful submissions from counsel for both parties and was satisfied it was well placed to assess the Respondent's actions. The Tribunal was an expert Tribunal in the field of professional conduct. The Tribunal had sufficient knowledge and understanding to determine the allegations in the case. The Tribunal had also been provided with a glossary of terms used in immigration law (by the Respondent), copies of relevant cases and extracts from or references to the

Immigration Act 1971, the Nationality, Immigration and Asylum Act 2002, the Immigration Act 2014 and the Immigration Rules in force at the relevant times, together with the Tribunal Procedure (Upper Tribunal) Rules 2008 and the relevant Practice Directions.

136. The investigation into the Respondent's conduct had begun following the delivery to the Applicant of the *Hamid* Judgment, arising from the hearing on 18 May 2015. The date of that Judgment was not clear on its face, but it had been provided to the Applicant before the investigation began on 8 June 2015; the date it was first seen by the Respondent was not known. Under Rule 15(4) of the Solicitors (Disciplinary Proceedings) Rules 2007 ("the Rules"), the *Hamid* Judgment was admissible and any findings of fact in that Judgment were proof, but not conclusive proof, of those facts. The Tribunal noted that, in fact, there were very limited findings of fact in the *Hamid* Judgment although it expressed the Upper Tribunal's reasons for concern about the Respondent's conduct. Any findings made by the Upper Tribunal were, of course, made to the civil standard rather than the higher standard applied in this Tribunal and were not sufficient to prove any of the allegations. The Tribunal regarded the *Hamid* Judgment as prima facie evidence, on the civil standard, of the matters stated within it. It was a helpful summary of the background to this case.

137. The Tribunal wanted to make it clear that there is nothing wrong or improper in any way in a solicitor carrying out immigration work. Such work involved vulnerable clients and the protection of their rights. It was generally poorly paid work. Deportation of an individual in particular was a matter of great significance for the client affected and their family and friends. The Tribunal did not criticise those involved in such work. It recognised that immigration was a politically sensitive issue. Solicitors should be able to properly represent their clients to uphold their rights, including against the State or government agencies. This work may involve creative and/or unpopular steps taken on behalf of clients; there was nothing improper in any of that. The Tribunal noted and accepted Mr Malik's submissions on this point. He had pointed out that immigration work often involved acting for individuals who were in the UK unlawfully and whose position needed to be regularised. It was an area of law which included sensitive cases, for example the separation of families and the parent of a young child being deported. The Tribunal also accepted Mr Malik's submission that in such cases there was nothing wrong, in principle, with having more than "one bite of the cherry" and making more than one application. The Tribunal noted that, of course, any such steps had to be undertaken professionally. The task for this Tribunal was to determine whether this Respondent, on the specific occasions referred to, was in breach of any of the Principles and conduct rules, in the way alleged.

138. The Tribunal also noted and found that there had been concern on the part of the Courts dealing with immigration matters that such cases were open to abuse. This was made particularly clear in the cases of Hamid, Awuku and Butt (extracts from which appear at paragraphs 18 and 19 above). A proper reading of these cases indicated that the Courts were concerned that those practising in the field of immigration law should act in accordance with their professional obligations, in particular in being candid with the Court (in accordance with Principle 1) and the

requirement to give full disclosure to the Court in the case of urgent, ex parte injunction applications.

139. From the issues raised in this case, the Tribunal noted and found that there was a particular vulnerability in the immigration system which left it open to abuse by those with wholly meritless claims. Where a person present in the UK unlawfully made representations by way of an application for LTR, pursuant to paragraph 353 of the Immigration Rules, that person could not be deported until those submissions had been considered by the Home Office and a decision made (paragraph 353A see below). In theory, only "new" submissions should be made, based on a change of circumstances, for example, or new evidence in support. However, where late submissions were made, there may not be a proper opportunity to consider whether or not there were new submissions, or simply a repetition, in slightly different words, of earlier matters. A method of frustrating deportations, therefore, was to make representations shortly before removal from the UK was due to take place, then apply for an injunction, pursuant to an application for JR, to prevent deportation pending the Home Office's decision on the representations. Where removal directions had been given, the client was often in an immigration detention centre for a period before the flight was due. When an injunction was granted, the client was generally released from detention (as there were no pending removal directions in force) and had the opportunity to abscond (whether or not that was actually done). Removal from the UK would be frustrated. Paragraphs 353/353A of the IRs were clearly a proper safeguard for those who had made meritorious applications for LTR or whose applications had not been considered promptly or properly. It cannot have been intended that the provisions (set out in the Appendix to this Judgment) should be used to frustrate deportation of those who were not going to be granted LTR.

140. The Tribunal noted that the Respondent did not challenge to any material degree the matters set out in the "Factual Background" section above, or the facts as alleged by the Applicant, save that there was a dispute about whether the Respondent drafted or assisted in drafting certain documents. In order to determine the allegations based on the five client matters, the Tribunal undertook a detailed consideration of each, in order to make findings of fact. These facts were then considered in the light of the allegations as pleaded and the Respondent's submissions on whether the actions substantiated the allegations. Allegations 1.5 and 1.6 were in a different category and required consideration of the circumstances of the *Hamid* Hearing, the *Hamid* Judgment and the transcript of the hearing as well as the evidence of the Respondent, Mr Javid and Mr Liu.

141. In considering the particular client matters, the Tribunal noted and found that the matters set out in the factual background with regard to dates and actions taken were proved to the required standard. The Tribunal also noted and found a number of general facts. First of all, the Tribunal was satisfied that the Respondent was the individual who dealt with the five cases and had prepared the documents, including attendance notes and Grounds for JR applications set out below. Although a case-worker, Mr H, had been mentioned in the *Hamid* Hearing, the Respondent did not at any stage of these proceedings suggest that Mr H had had any significant involvement. The actions in issue were those of the Respondent. Further, as Mr H was an unqualified case-worker, any actions on his part under the direct supervision of the Respondent could have been imputed to the Respondent in the absence of any

evidence from the Respondent on that point. The Tribunal was satisfied that the Respondent was solely responsible for all of the actions in issue and noted, indeed, that he had accepted he was so responsible from an early stage.

142. The Tribunal also noted the Respondent's evidence about his Firm's business model. The growth of the Firm relied on gaining referrals or further business from satisfied clients and their families/friends. The Tribunal accepted that the Respondent enjoyed helping members of the Chinese community, and others, and gained personal satisfaction from that and from being recognised for his good deeds on "WeChat" and otherwise. However, the Tribunal was satisfied on the Respondent's evidence that there was a clear, direct and swift financial benefit to him and his Firm if he were seen to have gone above and beyond the norm in helping his clients. The Tribunal noted and found that in such circumstances there would be a particular pressure on the Respondent to achieve the results his clients wanted and a temptation to take steps which other solicitors would not take.

143. Where there was a dispute of fact, the Tribunal took into account the Respondent's oral evidence as well as all of the documents and statements. The Tribunal took into account that the Respondent was suffering from a medical condition, was tired and that the proceedings had been stressful for him. It allowed him breaks whenever appropriate. Having made due allowance, the Tribunal found the Respondent to be an unsafe witness who did not tell the truth on a number of key issues. In particular, as set out in more detail below, the Tribunal did not believe the Respondent when he denied being involved in drafting several of the JR applications and the Grounds. On some points, the Respondent contradicted or undermined evidence he had earlier given. In particular, the Respondent initially referred to the benefit of his Firm's working model as being a fairly swift financial benefit in that clients would refer commercial property and other work to the Firm, but then added that he worked as he did to help others and did not mind if he did not get any referrals of other business.

144. The Tribunal assessed the Respondent as someone who lacked a steady adherence to a moral code. The Tribunal understood why the Respondent's own experiences might have influenced his desire to carry out immigration work. It was admirable to want to help those in distressing circumstances, but a solicitor should not act as if the ends justified the means. The Respondent's own evidence demonstrated that he had not given sufficient consideration to the merits of his clients' claims, and had encouraged them to make applications to the Court without analysing whether this was appropriate (save in the matter of Ms T, as set out below). The Respondent's lack of objectivity had both interfered with the proper administration of justice and the proper operation of the immigration system. As found in more detail below, the Respondent had completely abdicated his duties to the Court, in a misguided and improper attempt to help those who approached him. The Respondent's evidence was, to a large extent, to the effect that the clients should make applications and it was up to the Home Office or Court to determine if there was any merit in them; it did not appear to have occurred to the Respondent that he should act as a "filter" to ensure that whilst properly arguable cases could proceed, the system would not be clogged up with hopeless, urgent applications which neither the Court nor Home Office would consider favourably with knowledge of the true facts and circumstances. The Respondent's answers in cross examination demonstrated a belief that his duties were to his client but he was blind to his duties to the court and in the wider context of the

administration of justice. The Respondent's lack of objectivity may well have helped his clients' secure temporary relief, but may not ultimately have helped them regularise their immigration status in the UK. It undoubtedly contributed to the burden on the Upper Tribunal and the operation of the immigration system generally. There was a risk that where resources were diverted to dealing with matters such as the five in this case, other cases which required proper argument and consideration by the Court could be allocated insufficient resources.

145. The Tribunal found the following in relation to each of the matters of Ms T, Ms PZ, Ms AZ, Mr GL and Mrs MW.

146. ***Ms T***

146.1 Ms T first contacted the Respondent on 4 August 2014, as recorded in a telephone attendance note of that date. The note recorded that Ms T was in an immigration detention centre (Yarlswood) and had been given the Respondent's details by another inmate. The note also recorded that the client's instructions were "to obtain temporary release". Under cross examination, the Respondent stated that in addition to release from the detention centre Ms T wanted help to obtain a visa allowing her to remain in the UK although the first attendance note did not say that. The Respondent told the Tribunal that after release from detention, the client would have to report to the Home Office whilst the application for LTR was considered. The Respondent confirmed that Ms T phoned a second time on 4 August 2014, as recorded in an attendance note, which referred to her also seeking to regularise her immigration status. The Tribunal noted and found that this attendance note recorded that the Respondent, correctly, advised Ms T that she could not claim LTR on the basis that she had lived in the UK for 20 years or more but she could ask the Home Office to exercise its discretion; without an application, there was no possibility of obtaining LTR but there was a chance if she made an application. The Tribunal noted and accepted that Ms T had entered the UK in 1994, married a British citizen in 1995, left the UK in 1997, was refused entry clearance to return to the UK in 1998 but returned to the UK in 1999. A solicitor had been instructed to apply for a visa but it appeared this was not granted. Ms T divorced in 2006. As the Respondent put it, Ms T was "under the radar" of the Home Office from late November 1999 until she was encountered and detained on 30 July 2014. The second attendance note of 4 August 2014 indicated that the Respondent had carried out an analysis of the prospects of making a successful application for LTR. The Respondent told the Tribunal that as Ms T had been in the UK for nearly 15 years at the time he was instructed, there was a reasonable argument that she might be allowed to remain on human rights or exceptional circumstances ground. Whether or not that assessment was correct was not a matter for the Tribunal. What could be seen was that the Respondent had considered the relevant issues, including the possible grounds for a LTR application; this was in accordance with his duty as a solicitor.

146.2 The IFS showed that Ms T had been detained on 30 July 2014 and was served with RDs that day, which set the date for removal as 16 August 2014. The Respondent could not confirm when Ms T had been served with the RDs, but accepted that the fact she was detained meant that her removal was likely to take place in a short period. The Respondent's evidence was that the steps he took for Ms T were not simply an attempt to frustrate her removal.

146.3 On 4 August 2014, the date he was instructed, the Respondent wrote on behalf of Ms T to the Home Office's LTR team in Durham making submissions about why LTR should be granted. That letter contained inaccuracies. In particular, it stated: "Our client has lived in the UK for a substantial period of time; she has spent 20 years in this country, which is too significant to be overlooked"; "She is over the age of 18 and has lived in the UK for a period of 20 years"; "…having spent 20 years in the UK, any ties would inevitably have been lost a long time ago." The Respondent's explanation for these inaccurate statements, made on the date he received instructions, was that he had in his head that Ms T had entered the UK in 1994. Given that the Respondent spent an hour on the phone to Ms T on 4 August and knew of the gap in her residence, the representations to the Home Office, repeated several times in the letter, were surprising. The Respondent had pointed out in the letter that the actual ground on which the representations were made (276 ADE (vi)); this was not the ground which applied for those resident for over 20 years. However, the Tribunal considered that the repeated references to 20 years' residence could have caused confusion or delay in considering the application. The LTR application form, signed by Ms T, with a declaration that the information given was true referred to her having entered the UK in 1994 and having "overstayed since 2000", and referred to the covering letter as providing further information. Neither the form nor the covering letter made it clear that Ms T had left the UK in 1997 and returned in 1999, at which point she did not have entry clearance.

146.4 The Tribunal noted that the IFS must have been provided to Ms T, but it was not clear when this was done. This document did not refer to Ms T having been in the UK from 1994 to 1997 but simply referred to her entering the UK on 14 November 1999, when she was given temporary admission with reporting conditions. The IFS further stated, "The subject did not report and has been an absconder since this date." The Tribunal noted and found that the letter and application form were inaccurate and failed to give a complete account of Ms T's immigration history. The form had been signed by Ms T. The Respondent's evidence was that he advised Ms T that it was an offence to make a false statement in the application. There had been "human error" in allowing the errors into the paperwork, due to the urgency of making the application.

146.5 The Tribunal noted that on 11 August 2014 the Respondent sent a letter to a different office of the Home Office, being the National Removals Centre ("NRC") at Solihull. This referred to the LTR application and asked whether a decision had been reached and made a request to cancel the RDs until a decision was made on the LTR application. By 11 August, if not before, the Respondent was aware that Ms T was due to be deported on 16 August 2014 as he referred to the RDs. On 14 August 2014, the Respondent spoke to an officer at the NRC, referring to IR 353A and stating that it would be wrong to remove Ms T whilst there was an outstanding application for LTR. The note of that conversation recorded the Respondent as stating to the officer, "…I told him that if she was under the radar of the Home Office then she would not be eligible for leave to remain because she would not have accrued the residency period." The Respondent was not asked whether he had reconsidered the prospects of success of the LTR application in the light of his apparent view that the fact Ms T had been in the UK for some time would be discounted, and the Tribunal could reach no view on this. What was clear was that the note recorded that the Respondent told the officer to, "…make a note that my client will make a JR immediately if the Home Office doesn't give her a response to her application. She will give him a day to respond to

her application." It was unclear from the papers before the Tribunal what advice the Respondent had given to Ms T about making a JR application and what instructions he had been given at that point.

146.6 What was clear, from the Respondent's attendance notes of 15 August 2014, was that on that date he advised Ms T that it was worth making an application for JR, as Ms T's instructions were that she wanted to stop her removal. The note recorded the Respondent as saying, "…JR is outside the scope of what was initially agreed between us but because I feel that she has over 50% of success (sic) it's worth making a JR application. So I told her that I will prepare the JR application for her but I will not charge her for the service because if I am successful with the FLR application, she will pay my legal fees in the sum of £500 so both cases are intertwined." The Tribunal also noted that the Respondent prepared a file review note that date, setting out a summary of the law which the Tribunal was content to accept as a reasonable summary of the relevant issues. The note read:

> "Decided to make a JR application. This would be in the interest of the client because there is clearly an outstanding application and the Home Office has sent us confirmation of receipt of our client's FLR application in a letter dated 11 August 2014 and we have sent the FLR application by recorded delivery.
>
> According to Rule 353A as there is an outstanding application, the Home Office has a duty to consider the application before removal. There is a failing on the Home Office part.
>
> THE LAW
>
> > "353A. Consideration of further submissions shall be subject to the procedures set out in these Rules. An applicant who has made further submissions shall not be removed before the Secretary of State has considered the submissions under paragraph 353 or otherwise."
>
> We are relying on the above law in our JR application. The Home Office has a duty to follow the law and that they have failed the same. The purpose of making a JR application is on the basis of the Respondent's procedural failure, as opposed to the contents and/or merits of the case.
>
> When we make a JR application, it is not the judge's duty to decide the outcome of the FLR. It is the Home Office's duty to decide on the outcome of the FLR. What the Home Office has failed to do is to make a decision on the FLR and yet they have issued removal directions. There is clearly a pending FLR case. The purpose of the JR application is to seek an injunction to prevent our client's removal so the Home Office can reach a decision on her FLR case in a timely manner and for us to respond to the decision.
>
> We have sent a further communication to the Home Office to remind them to reach a decision on our client's FLR case and to date no response has been forthcoming."

The Tribunal had no criticism of this analysis of the situation or the applicable law, save to note that the RDs had been issued on 30 July 2014, although the Respondent may not have known this when the LTR (or FLR) application was made on 4 August 2014. The Grounds of the JR application referred to the RDs being given to her on 8 August 2014. It was of particular note that the Respondent had analysed Ms T's prospects of success with her substantive application for LTR.

146.7 In his oral evidence, the Respondent told the Tribunal that he had prepared the JR application and Grounds in support, together with the injunction application. These papers had been drafted on 15 August, 11 days after the Respondent was first instructed by Ms T. It was of concern that the Respondent's evidence was that he did not review the LTR application, made just 11 days before. His evidence was that he did not have the resources to check everything and he had not realised that there had been mistakes in the LTR application/covering letter. However, the Tribunal noted and found that the Grounds correctly referred to Ms T having been in the UK for almost 15 years, having entered in November 1999. The basis of the JR application was that the Home Office had not considered the 353A representations. The Respondent accepted that he had draft Grounds, which were adapted for clients. The Tribunal found no fault in working from a precedent or template, particularly where a recital of the law would often be in a standard form. Here, the recital of legal principles, extracts from cases and submissions on the law ran to over 10 pages. It would be unusual for a solicitor to draft such submissions from scratch for each client.

146.8 At paragraph 8 of the Grounds, Ms T made the surprising statement that her former lawyers, in 1999 or thereabouts, had advised her not to report to the Home Office, having been given temporary permission to enter the UK. At paragraph 11 the Grounds stated:

> "I have never made a Judicial Review application and I believe that the Respectful Judge needs to assess the Home Office's decision and action in that I was served with removal directions in a very short space of time without considering my outstanding application."

As noted further below, the phrase "Respectful Judge" occurred a number of times in the papers in this case.

146.9 On 15 August 2014 the Respondent wrote to "Treasury's solicitors" (sic) with a copy of the JR application. The letter went on to state,

> "Please note that if the Judge grants the injunction, it would be academic for both parties to continue with the JR claim in light of the fact that our client's objective is to achieve an injunction in order to enable your client to consider her FLR application.
>
> We trust the above concludes matters and please also note that we will be writing to the court to withdraw the JR if the respectful Judge grants our client's injunction."

The Claim Form for the Judicial Review noted the Respondent as "Secretary of State for Home Department" and gave the address for service as "Tresury's Solicitors" (sic).

146.10 On 15 August 2014 HHJ Raynor QC, after consideration of the documents lodged for Ms T, granted the injunction application in the following terms:

> "1. Until the final determination of the Applicant's application for permission to proceed with her claim for judicial review or until further order in the meantime, the Respondent shall not remove her or cause her to be removed from the UK…;
>
> 2. Permission to the Respondent to apply to vary or discharge this order on prior notice to the Applicant and her solicitors;
>
> 3. Costs reserved.
>
> Reasons:
>
> Her removal prior to consideration and determination of the representations dated 4 August 2014 would be contrary to IR 353A."

146.11 The Tribunal was satisfied that this JR application and the injunction order were served on the Respondent Home Office; this did not happen in the other cases under consideration. The Order of Swift J in March 2015 referred to the matter not being progressed and not to the papers not being served. Even if there was no formal service, the proceedings were drawn to the attention of the Home Office. Thereafter, on 27 August 2014 the Respondent recorded in a file review note his view of Ms T's case. He noted that as the injunction had been granted, "…it would prove futile to continue with the JR claim… We have decided to withdraw the JR application." The note contained a summary of the Respondent's reasons for coming to that conclusion. A further note on the same date recorded that Ms T was advised "there would be no point in continuing with it because it serves no value in the sense that all we wanted was for the Home Office to decide on her FLR…"

146.12 There was a letter from the Upper Tribunal dated 11 September 2014 to the Respondent reminding him of the need to serve the Respondent with relevant documents and confirm when this had been done. In response, the Respondent wrote to the Upper Tribunal on 12 September 2014, referring to a letter of 27 August 2014; this document was not within the hearing papers. The letter of 12 September included the statement, "We have kindly requested permission to withdraw our client's JR application since it is now academic."

146.13 Further attendance notes and correspondence on this matter in the hearing bundle showed that Ms T continued to report to the Home Office, at least until March 2014 (after which there were no further documents), and that her application for LTR had not been considered by that point. The final document of relevance to the matter of Ms T was the Order of Swift J made on 4 March 2015 which referred to the Claim Form of 15 August 2014, the documents lodged and the Respondent's letter of 27 August 2014 stated:

> "1. The Claimant's application for permission to apply for Judicial Review is refused and declared totally without merit.
>
> 2. The Order of HHJ Raynor QC dated 15 August 2014 restraining the Appellant's removal from the United Kingdom is hereby revoked with immediate effect. Renewal is no bar to removal.
>
> 3. The Defendant shall be permitted to remove the Claimant from the United Kingdom at any point after the date of this Order.
>
> Reasons:
>
> Between her entry to the UK and July 2014 (when she was detained as an illegal absconder), the Claimant wholly failed to co-operate with the Defendant in pursuing her application for leave to remain in the United Kingdom. In August 2014, following her detention, she made a claim for Judicial Review and secured an injunction restraining her removal. Having got the injunction, she made no effort to progress her permission to apply for Judicial Review. It appears from the letter of her Solicitors dated 27 August 2014 that, having obtained the injunction, they have chosen to treat the judicial review proceedings as at an end, stating that there is now "no currency in the claim." It is clear that the claim was made with the sole intention of obtaining an injunction to stop her removal and was therefore an abuse of process."

With regard to the Judge's finding that Ms T had "wholly failed to co-operate with the Defendant in pursuing her application for leave to remain", the Tribunal noted correspondence in the hearing bundle which indicated that the Home Office had sought in 2001/2 to interview Ms T and had considered that Ms T's former solicitors had thwarted those attempts.

146.14 With regard to Ms T, the Tribunal noted that the Respondent had been aware of the duty not to pursue JR claims which were "academic" and had been conscious of the decision of the Upper Tribunal President dated 11 June 2014 at this time. Whilst the Respondent may not have handled this matter in an ideal way, the Tribunal found that he may well have made the LTR application for Ms T before he was aware of the RDs, noting that Ms T stated in the Grounds for the JR that she had received the RDs on 8 August 2014. He had chased up a response from the Home Office, albeit not the office to which he had originally written, and he had advised Ms T that she could seek an injunction based on the Home Office's failure to consider the LTR submissions. There was evidence that the Respondent had considered the merits of Ms T's applications. The Grounds submitted to the Court were accurate, although the letter and application for LTR on 4 August 2014 had contained some incorrect assertions. There was, accordingly, no lack of candour in respect of this application. There were outstanding matters arising from the Order set out at paragraph 146.10 above, in particular the costs of the application had been reserved. Nevertheless, there was no indication that the Home Office had sought to apply to vary or discharge the Order of 15 August 2014 or had challenged the Respondent's view that pursuing the JR application would be "academic". Despite what was said in the Order of Swift J, the Tribunal noted that there was evidence that the Respondent's advice to Ms T was

aimed at regularising her immigration status and ensuring that the Home Office considered the LTR application. The Tribunal could not be sure that the Respondent's "sole intention" was obtaining an injunction, although this was clearly the immediate aim of the application.

147. ***Ms PZ***

147.1 On 14 March 2014, the Home Office wrote to Ms PZ, referring to her letter of 8 December 2010 (sic) in which she had made an application for her application for LTR to be considered under the European Convention on Human Rights. The Tribunal was struck by the delay of some 3 years 3 months between the making of the application by Ms PZ and the Home Office's decision. The letter did not appear to contain any explanation for the long period it had taken to consider the application. It set out at length the Home Office's reasons for refusing the application and told Ms PZ that she should make arrangements to leave the UK without delay.

147.2 On 21 March 2014, Ms PZ's partner, Mr Z, met the Respondent. He told the Respondent that Ms PZ was in detention. In the course of a telephone discussion with Ms PZ that day, the Respondent was given a brief immigration history. Ms PZ told the Respondent that she had been in a relationship with Mr Z for well over two years and although she regarded him as her husband she was not allowed to marry in the UK. A fee of £500 was agreed, on a "no win, no fee" basis. In a telephone discussion on 24 March 2014 it was recorded that Ms PZ was due to be removed from the UK on 26 March 2014. The Respondent noted in his attendance note that he told Ms PZ "...we still have time to cancel it", meaning the deportation. The Tribunal accepted that the context of this client's instructions to the Respondent was that, after a significant delay, the client had been somewhat taken by surprise at the rapid escalation from receipt of a Home Office decision to imminent removal. There was no copy of any submissions made by the Respondent in response to the Home Office letter of 14 March 2014 within the hearing papers, but there was reference to such submissions being made.

147.3 The Respondent's Firm was on record as acting for Ms PZ, and the Respondent accepted that he drafted and submitted the JR Claim Form and Grounds. The Claim Form, issued on or about 26 March 2014, noted the Respondent's address for service as "Treasury's Solicitors" at an address in London. The Tribunal noted and accepted that Ms PZ's application was based on the Home Office's refusal of her application for LTR, not because there were outstanding submissions. The application asked for the refusal and the RDs which followed that refusal to be quashed. It referred to Ms PZ's application for asylum in 2005, which had been refused, the lack of time to respond to the Home Office's refusal letter of 14 March and Ms PZ's changes in personal circumstances since her application in December 2010. In particular, it referred to her being in a permanent and subsisting relationship with Mr Z since late 2010, which circumstance had not been considered by the Home Office. The Grounds set out, over about 8 pages, Ms PZ's submissions on the law and how it applied to her case; it was accepted that the Respondent had drafted these submissions. It was noted that at paragraph 12 of the Grounds, it was stated, "…I believe the respectful Judge needs to assess the Home Office's conduct…"

147.4 On 26 March 2014, HHJ Davies granted an injunction preventing Ms PZ's removal on that date. Having considered the papers lodged by the Respondent/Ms PZ, the Judge made the following Order:

> "1. The Defendant is restrained from removing the defendant from the UK, whether pursuant to the removal directions set for 26 March 2014 or otherwise, pending the final determination of this case or further order in the meantime.
>
> 2. Permission to the Defendant to apply in writing on notice to the Claimant to set aside or vary this Order.
>
> Reasons:
>
> Whilst I have some doubts as to whether or not the further submissions can, even arguably, amount to a fresh claim, nonetheless given the delay in responding to the Claimant's 2010 submissions, given the claimed change in circumstances, and given that the Defendant has not yet responded to the further submissions, the balance of convenience favours restraining removal in the meantime."

The Tribunal noted that whilst the Judge had some doubts about the underlying merit of the application based on changed circumstances, there had clearly been a delay by the Home Office. It did not appear to the Tribunal that Ms PZ's application for JR, at that stage, was totally without merit.

147.5 On 26 March 2014, the Upper Tribunal sent a letter to the Respondent, which appeared to be in standard form, concerning the need to serve the application and accompanying documents. On 28 March 2014, the Respondent wrote to the Home Office at "Treasury's solicitors". This letter noted that,

> "The respectful judge has granted our client's request for an injunction and it would appear academic to continue with the judicial review application. We propose to the withdrawal of the JR application and will inform court of our intention since it not serve the overriding objective of the CPR to litigate this matter so as to save costs.
>
> We are mindful of the costs implications of the continuation of a JR application and in order to dispose of this matter, we propose that we withdrawal of a JR application as it serves no value for both parties to continue with the same if the respondent is prepared to formulate a decision on our client's immigration case in a timely fashion." (Typographical errors as in the original).

It appeared from the much later Order of Swift J that the JR Claim Form was not served on the Home Office, although there was clearly correspondence about it.

147.6 Thereafter, on 3 April 2014, the Respondent wrote to the Home Office at the Liverpool Reporting Centre, making further submissions on behalf of Ms PZ. This letter enclosed a number of documents and set out Ms PZ's position with regard to her

family and private life in the UK, along with submissions about why removal would no longer be appropriate. On an unknown date in April 2014 the Respondent spoke to Ms PZ. The note recorded that she was now living with Mr Z, that she was reporting to the Home Office and the Respondent advised her it may take a few months to hear from the Home Office about the submissions. The Respondent also recorded that he advised Ms PZ that, "…if there is a change of circumstances, she needs to let me know, I told her for example if someone is ill or if she is pregnant, as examples." The documents in the hearing bundle indicated that as at September 2014 the Home Office had not made any decision about Ms PZ. However, on 4 November 2014 the Respondent's attendance note recorded that he was told by an immigration officer that "her case has been concluded and therefore she is liable to be detained."

147.7 The Tribunal noted that the Home Office's decision letter was, apparently, dated 8 October 2014, but may not have been delivered to Ms PZ promptly. The Respondent wrote to the Home Office on 13 November 2014 asking why the letter had not been disclosed to the Firm and stating, "It appears that you had an ulterior motive." The Respondent's attendance note of a discussion with Mr Z on 12 November 2014 recorded that the Respondent stated it was likely Ms PZ would be kept in detention and be removed. The note also recorded that Mr Z explained the difficulties he would have in moving overseas and went on to say,

> "He wanted to know what's the prospects of making a JR application and I told him that it's at his discretion because applicants are entitled to make JR in order to allow the judge to peruse the case.
>
> I explained to the client's partner that there needs to be change in circumstances before a JR application will be accepted by a judge, otherwise the judge is at liberty to reject his JR application."

147.8 Ms PZ's second JR application was issued on 14 November 2014. The Firm was not named on the Claim Form as Ms PS's solicitors. Again, the Home Office's solicitors were described as "Treasury's Solicitors" at the London address.

147.9 The Respondent's evidence about this application was that he helped Ms PZ/her partner with the actual form, but not the Grounds for permission or the statement of facts. The Respondent told the Tribunal that such drafting takes a lot of time, so he did not get involved with this JR application. He accepted that he had drafted Ms PZ's March 2014 JR application but continued to deny involvement in this second application, save for assisting with the Claim Form itself and checking the paperwork before Mr Z submitted it to the Court. The Respondent was referred to the application for urgent consideration submitted with the JR application, which used expressions sometimes used by lawyers such as "It is averred that…" and, "…but the aforesaid…" and accepted that he had drafted this document. His witness statement also contained an acknowledgement that the Firm had neither allowed nor prohibited Ms PZ from using material from her first JR application and the Respondent accepted that it was "conceivable and probable" that this is what Ms PZ had done.

147.10 Under cross examination, the Respondent accepted that as the basis of the first and second JR applications differed, nine paragraphs in the "factual background" section appeared in the second and not the first. It was put to the Respondent that some of the

language used appeared to be that of a lawyer, rather than a lay person, for example, "...albeit a month after the decision was made…", "In the refusal letter… it is averred that the Home Office…", "I cannot open a bank account without a valid ID and this is another indication to show the Home Office unreasonableness in the determination of their decision (Wednesbury unreasonableness)." The Grounds document included approximately eleven pages of legal submissions and references to regulations and cases. The Respondent's evidence to the Tribunal was that he had not drafted this document, including these sections which were not in the first JR application, and that he could not say who drafted it. The Respondent suggested that it may have been drafted by someone with a legal background who wrote in English.

147.11 The Tribunal rejected the Respondent's contention that he did not draft this document or at least have a very significant role in its production. On his own evidence, the Respondent had agreed to check that Ms PZ's partner had all of the relevant papers before submitting them to the Court. His suggestion that clients who were detained in the same immigration detention centre might pass documents around between themselves was believable, but it was not credible that the Grounds, as submitted to the Court, were drafted by someone other than the Respondent. There was no reason at all for Mr Z to have the documents drafted by someone else, particularly where the Respondent's assistance in the first JR application had achieved the result Ms PZ wanted. The statements of law and submissions in the second JR application overlapped to a very significant degree with those in the first JR application, particularly the passages about paragraphs 353 and 353A of the IR, the "exceptional circumstances" criteria, human rights issues and consideration of the application outside of the IR. The font used on the first and second JR applications was the same, and the layout and indentation of certain paragraphs was the same in both documents. The Tribunal was satisfied, so that it was sure, that the Respondent had drafted the JR application, the application for urgent consideration and the Grounds.

147.12 The Tribunal was satisfied that a solicitor engaged in making an ex parte application to the Court should have advised the client about the duty to be candid and/or ensured that the documents submitted contained a full and accurate account of the circumstances. The Respondent's evidence to the Tribunal was that he did not advise Ms PZ that the second JR application should have drawn to the Court's attention the earlier JR and injunction application. This would have been of concern if Ms PZ and her partner had drafted the JR application. Where, as the Tribunal found, the Respondent had been responsible for drafting the application, any lack of candour was of particular concern. The Tribunal noted that whilst the Grounds stated: "I was given removal directions on 19 March 2014. It has been set for 26 March 2014. It was successfully deferred.", there was no explicit statement that there had been an application to the Court as a result of which an injunction had been granted, but the JR application itself had not been pursued. The Grounds contained the accurate statement that "I have made no application for Judicial Review, in the last three months…"" (Punctuation as in the original). However, it did not go on to refer to the JR application made 8 months earlier. The Tribunal had not seen the order which concluded the first JR proceedings for Ms PZ, but it was understood that those proceedings came to an end in late September or in October 2014.

147.13 The Tribunal noted and found that on 14 November 2014 HHJ Sycamore, a Judge of the Upper Tribunal, granted an injunction preventing Ms PZ from being removed from the UK. The Order also provided a timetable for consideration of the application for permission to apply for JR. In a section headed, "Observations", the Judge recorded:

> "I have granted an injunction preventing the claimant's removal as I am unable to say at this stage that the application for permission to apply for judicial review is unarguable. The matters raised on her behalf in the application for permission to apply for judicial review warrant consideration. There is a concern that whilst the defendant's decision to refuse the claimant's fresh claim application was made on 8th October 2014 it appears not to have been sent to the claimant and only brought to her attention when she reported and was detained on 3rd November 2014, thus not giving a proper opportunity for her to consider and respond. The injunction is not open-ended and, after the Acknowledgement of Service has been filed, a judge will decide whether to continue or discharge the injunction. I have granted the defendant the usual liberty to apply to discharge or vary the order irrespective of the timetable which is set out in the order."

147.14 The Tribunal noted and accepted that there appeared to have been some procedural unfairness which preceded the second JR application, in that the Home Office had decided to refuse the application for LTR but did not notify Ms PZ of this for some weeks. This may or may not have given reasonable grounds to challenge the Home Office by way of an application for JR, but there was no evidence that the Respondent had considered that point. The Tribunal noted that as at November 2014, the only course of action open to Ms PZ to try to prevent removal was an application for JR and an injunction. There was nothing to suggest that Ms PZ's personal circumstances had changed in any way between the application for LTR in March 2014 and November 2014, save that a few further months had passed in which Ms PZ had lived in the UK. The Tribunal found that the fact that the Respondent had tried to distance himself from the second JR application indicated that he did not believe the application was well-founded.

147.15 After the second JR application had been made, and the injunction obtained, the Respondent was instructed further by Ms PZ. On 4 December 2014, he wrote to the Home Office (Further Submissions Unit in Liverpool) on her behalf. On 21 January 2015 Ms PZ asked the Respondent to assist with obtaining "a status" and on 9 February 2015 a further application form for LTR was submitted. This appeared to have been drafted by hand by Ms PZ. In any event, the Respondent's continued engagement with Ms PZ's matters after the November 2014 injunction application could clearly be seen. He had distanced himself from the particular application, but not from the client.

147.16 On 4 March 2015, Swift J made an Order in respect of the second JR application. Swift J's Order referred to the Claim Form of 14 November 2014, the Home Office's Acknowledgement of Service and documents lodged on 8 December 2014 (which were not clearly identified in the papers) and stated:

"1. The Claimant's application for permission to apply for Judicial Review is refused and declared totally without merit.

2. The Order of His Honour Judge Sycamore dated 14 November 2014 restraining the Applicant's removal from the United Kingdom is hereby revoked with immediate effect.

3. The Defendant shall be permitted to remove the Claimant from the United Kingdom at any point after the date of this Order. Renewal is not bar to removal.

4. The Claimant shall pay the Defendant's costs of preparing and submitting its Acknowledgement of Service assessed at £160.

Reasons:

The Applicant entered the UK illegally. She made a claim for asylum which was unsuccessful. Her appeal rights were exhausted after she failed to attend the hearing of her appeal. Some years later, she made a legacy claim which was also refused. In March 2014, after she had been detained and served with removal directions, she made an application for Judicial Review and managed to secure an immediate injunction restraining her removal and release from detention. She failed to serve her Judicial Review claim on the Defendant and, in October 2014, the claim was concluded for non-service and the injunction was discharged. Meanwhile, she had lodged further representations with the Defendant which had again been refused. In November 2014, she was again detained and served with removal directions. Once again, she made a claim for Judicial Review and immediately obtained an injunction, staying her removal and her release from detention. Subsequently, she again did not serve her Judicial Review claim on the Defendant and failed to respond to a letter sent by it on 21 November 2014 requesting service and indicating that, failing service, the Defendant would make an application to discharge the injunction. The Claimant's repeated conduct in lodging a Judicial Review claim and, having secured a stay of her removal, failing to serve the claim constitutes an abuse of process."

147.17 In the light of this, and the other documents in the case, the Tribunal concluded that the Respondent, who was on record as acting for Ms PZ on the first JR application, failed to serve the JR proceedings as he should have done although, as noted, he did engage in correspondence with the Home Office on behalf of Ms PZ about the application, including in relation to the proposed withdrawal of the proceedings, and made further representations on her behalf. Although the Respondent was not on the Court record in the second JR application, the Tribunal found that he was responsible for drafting it and was, in effect, conducting the case. In those circumstances, he should have served the JR proceedings or ensured that his client did so.

147.18 It was seriously damaging to the Respondent's credibility that he had maintained the wholly unbelievable fiction that he did not draft or even check the contents of the Grounds of the second JR application for Ms PZ.

148. ***Ms AZ***

148.1 An attendance note by the Respondent dated 4 December 2014 showed that Ms AZ first instructed the Firm on that date. It recorded that Ms AZ was detained by the Home Office at Yarlswood and had been referred to the Firm by one of the other inmates. Ms AZ had entered the UK in 2007 on a work visa and had been reporting to the Home Office since 2008. In 2010 Ms AZ had a child, JC, with Mr C whom she married in 2011. It was recorded that Ms AZ had claimed asylum in 2014 and that she had a criminal record. The instruction was recorded as to "regularise her immigration status". As previously noted, the fact that Ms AZ was detained indicated that the Home Office was intending to remove her from the UK reasonably soon. The Respondent sent Ms AZ a client care letter on 4 December 2014; there was no doubt that he was instructed to act as Ms AZ's solicitor. That letter stated that the Firm would charge £500, on a "no win, no fee" basis.

148.2 On 8 December 2014 the Respondent requested Ms AZ's file from her previous solicitors, Gulbenkian Andonian ("GA"). They responded on 9 December 2014, enclosing Ms AZ's file which appeared to include a copy of the submissions GA had made to the Home Office on 1 December 2014 and the Home Office's reply to those submissions on 2 December 2014. The bundle, not all of which was seen by the Tribunal, also included counsel's advice in relation to the deportation arrangements and copies of applications made by or for Ms AZ earlier in 2014. From the list of contents of the bundle, it was clear that substantial work had been done for Ms AZ but the Home Office maintained its position that Ms AZ should be deported.

148.3 The Tribunal noted and considered the Home Office letter of 2 December 2014 which was in response to the submissions made by GA on 1 December 2014. The Tribunal noted that the Home Office decision was made very promptly in response to the submissions, by a part of the Home Office based in Liverpool which dealt with "criminal casework". The 11-page letter noted that the revocation of the deportation order had been requested on the basis of Ms AZ's family life. It noted that Ms AZ's representations did not amount to a "fresh claim" and that there was no realistic prospect of success on appeal. The letter recorded Ms AZ's immigration history and her conviction for a criminal offence in early 2013, which led to a term of imprisonment. The submissions made by GA appeared to have been based on Ms AZ's marriage to Mr C, a British citizen, and that she had a child who was British, and was then aged 4. The letter referred to the documents submitted in support of the submissions and the Judge's sentencing remarks when Ms AZ was convicted. The Tribunal noted that Ms AZ, and Mr C, had been convicted of running brothels. It accepted that Ms AZ was in a genuine and subsisting parental relationship with JC and that she was in a relationship with Mr C (which began when her immigration status was precarious, which appeared to be relevant under paragraph 399(b) of the IR, as Ms AZ had a conviction). The letter set out the circumstances in detail and concluded that there were no compelling circumstances which outweighed the public interest in deporting Ms AZ, nor any human rights issues which affected that conclusion. It was clear on consideration of this letter that GA had made comprehensive and appropriate submissions on behalf of Ms AZ which the Home Office concluded did not amount to a fresh claim. The Tribunal also noted a letter from the Home Office dated 3 December 2014 in response to a further letter from GA, of that date. The letter, from the "Returns Directorate" of the Home Office,

rejected the further submissions made on 3 December. The covering letter from GA to the Respondent was marked as received by the Respondent's office on 11 December 2014, so he had these items (and more) from that date.

148.4 GA's involvement with Ms AZ came to an end when the papers were transferred to the Firm. However, it was clear from the papers that they had made an application for JR on behalf of Ms AZ. Permission to bring JR proceedings was refused on 2 January 2015 by Upper Tribunal Judge McGeachy. The relevant Order read:

> "The application for permission is hereby refused.
>
> Reasons:
>
> The applicant applied for Judicial review of the decision to remove her to China, following a deportation order against which she had appealed and the dismissal of her appeal. Although in the grounds the applicant refers to the rights of her child, these were properly considered by the Tribunal who dismissed her appeal. The further submissions made are not significantly different from those considered by the Tribunal who dismissed the applicant's appeal.
>
> In all the circumstances of this case the Respondent was unarguably entitled to make the decision to deport the applicant to China.
>
> The costs of preparing the acknowledgement of service are to be paid by the Applicant to the Respondents, in the sum of £400, unless within ten working days the Applicant notifies the Court and the Respondent in writing that (s)he objects to paying costs, or as to the amount to be paid, in either case giving reasons. Where no representations have been received within the time specified in the order, the order for costs shall become absolute.
>
> The application is considered to be totally without merit."

The Tribunal made no criticism at all of GA's conduct; as argued by the Respondent, a finding that a case was "totally without merit" was not in itself sufficient to suggest any impropriety. GA's conduct of Ms AZ's matter appeared to have been entirely proper and to have raised on her behalf all matters which were reasonably arguable.

148.5 The Respondent accepted that the work done by GA was as set out above. He acknowledged that in order to make fresh submissions, a change in circumstances was needed, and that the final application made by GA had been considered to be "totally without merit". The Tribunal noted that he must have been aware of that from the terms of the Order made on 2 January 2015. The Respondent also acknowledged that Ms AZ's circumstances, including her relationship with her husband and child, had been considered by the Home Office. The Tribunal noted that where an applicant had a criminal record, as Ms AZ did, the Home Office was entitled to apply slightly different criteria to those which applied to non-criminals.

148.6 The Tribunal noted and found that the Respondent accepted instructions from Ms AZ in mid-December 2014. He wrote to the Home Office on her behalf on 24 December 2014, making an application for temporary release. That letter received a response dated 29 December 2014 which rejected the application for temporary release from detention. It was clear that the Respondent received a copy of the notice of deportation arrangements, dated 12 January 2015 on or by 13 January 2015. This notice stated that Ms AZ would be removed on a flight on 31 January 2015.

148.7 The Respondent had made an attendance note of discussions with Ms AZ/Mr C and an officer at Yarlswood detention centre on 13 January 2015. The note included the following:

> "…Explained to client that we will have to make further representations now to regularise her status as time is of the essence.
>
> Advised client that we can only submit what evidence we have at hand and will have to submit any further documents that we have at a later stage.
>
> Client agreed.
>
> Need to make further representations on basis of Article 8 and fresh evidence…
>
> Client asked is there anything that we can do to cancel the ticket for his wife.
>
> Explained that we were only instructed to regularise her status. However, they do have the option of doing JR. [Mr C] advised that he will do the JR himself but would need some assistance in the preparation of it. [Mr C] will submit the JR and return to us a sealed copy.
>
> Agreed that we will call HO today and ask if they are prepared to withdraw RD as client has good prospects of succeeding as she has BC husband and child…"

148.8 Under cross examination about this note, the Respondent told the Tribunal that his view was that any submissions made had to be different to the earlier submissions and that if there was no change of circumstances there could not be further submissions. The Tribunal accepted that this was a reasonable understanding and explanation of the legal position. The Respondent went on to say that the further submissions were not made to the Home Office until he had all the documents from the client and that the basis for advising about JR was the further submissions which were to be made. The Tribunal noted that despite what was said in the note about making submissions and sending further documents later, the Respondent's evidence was that everything should be sent together. The Respondent told the Tribunal that the change of circumstances in this case was that Mr C was awaiting a letter from his GP about his depression and his medication. The Respondent later added that he was awaiting a letter from JC's headmaster about the impact on the child. The Respondent's evidence was that as at 13 January 2015, it was up to the client whether or not to make a JR application. He had at that point advised that there had to be further submissions, with new information. The Respondent was asked about the basis for

his advice that Ms AZ had "a good prospect of succeeding…". The Respondent's position was that because Ms AZ had a British husband and child, she had a good prospect of success. He told the Tribunal that whether letters from the GP and the child's school would be enough to change the Home Office's mind was up to the Home Office. The Tribunal noted that he did not appear to have considered Ms AZ's serious criminal conviction in coming to his conclusion about the prospects of success.

148.9 The Tribunal found it incredible that a solicitor specialising in immigration cases could have advised that there was a change in circumstances, still less that there was a "good" prospect of success, simply on the basis that Mr C and JC were undergoing difficulties. Such difficulties were no doubt normal in such cases. The Home Office had already determined all of the issues concerning Ms AZ's personal and family life, and whether there were exceptional or human rights grounds on which she could remain in the UK.

148.10 The Tribunal noted and found that the Respondent made further submissions on behalf of Ms AZ by post on 26 January 2015, directed to the NRC at Solihull. The submissions were based on there being "exceptional circumstances" and the Home Office's discretion. The submissions referred to Ms AZ being "of good character". There was no mention of her conviction and imprisonment for running a brothel. This was a significant matter, and meant that her remaining in the UK was less likely than would have been the case if she had indeed been of good character. The letter referred to Mr C suffering from depression and to a letter from JC's headteacher which referred to "the possible negative long-term impact on [JC], should [Ms AZ] be deported." The Tribunal noted and found that it would be normal for a child to be adversely affected by the removal of a parent; it was inconceivable that this had not been taken into account by the Home Office. The letter from the school, even if in stronger terms than referred to, was extremely unlikely to make any difference to the Home Office's decision about Ms AZ. Similarly, a GP letter confirming that Mr C was depressed as he missed his wife, was highly unlikely to carry any weight.

148.11 The Tribunal noted, with concern, that the submissions were made only five days before the planned deportation, some 53 days after being first instructed, 46 days after receipt of the papers from GA and 13 days after being asked about JR applications (when the deportation notice had been served). This was in circumstances where the Respondent knew that he could have made submissions earlier and followed up with documentation when received. Further, on reviewing a letter sent by the Respondent to the Home Office (FLR(FP)) department in Durham on 8 May 2015, it was noted that there was a list of the documents which were submitted. This included, under the hearing of Mr C's documents, "Medical letter from [surgery] dated 12 January 2015" and "Letter from [Primary School] dated 8 December 2014". There was no reference to any GP letter or letter from the school after the dates noted. The Respondent's evidence that he had had to wait for these documents before submitting them on 26 January 2015 was, at best, unreliable. No reason had been given as to why a letter about Mr C prepared on 12 January 2015, or a letter from the school prepared on 8 December 2014 had not have been passed to the Respondent before 26 January 2015. The Tribunal concluded that the Respondent had delayed in making the submissions, for no adequate reason, save to limit the time in which the Home Office could respond to the submissions. This was an effective, if improper,

means to achieve the client's objective of preventing her removal, in circumstances where she had no proper grounds to prevent her removal.

148.12 On 29 January 2015, Ms AZ telephoned the Respondent to ask if the Home Office had cancelled the plane tickets. The Respondent agreed to chase "all HO departments" for a response and "Reminded client that if no response by tomorrow, husband will have to do JR to get an injunction." On 30 January, the Respondent sent a letter by fax to NRC at Solihull, chasing for a response. The letter noted that the day on which the deportation was due was a Saturday (31 January 2015). It referred to enclosing a statement from Mr C, and the earlier submission of "official documentation in the form of letters from [JC's] headmaster and [Mr C's] GP". The Tribunal noted that the letter did not mention the possibility of a claim for JR. The Tribunal noted that the Respondent had not chased for a response earlier in the week. The letter of 30 January 2015 was seen by the Tribunal as a document created to be exhibited or relied on in the JR/injunction application. This view was reinforced by the fact this correspondence was just a week after the Order in the matter of Mr GL, made on 23 January 2015 – see paragraph 149.8 below – in which there was reference to the numerous chasing letters sent in that case. A genuine attempt to chase for a response could have been made on 27 January and/or successive days. The letter also enabled the Respondent to appear to keep his distance from the JR application. That said, there were three further letters to the NRC, apparently sent by fax on 30 January 2015. One asked for a response to the Firm's "numerous correspondence", one noted, "As previously advised, we will proceed with a judicial review application today" and a third read, "We write further to our range of letters and chasers… We will now proceed with our Judicial Review application since you are not prepared to withdraw the removal directions…" In his oral evidence, the Respondent told the Tribunal that these chaser letters were simply template letters and did not mean that he was taking responsibility for the JR application. However, for the reasons set out below, the Tribunal was satisfied that, in fact, the JR and injunction applications were drafted or prepared by the Respondent, who encouraged the client to bring those proceedings.

148.13 The Tribunal reviewed the Statement of Grounds document. This contained a number of similarities with the Grounds seen in other matters. At paragraph 8 of the Grounds, there was a reference to "the respectful judge". The Grounds referred to the Home Office delaying a response to the submissions; it did not acknowledge that there had been a substantial delay in making the submissions, as set out at paragraph 148.11 above. At paragraph 10 of the Grounds it was stated, "My concern is a number of folds." This was a form of words which appeared in relation to other clients, as set out below. In the factual background section, it was stated, "I was charged with an offence and served with a custodial sentence" and "I became subject to a Deportation Order on 17 September 2013". The Tribunal noted that these, and other phrases, appeared to have been drafted by someone with legal knowledge and/or who was used to legal terminology, rather than a lay person. Findings in relation to the typeface used and the handwriting on the documents will be noted separately below.

148.14 The Respondent maintained in his evidence that he had not prepared the Grounds or JR application, but had simply checked that Mr C had included the correct documents with the application. The Respondent told the Tribunal that although on

13 January 2015 Mr C had said he would need help in preparing a JR application, he had just checked the contents, and not the substance of what was said.

148.15 It was noted that there were considerable similarities in the Grounds between those submitted by Ms AZ and those of Ms MW (see further below); the Respondent accepted that he had drafted the Grounds for Ms MW, which application had been made in November 2014. The only explanation the Respondent could offer was that the clients may have passed documents between themselves, as they knew each other from the detention centre. The Tribunal found the proposition that the Respondent had no role in drafting the Grounds incredible. The Grounds were, indeed, similar to those prepared for Ms MW. The Respondent had engaged in correspondence with the Home Office for Ms AZ, in which he had referred to making an application for JR. He had agreed, even on his own case, to check the documents to be submitted (albeit he did not agree that he would read the substance of the documents). Where Mr C was going to deliver the papers to the Respondent to check, it was not at all likely that Mr C would have obtained advice from anyone but the Respondent in order to prepare the document.

148.16 The Respondent accepted that the Grounds did not mention the earlier, failed, application for JR and that he had not advised Ms AZ that it should be mentioned. The Respondent also told the Tribunal that the JR application was not part of his retainer but he could accept, in hindsight, that he should have advised Ms AZ of the need to draw all of the circumstances to the attention of the Court. Given that the Respondent prepared the Grounds, it was incumbent on him to ensure that the Court was given all of the relevant information in the course of an ex parte application. In the course of his evidence, the Respondent accepted that a Judge could not properly assess the merits of a matter if not provided with all of the relevant information. Even if the Tribunal was wrong about the Respondent's preparation of the Grounds, he could and should have checked that they were complete and accurate; the idea he had looked at the contents but not read them was ridiculous.

148.17 On 30 January 2015, HHJ Platts of the Upper Tribunal granted an injunction preventing the removal of Ms AZ on 31 January 2015. The Judge made the following "observations" in the Order:

> "I make no comment on the strength of the Applicant's case save to note that her asylum claim was refused and became appeal rights exhausted in August 2014 and the further submissions (which were served very late) do not seem to point to any significant change in circumstances since that time. However, given that the Respondent has not yet had the opportunity to consider those further submissions and given that the consequences of removal may bar the applicant from entering the UK to see her family for 10 years the balance of convenience just falls in favour of granting the interim relief sought."

It was also apparent that the Order was granted, "until determination of the application for permission or further order."

148.18 It was clear that, in accordance with the directions given by HHJ Platts on 30 January 2015, the Home Office was served with the application and relevant papers. On 12 February 2015, the Home Office filed Summary Grounds of Defence.

This document pointed out that there was no reference in the application to the refusal of the JR claim made by GA for Ms AZ and it was submitted that this was a transparent attempt to mislead the Court in order to obtain injunctive relief to prevent lawful removal. The Summary Grounds of Defence set out a history of Ms AZ's various claims and maintained that all of the issues had been fully considered previously by the Home Office and/or the Courts. Of particular relevance to this case, the Home Office stated that "It is clear that [the Firm] are representing the Applicant for the purposes of her Judicial Review application" and "[The Firm] are well aware of the Applicant's previous judicial review application… having been passed the papers on 9 December 2014… The SSHD therefore submits that, given this new application is clearly an abuse of process, [the Firm] should be ordered to pay SSHD's wasted costs."

148.19 On 12 February 2015, as well as filing the Summary Grounds of Defence, the Home Office made an application to discharge the injunction, submitting that the application for permission to pursue JR was an abuse of process. An email serving the application was sent to the Respondent by TSol on 23 February 2015. That email was acknowledged by the Respondent on 24 February. The Respondent stated in his email that the application would be contested by Ms AZ and that there should be a hearing, "due to the complexity (sic) nature of this matter and the fact that it raises issues relating to European Convention on Human Rights and inter alia (sic)". In response to the suggestion put to him in cross examination that this suggested some familiarity with the matters mentioned in the Grounds for the JR/injunction application, the Respondent told the Tribunal that he had not read the substance but was aware of the general situation. The Tribunal could not accept this evidence; the Respondent could not properly have referred to the complexity of the case if he did not know what had been said in the Grounds.

148.20 The Tribunal noted and found that on 4 March 2015, Swift J considered the Claim Form dated 30 January 2015, the documents lodged by the Claimant, the Defendant's acknowledgement of service and Summary Grounds of Defence, along with the application dated 12 February 2015 and ordered:

> "1. The Claimant's application for permission to apply for Judicial Review is refused and declared totally without merit.
>
> 2. The Order of HHJ Platts dated 30 November 2014 staying the removal directions for the Claimant is hereby revoked with immediate effect.
>
> 3. The Defendant shall be permitted to remove the Claimant from the United Kingdom at any point after the date of this Order.
>
> 4. The Claimant shall pay the Defendant's costs of preparing the Acknowledgement of Service and the application of 12 February 2015 in the total sum of £450.
>
> Reasons: When making her application for Judicial Review on 30 January 2015, the Claimant failed to disclose the fact that a similar application made by her on 2 December 2014 had been refused by Upper Tribunal Judge McGeachy on 2 January 2015 and declared totally without merit. There had

> been no significant change in her circumstances since then and she has failed to establish any good reason why she should not be deported. Her latest application was an abuse of process. The suggestion made by her solicitor that the matter is so complex that a hearing is required is entirely unfounded."

148.21 The Tribunal noted that the Respondent accepted that he had become aware of that Order about the time of the *Hamid* Hearing; the Tribunal reminded itself that the letter about that hearing was sent to the Respondent on 6 May 2015. Despite the significant concerns which had been expressed by Swift J and by the TSol in the Summary Grounds of Defence document, the Respondent made further submissions, this time to the Home Office's "Leave to Remain" department in Durham, on 8 May 2015. This application was again on the basis of Ms AZ's family connections to her son and husband. The Tribunal noted with concern the statement in the letter that "Our client has always lived with her child since his birth…" It was unclear whether, during her period of imprisonment for a criminal offence for 4 months of her 21-month sentence, in 2013, the child had been placed with her and there was no explanation of whether JC lived with Ms AZ during her periods in immigration detention centres. The Tribunal noted that the Respondent's submissions on behalf of Ms AZ did not mention her older child, who had been left in China when she moved to the UK.

148.22 There was a possibility that the Respondent had not seen the Orders of Swift J at the time of this letter, but it was a matter of great concern that he could have made substantially similar submissions to the Home Office when it was clear that the earlier submissions had not succeeded. The Respondent told the Tribunal that he had made the further submissions in accordance with his client's instructions, and that there were no removal directions in place at that time; he had hoped that the Home Office would grant Ms AZ a visa on the basis of "exceptional circumstances". The Respondent accepted in his evidence that the submissions made in January and May 2015 were very similar, the only real difference being in relation to what was requested, namely a Visa rather than cancellation of removal directions. The Tribunal noted that the facts underlying the submissions were the same; there had been no change in Ms AZ's circumstances.

148.23 At some point between the letter of 8 May and a further letter sent by the Respondent on 1 June 2015, Ms AZ was again served with RDs, due to take effect on 9 June 2015. In the letter of 1 June 2015, sent to the NRC in Glasgow, the Respondent referred to the submissions made on 8 May, on which no decision had been made, and stated, "...we will proceed with an injunction application if you fail to revert to us." This was a threat, for the third time, of injunctive/JR proceedings on behalf of Ms AZ since December 2014. This letter was, of course, sent after the *Hamid* Hearing (referred to, inter alia at paragraph 20 above) at which it was abundantly clear that the conduct of the Firm was being called into question but that hearing did not appear to have made the Respondent any more cautious in his willingness to threaten injunctive proceedings. On 5 June 2015, the Respondent spoke to Ms AZ and advised her, "HO has received the application, acknowledged the application but has not processed or made a decision on it. Told her this is ground for JR". The Tribunal noted that the Applicant's investigation began on 8 June 2015; there were no matters raised which post-dated the start of the investigation. In the matter of Ms AZ, the Tribunal found that the Respondent had become so involved with his client's case that he chose to overlook the fact that she had no avenues left to explore.

148.24 The Tribunal could not be sure when the Respondent had received the *Hamid* Judgment. However, he had been present at the hearing on 18 May 2015, when Green J had expressed his concerns as follows:

> "So, the context of this is that [the Firm] have been notified of a number of cases and you may have gathered that Swift J was reviewing a series of cases involving [the Firm] and recognised what she believed to be a pattern of behaviour which was that [the Firm] were instructed in cases, applications for interim relief sought and not infrequently obtained, and thereafter the Firm did not process any of the claim forms, in other words, they allowed, quite deliberately, the claim to die. On a number of occasions, they were chased by both the Treasury Solicitors but by the court office and nothing happened and, as a result, as so often happens, the client will be released from detention and in some cases as we have seen absconds and in other cases the case just falls into abeyance. I am sure that [the Respondent] and Mr Javid, being experienced in this area, know that an application for interim relief is simply that, in other words the application for an interim injunction is an application which, if successful, is outstanding pending the full review. So it doesn't entitle a legal representative to not pursue the claim…"

and

> "Swift J put on her reasons for refusal that the cases were TWM (totally without merit) and referred to a number as being an abuse of process… the reasons which have led to this hearing are largely set out in her orders…"

148.25 The Tribunal noted and found that by the time he wrote the letter for Ms AZ on 1 June 2015, and advised her about a further JR application on 5 June 2015, the Respondent either had failed completely to understand the concerns about his conduct or was arrogant enough to think he was right and a High Court Judge was wrong, without even reflecting on this issue.

148.26 Having considered all five client matters in this case, the Tribunal found that the Respondent's conduct in relation to Ms AZ was the most egregious. The Respondent knew all about the submissions and applications made for Ms AZ by GA. He made further submissions for Ms AZ, which covered the same areas as the earlier submissions, on 26 January 2015, having delayed in making those submissions until only five days before Ms AZ was due to be deported. There was no good reason for that delay and the Respondent knew that the basis of the submissions did not include any new material. The Respondent had chosen to make the submissions to NRC at Solihull rather than to the Criminal Casework team at Liverpool, which had managed to respond to two sets of submissions made by GA within a day. In the absence of any explanation about this, the Tribunal determined that the Respondent hoped to be able to delay Ms AZ's deportation by sending the submissions to a section which had, in other cases in which he was instructed, taken rather more than a day to respond, in the hope that the failure to respond could be the basis of an injunction application. The letter from the GP (dated two weeks before the submissions) and the letter from the school (dated 46 days before the submissions) were not realistically capable of making any difference to the strength of Ms AZ's case. In some cases, a particular document might be enough to significantly strengthen an applicant's case; here, there

was no realistic prospect that these items would be sufficient to be regarded as "new", let alone significant, material. The JR application did not set out fully the situation and was misleading, including with regard to the Respondent's role in those proceedings. The Tribunal was satisfied that the Respondent had drafted the Grounds of the JR application, and this document had failed to mention the earlier unsuccessful JR application. The Respondent had accepted, in his oral evidence, that the documents failed to mention matters which should have been mentioned. The Respondent's correspondence with the Home Office, in particular the letter of 26 January 2015 was misleading; this letter described Ms AZ as being of good character, which was clearly not correct in the light of her conviction and sentence of imprisonment in 2013. It was not clear that the Respondent had advised Ms AZ that any unsuccessful applications could result in costs orders against her. It was not clear why the Respondent had been prepared to put aside any professional objectivity in advising Ms AZ, save that if he were able to achieve a result which GA had not achieved, it would help to grow his business.

149. ***Mr GL***

149.1 Mr GL was served with RDs, in the first instance, on or about 9 April 2013. The Respondent was instructed and on 11 April 2013 sent at least three letters by fax to the Home Office (UKBA) at Cardiff. This correspondence included a letter headed "Further submissions" which set out information about Mr GL. It was clear from a IFS produced in January 2015 that Mr GL had first applied for asylum in 2003, had exhausted his appeal rights, then made further submissions in 2010 which were rejected. The further submissions prepared by the Respondent were made on 11 April 2013. On 12 April 2013, Mr GL's appeal was struck out. An application for JR was made on 13 April 2013, in Mr GL's own name, which led to deferral of the RDs. The further submissions were rejected in May 2013 and the injunction discharged in June 2013. It appeared that some further submissions were made in July 2013 which, after some delay, were rejected in December 2014. Mr GL was detained on 12 January 2015 and instructed the Respondent on 13 January 2015.

149.2 The Respondent accepted that he had helped Mr GL with the JR application in April 2013. It was noted by the Tribunal that the Grounds with that application included the expression, "My concern is a number of folds". The Respondent's evidence to the Tribunal was that he had treated Mr GL as a new client in January 2015 and he did not have the file from April 2013 as at January 2015. He told the Tribunal that he was aware of the previous JR application because of the IFS and that Mr GL had not referred to having previously instructed him. The Respondent even told the Tribunal that he did not think he was dealing with the same person, and told the Tribunal that some clients used different names and dates of birth (due to differences in the European and Chinese calendars). The Tribunal noted that Mr GL's name appeared the same in the documents from 2013 and 2015, and his date of birth was the same. It was a matter of concern that, on the Respondent's own case, he had not carried out a conflict check or other check to find out if he had had any prior dealings with Mr GL. It should be simple to check if an individual was a former client (particularly where the Respondent's submissions in April 2013 had been rejected just 18 months before the January 2015 instruction). The Tribunal did not accept the Respondent's evidence that he had no recollection of Mr GL's matter; even if he did not recall the name, the circumstances (being a failed asylum claim based on breach

of the "one child" family policy in China) did not appear to be "standard", and were certainly not in line with any of the other four cases mentioned in this matter. In the course of taking instructions in January 2015, the Respondent must have realised that he had had some previous involvement. It was of concern that the Respondent said that the file was not available; it should have been archived securely and been readily available. Whilst the Respondent gave evidence that he would take full instructions on the client's circumstances, it was concerning that he did not seem to think that checking any existing documents might be of assistance.

149.3 It was notable that when Mr GL instructed the Respondent on 13 January 2015 his instruction was "to help him as soon as possible as he does not want to be locked up." The Respondent agreed to act for Mr GL on a "no win, no fee" basis; his fee would be £500 if successful, but the attendance note did not define what would constitute success.

149.4 The Respondent wrote to the Home Office (NRC at Solihull) on 20 January 2015 on behalf of Mr GL. The Respondent accepted that those further submissions were based on Mr GL's relationship with his partner. The representations under the heading "Private life in the UK" were in very similar terms to those made on behalf of Ms AZ on 26 January 2015, including sentences such as "Throughout this time, he has developed as a person and created many heartfelt memories with those closest to him." The use of precedent or template letters was not inherently problematic, but it was essential to check that the letter when sent was adapted to the particular client on whose behalf it was sent. The letters regarding Ms AZ and Mr GL were sent within a week of each other. The letter for Mr GL did not appear to state the length of Mr GL's relationship with his partner. There was no mention of the partner in the JR application made in April 2013.

149.5 The JR Claim Form, dated 23 January 2015, was in the name of Mr GL; the Firm was not on the record. The Home Office's contact details were stated to be at "Treasury's Solicitors". The Respondent accepted, in his first witness statement, that he had advised Mr GL to lodge the JR application and that the Firm checked the application "to ensure that the correct documents had been collated for procedural purposes." In his oral evidence, the Respondent accepted that he had assisted in the preparation of the January 2015 application. The Grounds in support referred to "the respectful Judge" and noted that "My concern is a number of folds".

149.6 The Tribunal was satisfied that, as admitted by the Respondent, he had assisted in the drafting of the JR Claim and application. Indeed, the Tribunal was satisfied the Respondent drafted the documents. There was nothing inherently wrong in a solicitor drafting a document for a client to sign, but if the solicitor had taken on that responsibility, it was important to ensure it was accurate and not misleading. In this instance, the JR Grounds referred to Mr GL being served with removal directions on 9 April 2013 and stated, "It was successfully deferred". This was not the candid statement which would be expected to the effect that there had been an injunction application which was successful, and that the underlying JR claim had been concluded in June 2013.

149.7 The Tribunal noted that in Mr GL's matter, there appeared to have been a regrettable delay on the part of the Home Office in that the refusal letter dated 8 December 2014 was not disclosed to the Firm until sometime around 20 January 2015; that said, of course, the Firm was not instructed until 13 January 2015 and did not write to the Home Office on behalf of Mr GL until 20 January. It appeared from the Grounds in support of the JR application that the refusal letter was handed to Mr GL on 12 January 2015. The delay, which had had an impact on Mr GL's ability to reply to the refusal, was referred to in the Grounds.

149.8 On 23 January 2015 the Upper Tribunal considered the injunction application, which was decided by HHJ Pelling QC. The Order restrained the Home Office from removing Mr GL "until after final disposal of this claim or further order", gave permission to apply to vary or discharge the order on 1 working days' notice and gave as reasons for the decision:

> "Although I consider the further submissions that have not apparently been responded to by the Defendant are unlikely to take matters further, the fact remains that IR 353A makes it unlawful for removal to take place while further submissions are outstanding. There have been a number of chasing letters seeking a response that have gone unanswered. The fact that the Defendant apparently delayed in serving documentation including the most recent refusal letter for a month after the date it was apparently signed is capable of explaining the difficulties that have arisen."

This decision, of course, was made a week before the Order in the matter of Ms AZ.

149.9 The Respondent was referred in cross examination to a fee exemption application form signed by Mr GL on 11 June 2015, four months after the submissions were made. In this form, Mr GL had: ticked a box to indicate that he was single (in circumstances where "unmarried partner" was an option); not made any entry in the section asking with whom Mr GL lived and their relationship to him; noted as "not applicable" the section on the financial details of "spouse/partner/parent". This form could have been read as weakening any claim for LTR which Mr GL made on the basis of a genuine and subsisting relationship with a partner. The Tribunal could make no findings about the Respondent's role, if any, in preparing the fee exemption form.

149.10 On the same date as the fee exemption form was signed by Mr GL, the Respondent made a further LTR application on behalf of Mr GL. This was in substantially the same terms as the representations in the 20 January 2015 letter. The Respondent told the Tribunal that these representations were based on both Mr GL's family and private life. By this time, the *Hamid* Hearing had taken place, so the Respondent had heard of the concerns expressed by Green J on 18 May 2015 and the Applicant's investigation had begun. The Respondent was on notice that there were significant concerns about his conduct, and yet had chosen to make further representations for Mr GL even though the earlier submissions had not been successful. Indeed, the Tribunal noted the terms of the Order of Swift J on 6 March 2015, which referred to the Claim Form of 23 January 2015 and the documents lodged by the Claimant and stated:

"1. The Claimant's application for permission to apply for Judicial Review is refused and declared totally without merit.

2. The Order of His Honour Judge Pelling QC dated 23 January 2015 restraining the Defendant from removing the Claimant from the United Kingdom is revoked with immediate effect.

3. The Defendant shall be permitted to remove the Claimant from the United Kingdom at any point after the date of this Order. Renewal is no bar to removal.

Reasons: - The Claimant made an application for Judicial Review on 23 January 2015, the day when he was due to be removed from the United Kingdom. Having secured an injunction, restraining his removal, he failed to serve the Defendant with the application, thus ensuring that he was able to remain in the UK. He had made a JR application in 2013 and had again obtained an injunction restraining his imminent removal. Admission had been refused and the injunction revoked. The Applicant's position has not changed materially since his appeal rights were exhausted and it is clear that his latest application was made solely with the intention of stopping his removal and is an abuse of process."

149.11 The Tribunal noted and found that there may have been a change in Mr GL's circumstances between 2013 and 2015, in that he referred to a partner in 2015. Although Swift J had found that was not a material change, there may have been some change and so it was not possible for the Tribunal to determine that Mr GL's applications to the Court were totally without merit. However, there was a clear lack of candour when the application was made in January 2015. Also, the JR proceedings were not withdrawn or otherwise brought to a conclusion by the Respondent or his client nor, it appeared, had the proceedings been served on the Home Office.

150. ***Mrs MW***

150.1 A telephone attendance note on the Respondent's file showed that Mrs MW instructed the Firm on 4 June 2016. Her instructions were that she was in detention at Yarlswood and had been referred to the Respondent by a fellow inmate. It appeared that Mrs MW had entered the UK in 2003, married Mr Z in 2011 and claimed asylum in 2014; it was noted that it was possible Mrs MW had claimed asylum in Ireland in 2003. Mrs MW had been "encountered" and taken to a detention centre on 21 March 2014. The instruction was to help Mrs MW to regularise her immigration status. It was agreed that the Respondent would act on a "no win, no fee" basis to do this, as she had been referred by another client, and would charge £500 if the regularisation were successful. The Tribunal noted a document apparently created by Mrs MW on 2 June 2014 which referred to her solicitor having asked for more evidence; it was not clear which solicitor was referred to in that note, but another firm was referred to in other documents within the case papers.

150.2 A further file note dated 4 June 2014 indicated that the Respondent had sent a client care letter and carried out a risk assessment and conflict check. Mrs MW signed a letter of authority for the Respondent to obtain documents and information about her case on 4 June 2014.

150.3 Almost four weeks later, on 2 July 2014, the Respondent wrote to the Home Office, LTR department in Durham, making submissions on behalf of Mrs MW. These representations were on the basis of Mrs MW's family life with her husband in the UK. It was also stated that Mr Z suffered from ill health and had been unable to work since 2013 because of this and that as the couple were using savings to live on, Mr Z would be unable to afford medical treatment in China if he had to leave the UK with Mrs MW. Submissions were made on the basis that there were exceptional circumstances in this matter. The letter did not mention the RDs which, as noted below, had been passed to Mrs MW almost four weeks earlier.

150.4 In response to questions in cross examination about why there had been a delay in making the submissions, the Respondent stated that he had had to wait for documents from Mrs MW, who was in detention, and her husband. The Respondent was not able to say which of the documents, if any, listed in the letter of 2 July had been in the possession of Mrs MW and which had been obtained by Mr Z. The Tribunal accepted that obtaining documents from an individual who was in detention could take longer than from a person who was at liberty. However, it was not clear on the face of the letter that any of the items would have been with Mrs MW rather than Mr Z.

150.5 The Tribunal noted and found that RDs in Mrs MW's case were dated 5 June 2014 and fixed the date for her removal as 8 July 2014. The RDs noted that they were served on Mrs MW's then solicitors (with an address in the London area) on 5 June 2014. The Respondent confirmed that Mrs MW would have provided a copy of the RDs to him, but he could not say when that had been. Given that Mrs MW had instructed the Respondent to "regularise" her immigration status, the Tribunal could confidently infer that Mrs MW would have informed the Respondent of the RDs closer to 5 June than to 2 July. It was clear from the speedy access that she had to the documents sent and her ability to contact the Respondent by telephone that Mrs MW was not delayed in passing instructions to the Respondent.

150.6 On 4 July 2014 the Respondent spoke to Mr Z on the telephone. The attendance note recorded that the Respondent explained the RDs to him. Mr Z had asked if there was "anything we could do to cancel the ticket for his wife." The note went on to read:

> "Explained option of doing JR.
>
> Explained to client that we are instructed to regularise client's immigration status and to do legal representations. [Mr Z] said he will prepare it himself but would need some assistance in the preparation of it. Client understands that he is to submit JR in his wife's capacity.
>
> [Mr Z] will speak to client first and will prepare JR and take it to court to seal. Agreed that I will call the HO today to ask if they are prepared to withdraw RD in light of the outstanding application."

150.7 Thereafter, on 7 July the Respondent spoke to the detention centre, which confirmed that the RDs had not been cancelled and to the client, who was concerned and said she would discuss the position with her husband. A further note of 7 July recorded that the Respondent spoke to Mr Z who said that,

> "he's getting the JR ready and will come to our offices tomorrow morning/early afternoon."

An attendance note of 8 July 2014 recorded,

> "[Mr Z] handed over sealed JR and asked us to forward the same to the HO to cancel his wife's RD.
>
> Agreed to liaise with HO in light of the sealed JR.
>
> Advised client to send one copy of the sealed JR to TSOL today as advised by court."

There was no note about assisting Mr Z with the JR application or checking it on his behalf.

150.8 At some point on 8 July 2014, the Respondent wrote to the Home Office (Yarlswood detention centre), stating:

> "Please find enclosed our client's Judicial Review Application against the Removal Directions imposed on her for today for your immediate attention."

It appeared from that letter that no injunction had been granted at that point, but there was a request to cancel the RDs on the basis that the application had been lodged.

150.9 The Tribunal had a copy of the Claim Form from which it could be seen that the Respondent's contact details were given as "Treasury's Solicitors".

150.10 At some point on 8 July 2014, the Upper Tribunal (HHJ Pelling QC) granted an injunction restraining the Home Office from removing Mrs MW from the UK until final disposal of the claim or further order, with permission to the Home Office to apply to vary or discharge the order on one working days' notice. The reasons given in the Order were:

> "In light of the fact that I have concluded that an injunction should be granted, I can express my reasons shortly. The FTT Judge made adverse credibility findings against the Applicant and rejected both her asylum and Article 8 claim. The basis on which the latter claim was rejected was a failure to satisfy the requirements of the JRs and because the IJ was not satisfied that there were exceptional circumstances that justified a conclusion that removal was a disproportionate interference with the Applicant's Article 8 rights. The basis of this conclusion was that the Judge considered that the marriage may not be genuine (although she did not in terms hold that it was not, she made findings that were consistent with her view being that it was not); there was no reasons why her husband could not return to China with her (even though he has been

> granted ILR) and that there was no evidence that he was chronically ill or dependent upon her. The sole issue that arises is whether the additional representations are sufficient to justify them being treated as a fresh claim. Whilst this case is on the borderline or arguability, I am satisfied that it passes the low threshold test that applies in deciding that issue when considering the grant of an injunction. The material that has been produced includes a number of statements from third parties that are consistent with the marriage being a genuine one. In relation to the ill health of the husband, there is some evidence albeit only in the form of a single letter that predates the hearing before the IJ that suggests the Applicant's husband has undergone some quite serious heart surgery. In an ideal world, an up to date medical report would have been to hand but this material suggests that there is something of substance that needs to be considered. All this, in combination with the fact that the Article 8 rights of the Applicant have to be considered together with those of her husband lead me to think that there is a realistically arguable basis on which an IJ might reach a different conclusion on the Article 8 point when considering the new material in the round with that previously considered by the IJ. Finally, I should add that the letter rejecting the supplemental submissions reached the court only just before 6pm this evening. The letter rejects the additional material but no reasons specific to the additional materials supplied have been given for rejecting this material."

150.11 The Tribunal noted that there was a five-page letter from the Home Office (Operational Support and Certification Unit) dated 8 July 2014 which rejected the submissions made for Mrs MW. That letter referred to the submissions made by the Firm on 6 July 2014; no letter of that date was noted in the papers before the Tribunal. The rejection letter dealt with issues about Mrs MW's credibility, as considered at the FTT hearing in May 2014, and stated, "It is considered that your purpose in raising these issues so late is simply to frustrate that process and to prolong your client's stay in the United Kingdom." The letter did not specifically address the medical evidence concerning Mr Z, which (it appeared from the Order) pre-dated the FTT hearing. It was not explained why no up to date evidence had been sought between the Respondent's instruction on 4 June 2014 and the letter to the Home Office on 2 July 2014.

150.12 The Tribunal noted from an Order made on 21 November 2014 that the early July 2014 application for permission to pursue JR had been refused on 14 October 2014.

150.13 There was an attendance note on the Respondent's file which recorded a conversation with Mr Z on 10 July 2014. The note stated that Mr Z asked for an update as he wanted Mrs MW to go home as soon as possible. The note went on to say:

> "Explained to him that since judge has granted injunction therefore HO has deferred RD and no further RD has been issued yet.
>
> I told him that no outcome has been received re outstanding application. The HO has power to serve her RD again.

> [Mr Z] said he and his friend has read the refusal letter from the HO sent to previous solicitors. He is not happy of the HO's comments on the genuineness of their relationship. He emphasised to me that he has to remain in the UK due to his medical problems and his wife has been his main carer; they have a subsisting relationship.
>
> [Mr Z] asked if he could do another JR to challenge the HO's decision to refuse leave to client… I told him that it's up to him to do it. I reiterated that we are not on record to deal with client's JR case and he understands not to insert our firm's details on the JR. He said he will make arrangements to get JR sealed for the judge to consider, he said he doesn't believe the HO will consider client's case properly. He said he will submit another JR himself as he knows what to do from last time. I reminded him of the importance of complying with the court's direction upon sealing the JR as otherwise it would not assist his wife's case…"

150.14 Thereafter, on 25 July 2014, the Respondent wrote to the Home Office (Yarlswood) asking for a copy of the refusal letter of 8 July 2014. The Tribunal noted that the refusal letter was sent from Operational Support and Certification and had been addressed to the Firm at its correct address.

150.15 The Tribunal noted that a second JR application was made for Mrs MW on 29 July 2014. That Claim Form did not appear to be in the same handwriting as the Claim Form issued on 8 July 2014. The "Statement of Grounds" was seen, which referred to the injunction granted on 8 July 2014. In that document, there was a reference to "the respectful Judge". It included a number of pages of legal submissions which were similar to those seen on other documents seen in the course of this case. The outcome of that application was not apparent on the papers before the Tribunal.

150.16 Under cross examination, the Respondent maintained that he did not draft this JR application but was aware of it. The Respondent told the Tribunal that the second JR application did not rely on IR 353 but was by way of a challenge to the refusal letter. It was put to the Respondent that the language used in the Grounds was not the language of a lay person, for example: "An injunction was granted because His Honour Judge Pelling QC (was) satisfied that my additional representations pass the low threshold test and should be considered as being a fresh claim. The respectful judge also stated that…" The Respondent told the Tribunal that he did not know who drafted these Grounds, which were handed to him by Mr Z. The Respondent told the Tribunal that a number of Chinese clients would pass documents around between themselves. The Tribunal rejected the Respondent's evidence that he had not drafted the Grounds or been involved in preparing the JR application. As will be set out further below, the similarities with other documents which were clearly prepared by the Respondent was overwhelming. Also, it was not credible that the Respondent would have left Mr Z to issue this and the earlier JR application without assistance. Whilst Mr Z may have known what to do, if he had issued the early July application, by late July there was no indication that the Respondent had actually given any guidance on the procedure to Mr Z. His suggestion that someone else had helped was not credible, given that the Respondent was the instructed solicitor trying to help Mrs MW.

150.17 On 2 October 2014 the Respondent telephoned the Home Office. It was not clear which department or to whom the Respondent spoke. His attendance note recorded that he asked the Home Office to consider Ms MW's case urgently as it had been outstanding for some time. On 27 October 2014 Mrs MW instructed the Respondent that she had received some documentation, which she faxed to him. It appeared that she was served with RDs dated 20 October 2014, with a removal date of 21 November 2014. There was reference in a letter of 10 November 2014 from the Respondent to the Home Office (Yarlswood) to submissions dated 3 November 2014, but no copy of that letter or the relevant submissions was available. On 20 November 2014, the Respondent again wrote to Yarlswood, apparently enclosing a further copy of the submissions made on 3 November 2014, and noting that there had been no response.

150.18 On 21 November 2014 a third JR application was made on behalf of Mrs MW. Unlike the two issued in July, on this occasion the Firm was on the record as acting. The Home Office's address for service was, as seen on other documents, stated to be "Treasury's Solicitors". The Grounds of the late July and November 2014 JR applications were in the same typeface, contained substantially the same factual matters and were in a similar layout. Again, the expression "the respectful judge" appeared, as did the expression "My concern is a number of folds." The Grounds stated that Mrs MW had two outstanding applications. It was not clear to what that referred. It appeared from the documents that there had been submissions made on 3 November 2014, to which no response had been received. The status of the JR application challenging the refusal letter dated 8 July 2014 was not made clear.

150.19 Under cross examination, the Respondent told the Tribunal that the difference between this and the earlier proceedings was that there were new circumstances relating to Mr Z's ill health. The Respondent accepted that this had been dealt with in the 2 July 2014 submissions and told the Tribunal that there would have been something new, otherwise he would not have made the further submissions. The Respondent accepted that there was, to some extent, overlap between the July and November 2014 submissions.

150.20 Whilst the Tribunal did not have a copy of the Grounds relied on in the early July 2014 application, it did have those used in late July 2014. The former addressed the Home Office's dismissal of Mrs MW's marriage being a genuine and subsisting relationship. The submissions made on 2 July 2014 referred to the relationship between Mrs MW and Mr Z, and dealt with Mr Z's ill health. Apart from the nature of the relationship and Mr Z's health, the Grounds in November 2014 simply relied on the fact that the Home Office had not responded to the submissions made on 3 November. The Tribunal found that there were no new submissions or any change in circumstance between July and November 2014 so as to raise a significantly new issue. The relationship and Mr Z's health were raised as issues throughout 2014.

150.21 The Tribunal noted that the Respondent's application for an injunction for Mrs MW was successful. HHJ Bird considered the documents, including the submissions made on 3 November 2014, noting those were sent in two letters, one to the Home Office and one to Yarlswood, "apparently referring to evidence of the Applicant's subsisting relationship with her husband" and ordered that the Home Office should not remove

Mrs MW "until determination of the present application or sooner order." The Reasons stated by the Judge for his Order were:

> "The Applicant has a right (or an arguable right) to have her full request for leave to remain to be determined prior to removal (see IR 353A). It appears that the claims listed above… have not been determined despite the Applicant's solicitor chasing a determination by letters dated 10 and 20 November 2014.
>
> The Tribunal notes (from the [IFS]) that permission to proceed with Judicial Review proceedings in respect of previous removal directions was refused on 14 October 2014. This present order is made on the basis that the matters advanced in the claims of 3 November 2014 were not considered by the Tribunal when permission was refused and were not before the Respondent when the removal directions were issued. The Tribunal proceeds on the basis that the Applicant's solicitors would have informed the Tribunal if such matters were considered when permission was refused."

The Judge went on to give directions for the further conduct of the application.

150.22 Under cross examination, the Respondent was asked whether he had thought it relevant to deal with the overlap in the circumstances relied on in July and November 2014. The Respondent told the Tribunal that he did not, as the Grounds in November 2014 referred to the successful injunction application on 8 July 2014.

150.23 The Tribunal noted and found that the Respondent had failed, in the Grounds, to make clear the basis of the early July 2014 injunction, and had failed to point out to the Court that there was substantial overlap between the submissions in early July and those in early November 2014. The Tribunal noted in particular that the Court made it very clear, in the Order of 21 November 2014, that the Court had relied on the Respondent, explicitly stating that the Order was made on the basis that "the Applicant's solicitors would have informed the Tribunal if such matters were considered when permission was refused." The Respondent had clearly failed to do that. The reference in the Grounds to the successful injunction did not make clear the circumstances in which that injunction had been granted.

150.24 The Tribunal was concerned that it had apparently taken the Home Office three weeks to respond to the Respondent's submissions of 3 November 2014. It was not clear whether the submissions – which had not been seen – had been sent to the most appropriate department. The Tribunal noted that the Respondent addressed correspondence to a number of departments or sections within the Home Office. The Tribunal had not been given information on which sections dealt with applications of this kind. It seemed unlikely that Yarlswood, as a detention centre, would be in a position to respond in the same way as other departments, such as the one which had responded to submissions about Ms AZ within a day. The fact of the delay may have been a cause of concern, but did not displace the requirement under IR 353 that submissions should be "significantly different". Here, the Tribunal found that there was nothing new in Mrs MW's submissions, even if they had been expressed slightly differently. There was no proper explanation of the delay of four weeks between

being instructed on 4 June 2014 and making submissions on 2 July 2014, particularly where RDs had been served on Mrs MW on or about 5 June 2014

Overview

151. The first in time of the client matters in issue related to Mr GL, who first instructed the Firm in April 2013. The Respondent was instructed again in January 2015. A JR application was made, in Mr GL's name, on 23 January 2015. Ms PZ instructed the Firm in March 2014. Whilst the Firm was on record as acting in her injunction application made on 26 March 2014, the Firm was not on record for the JR/injunction application made on 14 November 2014. The Firm continued to act for Ms PZ thereafter, including making further submissions on her behalf on 4 December 2014 and a LTR application on 9 February 2015. Mrs MW first instructed the Firm on 2 July 2014. An injunction/JR application was made in the client's own name on 8 July 2014. The Firm continued to be instructed by Mrs MW, and made submissions on her behalf on 3 November 2014. A further JR application was made, with the Firm on record, on 21 November 2014. Ms T first instructed the Firm in August 2014 and the Firm made a JR/injunction application on her behalf on 15 August 2014, notifying the Court that the Firm considered the JR application to be "academic" on 27 August 2014. Ms AZ instructed the Firm in early December 2014. By that time, the Respondent was on notice about the Court's reliance on what was submitted by solicitors, as set out in the Order of 21 November 2014 in the matter of Mrs MW. Another Firm had made an application for JR on Ms AZ's behalf, which was successful in staying RDs due to be executed in December 2014, but which was later dismissed as being without merit. On 24 December 2014, the Firm made an application for Ms AZ to be released. On 13 January 2015, the Firm advised the client about JR proceedings. On 26 January 2015, the Firm made submissions on behalf of Ms AZ. On 30 January 2015, a JR/injunction application was made in Ms AZ's name. As a result of those proceedings, the Firm was aware by 24 February 2015 (when the Firm responded to a letter from TSol) that it was alleged the Firm was engaged in an abuse of process. Thereafter, Swift J made her Order on 4 March 2015. The Firm continued to act for Ms AZ, making a LTR application on her behalf on 8 May 2015 and making representations concerning further RDs; this was after the *Hamid* Hearing.

152. The Respondent denied being involved in drafting the JR applications/Grounds for: Mrs MW (2 and 29 July 2014); Ms PZ (November 2014); Mr GL (23 January 2015); Ms AZ (26 January 2015). He accepted he had drafted and issued the injunction/JR applications for: Ms PZ (March 2014); Ms T (August 2014); Mrs MW (November 2014). For the reasons set out below, the Tribunal was satisfied to the criminal standard that the Respondent had been instrumental in drafting relevant applications and Grounds:

152.1 Terminology – "Respectful judge"

The expression "the respectful judge" appeared in many documents known to have been drafted by the Respondent, for example:

- Email to the Court concerning the *Hamid* Hearing (13 May 2015) – see paragraph 24;

- Letter to TSol re Ms PZ (28 March 2014) – see paragraph 55;
- Letter to TSol re Ms T (15 August 2014) – see paragraph 39;
- Grounds re Ms T (15 August 2014) – see paragraph 146.8;
- Grounds re Ms PZ (26 March 2014) – paragraph 147.3;
- Letter re Ms PZ (28 March 2014) – see paragraph 147.5; and
- Grounds re Mrs MW (21 November 2014) – see paragraph 150.18.

It also appeared in a number of documents which the Respondent denied were his, including:

- Grounds for Mrs MW's second injunction/JR application (29 July 2014) – see paragraph 150.5;
- Grounds for Mr GL's injunction/JR application (23 January 2015) – see paragraph 149.5;
- Grounds for Ms AZ's injunction/JR application (30 January 2015) – see paragraph 148.13.

152.2 Terminology – "several folds"

The expression "my concern is a number of folds", appeared in several places, including Ms MW's Grounds for JR in November 2014, which the Respondent accepted he had drafted.

The same expression occurred in Mr GL's Grounds in January 2015 – see paragraph 149.4 – and Ms AZ's Grounds in January 2015 – see paragraph 148.13 – both of which the Respondent denied drafting.

152.3 Terminology – "I have made no application for Judicial Review, in the last three months"

This wording, including the comma after "Judicial Review" appeared in both Ms PZ's Grounds in March 2014, which the Respondent drafted, and those submitted in Ms PZ's name in November 2014. In this instance, the Tribunal noted that Ms PZ may have been able to work from the earlier document.

152.4 Addresses on Claim Form

The Claim Forms for each of the JR applications considered as part of this case were handwritten. The Tribunal had not received any evidence about who had written on these forms but noted that the handwriting on several appeared similar. This impression was reinforced by the fact that the identity of the respondent to the application and the address was set out in the same way, namely "Treasury's Solicitors" at "One Kemble Street" on:

- Ms T's Claim Form (Firm on record) August 2014;
- Ms PZ's Claim Form (Firm on record) March 2014;
- Mrs MW's Claim Form (Firm not on record) July 2014;
- Mrs MW's Claim Form (Firm on record) November 2014;
- Ms PZ's Claim Form (Firm not on record) November 2014.

A different form for the address ("1 Kemble Street") appeared on other Claim Forms.

152.5 Font

All of the Grounds seen appeared to be in the same font (probably Times New Roman), whether those documents were said to be drafted by the Respondent or whether he denied drafting them. The Tribunal noted that this font is often used; it is not at all unusual in any formal documents.

152.6 Submissions and Law

Each of the Grounds seen in the course of this case contained submissions on the relevant law. The circumstances of the clients varied. However, the Tribunal noted some overlap between the submissions made for clients where the Firm was on record and those submitted by clients apparently on their own behalf. In particular, the Tribunal noted that paragraphs dealing with certain case law (*Re WM (DRC))* were identical in the Grounds for Ms PZ in March 2014, where the Firm was on record, and for Ms MW on 29 July 2014 (acting in person). There were identical statements concerning the case of *ZT (Kosovo)* and *ZL and CL v SSHD* in Ms PZ's Grounds drafted by the Firm in March 2014 and the Grounds for Mr GL, apparently acting in person, in January 2015. Ms MW's submissions, in her own name, on 29 July 2014 included detailed extracts from the Eligibility for Limited to Leave to Remain as a Partner under Appendix FM, along with references to cases (*South Bucks v Porter, MF (Nigeria), Izuazu and Nagre*). The submissions on legal points ran to over 10 pages. The submissions on law for Ms PZ with her application of 14 November 2014 ran to about 9 pages and included phrases such as "…it is averred that…" There were references to *WM (DRC)* – in the same terms as for Ms PZ and Ms MW. Mr GL's Grounds in January 2015, submitted under his own name, referred to "*Wednesbury principle/unreasonableness*".

153. None of the matters set out at paragraph 152, if standing alone, would have been sufficient to find to the higher standard that the Respondent had drafted or been involved in the drafting of the Grounds/JR applications in those matters where the Firm was not on record. However, cumulatively, the Tribunal was driven to the irresistible inference that the Respondent had drafted or prepared and/or significantly assisted the clients in submitting the JR applications where his Firm was not on record (i.e. Ms PZ in November 2014, Ms AZ, Mr GL and Mrs MW on 8 and 29 July). His denial of involvement seriously undermined his credibility. The evidence was overwhelming that he had been involved. Whilst it might have been the case that clients would show documents to each other, there was no credible explanation for how identical sections appeared in documents for Mr GL and Ms PZ.

154. Given that the Respondent was involved in drafting the applications and Grounds, he had a responsibility to ensure that their contents were true and that the Court was given all the necessary information to make a properly founded decision. There could be no doubt that solicitors, as officers of the Court, are expected to uphold the rule of law and the proper administration of justice. In the context of ex parte applications, there is a particular duty of candour, to ensure that the Court is presented with the relevant facts and issues as, by their nature, there will be no representations from anyone in opposition to the application. It was of concern that the Respondent's

evidence on a number of points was to the effect that he did not need to check e.g. by reading earlier submissions made by previous solicitors whether what he was stating was "new" under paragraph 353 of the IR or to satisfy himself that what the Court was being told was correct.

155. Whilst a solicitor should, of course, be honest and should endeavour to be accurate in correspondence with an opponent – such as the Home Office – the duty of candour is less onerous. With regard to Ms T, it was of concern that the Respondent's correspondence with the Home Office had been inaccurate about the length of time for which she had lived in the UK, as this meant there was potential for someone reading the correspondence to misunderstand the true position. However, there was no allegation specifically of misleading anyone in correspondence.

156. The Tribunal noted that all of the injunction orders in issue had been made in terms that they would subsist until further order. Whilst the precise means by which the proceedings may be brought to an end may vary, it was clearly to be assumed that the Court expected something to happen after the injunction was granted. In particular, the proceedings had to be served. Thereafter, they may be compromised and a Consent Order submitted or contested. The costs of the proceedings were not determined when the injunctions were granted; this was an outstanding issue which had to be addressed by some means.

157. The Tribunal noted and accepted that there was no "Notice of Withdrawal" form in the Upper Tribunal. The parts of the allegations relating to failure to serve such a document were, therefore, bound to fail. However, there was a clear procedure under Rule 17 of the Upper Tribunal Rules whereby a party could apply to withdraw a case. This procedure was not followed in any of the cases under consideration.

158. The Tribunal noted the submissions made on the meaning of "TWM" in the context of immigration proceedings. It accepted the Respondent's submission that "totally without merit" meant no more, and no less, than "bound to fail". It did not imply, in itself, any abuse of process or that the proceedings were vexatious. In this context, the Tribunal noted and found that the Respondent accepted that if submissions were made under paragraph 353 IR did not amount to a fresh claim, they were bound to fail. By irresistible inference, the Tribunal concluded that when the Respondent made submissions which he knew did not amount to a fresh claim, he was aware that any application based on those submissions would be bound to fail and be TWM.

159. On the facts of this case, the Tribunal found that the following submissions, purportedly made under paragraph 353/353A did not amount to "fresh" claims:

- Ms PZ – 3 April, 9 May and 4 December 2014;
- Ms AZ – 26 January 2015
- Mrs MW – 3 November 2014 (the "new" medical evidence being insufficient)

160. The Tribunal noted that the parties agreed that when considering integrity, the Tribunal could have regard to the statement in Hoodless that "... "integrity" connotes moral soundness, rectitude and steady adherence to an ethical code. A person lacks integrity if unable to appreciate the distinction between what is honest or dishonest by ordinary standards…" The Tribunal also noted the significant line of cases which

indicated that "integrity" could be recognised by the Tribunal as present or not on the basis of the facts of the case.

161. The Tribunal also noted and found that it could be an abuse of process to conduct court proceedings in a way which was in strict compliance with the relevant rules, but which had the effect of frustrating the proper administration of justice.

162. **Allegation 1.1 -The Respondent brought judicial review applications which were totally without merit and an abuse of process. This was contrary to Principles 1, 2 and 6 of the SRA Principles 2011 ("the Principles") and he failed to achieve Outcomes 5.1, 5.2, 5.3 and 5.6 of the SRA Code of Conduct 2011 ("the 2011 Code")**

162.1 The Tribunal noted that for this allegation to be proved, it was necessary to show that the judicial review applications brought by the Respondent were both TWM and an abuse of process. It could not be proved if only one of those two aspects of the allegation were proved.

162.2 For the reasons noted above, the Tribunal was not satisfied with regard to Ms T that the JR application was either TWM or an abuse of process, despite the indication on the Order of Swift J. Submissions were made promptly after instruction. No response was received and a JR/injunction application was made on the basis there had been no substantive response. There had been errors in the submission letter, with regard to the assertions that Ms T had been in the UK in excess of 20 years, but the JR application was based on a failure to consider the submissions made on 4 August 2014 by 15 August 2014; these were the first submissions made for Ms T after her detention on 30 July 2014. The Firm was named on the Claim Form. None of the alleged breaches of the Principles or Outcomes had been proved.

162.3 The Tribunal was satisfied that the Respondent had advised and assisted Mr GL with regard to his injunction/JR application made on 23 January 2015, and indeed that he had drafted the Grounds and supporting documents. In this matter, Mr GL instructed the Firm both in 2013 and 2015. It was concerning that the Respondent did not appear to have established, when re-instructed, that he had acted for Mr GL two years earlier in connection with an injunction/JR application. That application had been dismissed on 12 June 2013 as it had no real prospect of success. On that occasion, there had been substantial delay by the Home Office in considering Mr GL's submissions, prior to the removal directions being issued. Whilst that did not mean the Home Office's decision to reject the submissions was wrong, it meant there was some possibility that Mr L's personal circumstances would have changed in the intervening period. The submissions made by the Firm for Mr GL in January 2015 were, indeed, based on his changed circumstances, in that it was said he was in a relationship with a UK citizen. There were documents, including the fee exemption form from June 2015, which cast doubt on the whether there was really such a relationship. Nevertheless, as at January 2015, the relationship was a new factor, not previously considered by the Home Office. It could not be said, therefore, that the application for an injunction/JR whilst the Home Office considered this application was TWM. However, the Tribunal concluded that the application was an abuse of process. First of all, the Firm did not go on the record as acting, when clearly it was responsible for the application and its contents. As noted elsewhere, the Grounds

lacked candour. Whilst there was mention of the earlier removal directions being "successfully deferred", there was no mention of the JR application in 2013 being brought to an end as being TWM. Notably, the Grounds did not mention Mr GL's long immigration history, including that his application for asylum had been rejected in 2003 and the reasons for seeking asylum in 2003 (breach of China's one child policy) had been rehearsed in the 2013 application. The Grounds did not say anything explicit about the length of Mr L's purported relationship with a UK citizen, nor whether the couple co-habited, and this was not set out in the submissions made by the Firm on 20 January 2015. It was highly likely, in those circumstances, that the submissions would be rejected by the Home Office. Making a JR application may have been permitted, pursuant to paragraph 353(A) of the IR but it must have been clear to the Respondent that that application lacked any real merit, and was therefore an abuse of process. The application achieved the client's desired result, of postponing his deportation.

162.4 With regard to Ms PZ, the March 2014 JR application, for which the Firm was on record, was concluded on the basis it was not served. That first application arose in circumstances where the Home Office, for reasons which were not clear, had delayed over three years in responding to Ms PZ's submissions made in December 2010. The fact of delay meant that there was some chance that Ms PZ's circumstances had changed. Indeed, the submissions made on her behalf by the Firm on 24 March 2014 were on the basis that she now had a partner. This would suggest there was a fresh claim, under paragraph 353(A) of the IR. Although Swift J noted in the Order of 4 March 2015 that the first application was TWM, the Tribunal could not adopt that conclusion. The second JR application was made after the first had been concluded. The Firm was not on the record on this occasion but, as noted above, the Tribunal was satisfied that the Respondent was engaged in drafting and making the application. The Firm had made a second set of submissions for Ms PZ, on 9 May 2014, which had been refused on 8 October 2014. There was nothing to indicate any change in circumstances for Ms PZ after May 2014. In those circumstances, making a second JR application where a) there were no outstanding submissions; b) all relevant issues concerning Ms PZ's personal circumstances had been considered; and c) the previous application had been dismissed as TWM was an abuse of process. The application was bound to be dismissed as TWM, as indeed it was by Swift J in March 2015. The application was not served on the Home Office, via TSol, as required. This was also an abuse of process. In these circumstances, the Tribunal was satisfied that in relation of Ms PZ, the Respondent had made judicial review applications which were TWM and an abuse of process.

162.5 The Tribunal noted that it did not have in evidence the Order apparently made by Swift J in the matter of Mrs MW in March 2015. It therefore reached its own conclusions on whether the JR applications for Mrs MW were TWM and/or an abuse of process. The Respondent was instructed on 4 June 2014 and removal directions were made on 5 June 2014, although the Respondent may not have been aware of these immediately. The Respondent made a LTR on behalf of Mrs MW to the Home Office on 2 July 2014 on the basis of her private and family life as, despite having no secure immigration status, Mrs MW had married in 2011. The Respondent made further submissions on 6 July 2014. Those submissions were rejected, as set out in a letter dated 8 July 2014 to the Firm. That letter addressed issues related to Mrs MW's private and family life, and the human rights aspects of her claim. The first

injunction, deferring the removal directions, was granted on the same date as the refusal letter; it appeared that the Judge may have seen that letter just before considering the injunction application. With regard to the first injunction application for Mrs MW, the Tribunal noted that there was a significant delay between being instructed and making any application or submissions on behalf of Mrs MW. Whilst it could not be said with certainty exactly when the Respondent became aware of the RDs, it was inconceivable that he did not know about them reasonably soon after 5 June 2014. His client was in detention, which suggested that removal was imminent. There was nothing to suggest Mrs MW had difficulties in contacting the Respondent during June 2014. A solicitor acting with any care would have sought specific instructions or advised the client to let him/her know as soon as possible if RDs were served. The timing of the first submissions (2 and 6 July 2014) caused concern. The Tribunal found that the submissions were made late, in order to avoid a decision being made by the Home Office before the date for removal. This therefore allowed a JR application to be made and to obtain an order suspending the removal directions. The first JR application was refused in late September or early October 2014.

162.6 The second JR application was made for Mrs MW on 29 July 2014. For the reasons noted above, the Tribunal was satisfied that the Respondent was instrumental in making this application. The JR application was made by way of challenge to the refusal (on 8 July 2014) of the submissions made on 6 July 2014. That application was not linked to an injunction application; no new RDs had been served by that point after the injunction of 8 July 2014. It appeared that the JR application had been refused on or about 2 October 2014. It was unclear whether the application had been properly served on TSol. The Tribunal noted that if there had been merit in the application, it may have been allowed to proceed.

162.7 A third JR application, combined with an injunction application, was made by the Firm for Mrs MW on 21 November 2014. This was in circumstances where the new RDs had been issued on 20 October 2014 after dismissal of the previous two applications made for Mrs MW. The RDs fixed the date for removal as 21 November 2014. The Respondent had made further representations on behalf of Mrs MW on 3 November 2014, again on the basis of Mrs MW's marriage and the ill health of her husband. The injunction and JR application were based on the fact that the Home Office had not responded to the further representations which had been made on 3 November 2014. There was no evidence that these latest representations could have amounted to a fresh claim, under paragraph 353 of the IR. The Grounds, which the Respondent accepted he had drafted, did not set out properly the history of the previous two applications, which had by that time been concluded. The statement that "I was successful in my injunction" (referring to the 8 July 2014 Order) was far from a full and frank statement. It did not refer to the submissions of 6 July being rejected on 8 July. There was no reference to the challenge to the refusal decision being unsuccessful. The statement that "I have 2 outstanding applications with the Home Office" was not correct. The only outstanding issue was the submissions made on 3 November 2014 which, as already noted, were not based on any new or changed circumstances. The injunction was granted. As already noted, the Order contained an express statement that the Judge had relied on the fact that the Firm would have informed the Court if the matters raised on 3 November had already been considered when the refusal decision was made on 8 July 2014. The Respondent had clearly

failed to do this. It appeared that the Respondent sent various documents about the case to the TSol. This was not received by TSol until 15 December 2014. In the letter acknowledging the documents, TSol reminded the Respondent that the Claim Form and Grounds had to be served on the Home Office.

162.8 In all of the above circumstances, the Tribunal was satisfied that the third JR and injunction application were TWM. That set of proceedings followed two earlier applications made by the Respondent for Mrs MW. The failure to give full information, the delay in issuing proceedings after the RDs had been set and the fact that the 3 November 2014 did not contain any new material – simply restating issues which had been raised previously – were sufficient to show that the course of conduct and in particular the issue of the third JR application amounted to an abuse of process.

162.9 With regard to Ms AZ, the Tribunal found that the Respondent had drafted the JR and injunction applications issued on 30 January 2015. As could be seen from the Order of Swift J dated 4 March 2015, the Court found this claim to be TWM and an abuse of process. The Tribunal had no reason to disagree with that finding, which was clearly right. As set out at length above, full representations had been made for Ms AZ by GA in early December 2014. Those were refused, with the decision being made within a day. Clearly, the relevant unit of the Home Office which dealt with immigrants with criminal convictions was able to deal with such representations within a day or so; that was not the unit to which the Respondent wrote when he eventually made submissions for Ms AZ on 26 January 2015. The Respondent had given no proper explanation for the substantial delay between receiving instructions and making the submissions. The two documents he claimed to be awaiting were not likely to assist in any meaningful way, as the Home Office had already been told about JC and about Mr C's ill health. In any event, the letter from the school was dated 8 December 2014 and the GP letter from 12 January 2015; it was extraordinary that these could not be submitted in mid-January. In any event, as the Respondent had noted, it would be possible to make submissions and then follow them up with supporting documents when they were available.

162.10 The Tribunal noted that the "factual background" section of the Grounds failed completely to mention: a) the nature of Ms AZ's offence and the length of sentence imposed; b) the submissions made in early December 2014, which were rejected, and the JR application made by GA; c) that the matters in the 26 January 2015 submissions were substantially the same as those made in December 2014. Not only was there no proper basis for the JR/injunction application – save the client's desire to stay in the UK – but issue of the application was an abuse of process.

162.11 Mr Malik had, properly accepted that if the applications were found to be TWM and an abuse of process, that would be sufficient to show breaches of the Principles and Outcomes as alleged.

162.12 As noted above, the Tribunal did not find that the matter of Ms T involved either element of the allegation and that the matter of Mr GL, whilst amounting to an abuse of process, was not TWM. The statements below, therefore, apply to the matters of Ms PZ, Mrs MW and, most egregiously, Ms AZ.

162.13 The Tribunal was satisfied that bringing the JR applications as he did showed that the Respondent had failed to uphold the rule of law and, more pertinently, the proper administration of justice and was therefore in breach of Principle 1. The public would not expect a solicitor to engage in such conduct and it was, as alleged, likely to diminish rather than maintain the trust the public would place in the profession and the provision of legal services. In assessing whether the conduct also lacked integrity, the Tribunal found that the Respondent knew that what he was doing was inappropriate, but carried on regardless. He had chosen to carry out his clients instructions, in an attempt to allow them to stay in the UK, in circumstances where he knew, or should have known, that there was no real merit in his clients' applications. Such conduct lacked integrity.

162.14 The Tribunal found that the Respondent had knowingly or recklessly misled the court. In particular, he had failed to provide full and proper information to the Judges charged with making urgent decisions, without the benefit of hearing from the other party. The breach of duty of candour was made out. The Tribunal had found that the Respondent had himself prepared/drafted and been involved in the preparation of all the documents submitted to the Court, he had thereby been complicit in his clients' endeavour to mislead the Court. The relevance of Outcome 5.3 to this allegation was not understood; there were no relevant Court orders in issue. The Respondent's duties to the Court included the duty to be frank, particularly on ex parte applications; he was clearly in breach of that duty.

162.15 The Tribunal found, so that it was sure, that the Respondent was in breach of Principles 1, 2 and 6, and had failed to achieve Outcomes 5.1, 5.2 and 5.6 of the Code, with respect to Mrs MW, Ms PZ and Ms AZ. Whilst not being proof of this allegation, the matters noted above with regard to Ms T and Mr GL could also be taken into account in considering the other allegations, in particular allegation 1.2.

163. **Allegation 1.2 - The Respondent engaged in a systematic course of conduct designed to undermine the immigration system, amounting to a persistent abuse of the process of the Court. This was in breach of Principles 1, 2, 3, 6 and 8 of the Principles and the Respondent failed to achieve Outcomes 5.1, 5.2, 5.3 and 5.6 of the 2011 Code**

163.1 Although this was the second allegation in the case, the Tribunal considered it after allegations 1.1, 1.3 and 1.4 as findings on the facts and issues covered in those allegations was needed before there could be consideration of whether the Respondent had engaged in a systematic course of conduct in the way alleged. Even where an allegation had not been proved, the conduct examined in relation to that allegation could be taken into account in determining this allegation.

163.2 The Tribunal noted and accepted that for a course of conduct to be described as "systematic", there had to be a recurrence of conduct. "Systematic" also implied that there was intention; someone acting in a random way, without planning or intention, may act improperly but their actions may not amount to a systematic course of conduct. It therefore had to consider each of the five client matters in issue.

163.3 Underlying the allegation was the recognition that paragraph 353(A) of the IR created a weak spot in the administration of the immigration system. In short, the provision meant that if "new" submissions were made which were not determined before RDs were due to be executed, an application could be made for JR/an injunction to prevent removal, pending determination of the submissions. This was a safeguard to ensure that the cases of vulnerable people could be properly considered before deportation. It could not have been the intention of the Immigration Rules and the immigration system that an individual could make multiple submissions, based on the same grounds as had previously been considered, to delay or prevent deportation. There was a requirement for the submissions to amount to a fresh claim, which was defined as:

> "…significantly different from the material that has previously been considered. The submissions will only be significantly different if the content:
>
> (i) Had not already been considered; and
>
> (ii) Taken together with the previously considered material, created a realistic prospect of success, notwithstanding its rejection…" (IR paragraph 353).

The Tribunal was satisfied that a course of conduct in which there was no proper attempt to make sure that the submissions amounted to a fresh claim before making a JR/injunction application was capable of amounting to an abuse of the immigration system. Such a situation was not the same as one in which a solicitor properly considered the merits of an application for LTR in the light of any submissions and applications previously made – even if the assessment was later judged to be wrong. The Respondent contended that there was a low threshold to show that a claim was "fresh". This could not be right, given the requirement for the content to be "significantly different" from the material previously considered.

163.4 The Tribunal noted and took into account that the Respondent had sought to distance himself from some of the JR applications in issue. As already noted, the Tribunal found that the Respondent had not only advised clients to make JR/injunction applications in order to prevent removal, but had been engaged in drafting and issuing those claims. His role had not been the "secretarial" function of simply checking that the right documents had been collected. In each of the five matters in issue, the application for an injunction had been successful and clients had not only not been deported when planned but had also been released from detention. The Respondent had thus achieved for his clients some successes which would enhance his reputation with those clients and, on the basis of his own evidence, would lead to referrals and further work for the Firm. In giving evidence in relation to Ms T, for example, the Respondent had indicated that he would expect an almost immediate financial gain by way of referrals of work.

163.5 This allegation was particularly serious and to determine it the Tribunal carefully reviewed all of its other findings of fact (save those relevant to allegations 1.5 and 1.6, which were in a different category).

163.6 The Applicant's position with regard to Ms T was that the Respondent had sought interim relief to avoid his client's removal and not for the purpose of pursuing the underlying judicial review proceedings, thus amounting to an abuse. It was submitted that this was plain from:

- The Respondent's failure to obtain and provide a full immigration history, and his view that the same was not necessary;
- The advice that injunctive relief should be sought in order "to prevent our client's removal so the Home Office can reach a decision on her FLR case in a timely manner and for us to respond to the decision";
- The letter of 15 August 2014 by which the Respondent advised TSol that it would not be pursuing the JR application if the interim relief was granted, as the latter would render the former "academic";
- The Order of Swift J of 4 March 2015 which stated, "It is clear that the claim was made with the sole intention of obtaining an injunction to stop her removal and was therefore an abuse of process";
- The advice given to Ms T following the grant of injunctive relief, in particular that the JR application should be abandoned on the basis that "the Judge has already granted the injunction and it would prove futile to continue with the JR claim" and "there would be no point in continuing with it because it serves no value";
- The letters to the Upper Tribunal of 27 August 2014 and 12 September 2014 stating that the interim relief rendered the judicial review application "academic"; and
- The Respondent's explanation, when interviewed by Ms Young, that "There is nothing that we need to do because they have just granted it. Even if both parties go to courts there is nothing to agree because, my request is for [the] Judge to cancel ticket in order to allow Home Office to look at the case. The judge has accepted my argument and it is for that reason the injunction was granted. I was seeking an injunction not a review of the Home Office decision. Because granted Home Office [they] cancelled the ticket. It's futile for both parties to proceed with it"; and
- The Respondent failed to pursue JR proceedings.

163.7 As already noted, there was no mischief in failing to file a Notice of Discontinuance. However, a failure to file a notice of withdrawal, seeking the consent of the Upper Tribunal to that withdrawal amounted to a failure to follow the proper procedure. The Respondent had written to the Upper Tribunal about the case being "academic" when the injunction was granted. That was, however, at a point where the injunction order had been expressed to be made "until the final determination of [Ms T's] application for permission to proceed…" and where costs had been reserved.

163.8 The matter of Ms T illustrated that the Respondent did not think it necessary or important to obtain and review a client's full immigration history. His evidence to the Tribunal was that some of his clients did not want him to obtain files from previous solicitors, for example. Whilst Ms T's case was not one in which there had been multiple previous applications for LTR, the Respondent's evidence clearly showed that review of previous material was not part of his usual procedure. There was, however, evidence that the Respondent had properly considered the steps which could be taken for Ms T and the rationale behind those steps. The Respondent had not pursued the JR application to any sort of proper conclusion. The Tribunal accepted that there was no obligation to pursue a matter which was "academic", but the Tribunal found that the decision as to whether or not a matter could formally be withdrawn was clearly one to be made by the Upper Tribunal, pursuant to the Rule 17 of the relevant rules. The Tribunal noted that the Respondent relied on an Order in another matter, dated 11 June 2014, in support of his view that purely "academic" matters should not be pursued. The Tribunal noted that in that Order, the President of the Upper Tribunal not only referred to continuing the proceedings as academic and also stated, "…this application should properly have been discontinued." If the Respondent had been persuaded, therefore, that there was no point pursuing Court proceedings after an injunction was obtained, he was also put on notice that such claims should be "discontinued", as the Judge stated, or "withdrawn" as mentioned in the Rules.

163.9 Ms PZ first instructed the Respondent in March 2014 and continued to do so until at least December 2014. It was the Applicant's position that the Respondent sought interim relief to avoid his client's removal and not for the purpose of pursuing the underlying judicial review proceedings. It was submitted that this was clear from:

- The pattern of behaviour summarised by Swift J, by which proceedings were not pursued once a stay of removal had been secured;

- Ms PZ having been advised on 24 March 2014, two days before the JR claim form was lodged, that "I am aware that the removal is on the 26 March 2014 at 5.40 and we still have time to cancel it"; and

- The letter of 28 March 2014 to the TSol which proposed to withdraw the JR application on the basis that it would now be "*academic*".

163.10 In this matter, the Tribunal noted that the Respondent had adopted the view that it would be academic to pursue the JR application by the time he wrote to TSol on 28 March 2014, i.e. before the Order dated 11 June 2014 mentioned above. The Respondent's letter indicated "…we propose that we withdrawal (sic) the above JR application…", but he did not do so.

163.11 There was a concern with this matter that the Home Office may not have sent the letter refusing the submissions made on 9 May 2014 as promptly as possible. This enabled the Respondent to argue that there was insufficient time to challenge that refusal, leading to the decision to make the 14 November 2014 JR application. However, there was nothing at all to suggest that Ms PZ's circumstances had changed between the submissions made in March and May 2014 and November 2014 and that there was any improvement in the merits of her claim to be allowed to remain in the

UK. There was no indication that the Respondent had considered whether, in these circumstances, a challenge to the refusal decision was purely academic or had any merit.

163.12 With regard to Mrs MW, it was the Applicant's case that the applications of 8 July 2014 and 21 November 2014 were made for the illegitimate purpose of avoiding Mrs MW's removal and not for the proper purpose of pursuing the underlying judicial review proceedings. It was submitted that this was apparent from:

- On both occasions, JR claims not being pursued once interim relief had been obtained (revealing that the sole objective was to avoid detention); and
- The indication given on 3 November 2014 that "we will have no alternatives but to seek an injunction if you fail to revert to us"; and
- On 21 November 2014, the Firm brought a further JR claim on Mrs MW's behalf. The Claim incorrectly referred to Mrs MW having "2 outstanding applications".

163.13 The Tribunal, as already noted, had found that there had been a delay, with no proper explanation, between service of the RDs on Mrs MW and the making of the JR application to challenge those RDs. There was then a second JR application, challenging in general terms the refusal letter of 8 July 2014. The third JR application, made on 21 November 2014 in the Firm's name, challenged the RDs made on 20 October 2014. The Tribunal found that the Respondent was engaged in making JR applications without any proper analysis of whether there were substantive grounds to support Mrs MW's desire to stay in the UK. It found that, as alleged by the Applicant, the Respondent had failed to pursue the JR applications, having obtained the result the client wanted and had included an incorrect statement in the Grounds for the 21 November 2014 application.

163.14 With regard to Mr GL, it was submitted by the Applicant that, as identified by Swift J, the conduct of this application was part of a pattern of behaviour by which court processes were abused for the purpose of circumventing the proper immigration process.

163.15 The Tribunal noted that, as recorded elsewhere, the Respondent had acted for Mr GL in January 2015 without establishing that he had previously acted in a JR application and made submissions on his behalf. This was another matter in which there was delay between being instructed by a client in detention (which carried the implication that removal was imminent) and making representations. There was scope for criticism of the Home Office's delay in dealing with Mr GL's application between April 2013 and refusal of those submissions in December 2014. This had given scope for Mr GL to submit that his circumstances had changed; he based his submissions in January 2015 on a relationship with a new partner and thus his private and family life. The Tribunal noted that the submission letter, whilst naming the partner, referring to the end of Mr GL's relationship with his previous partner in China and asserting that there was a relationship, gave no information about the length of the relationship at that point and did not state whether Mr GL was cohabiting (prior to his detention). There was no comment on how/when the relationship began or how it could be

evidenced. Given that in June 2015 (after the Respondent's known involvement with Mr GL's case had ceased) Mr GL did not refer to his supposed partner on an application for fee exemption. Whilst a solicitor would not be expected to carry out a full investigation into a client's private life, there was nothing to suggest that the Respondent had checked any basic facts with Mr GL before advising on the JR application of 23 January 2015. It was noteworthy that when instructed on 13 January 2015, it was recorded that Mr GL told the Respondent that he wanted to be released and that, having been in the UK since 2003, "…all his friends are here and he has built a good network of close friends." There was nothing in the note to indicate that Mr GL had a partner.

163.16 The matter of Ms AZ was the last of the JR applications/injunctions in issue. The application was made a week after that submitted for Mr GL. It was the Applicant's case that in relation to the application of 30 January 2015, the Respondent sought interim relief for the illegitimate purpose of avoiding his client's removal and not for the proper purpose of pursuing the underlying judicial review proceedings. It was submitted that this was apparent from:

- The file note of 29 January 2015 recording that Ms AZ was advised as follows: "reminded client that if no response by tomorrow, husband will have to do JR to get an injunction";

- The letter to the NRC of 30 January 2015 in which the Firm stated, "We will now proceed with our Judicial Review application since you are not prepared to withdraw the removal directions";

- The letter to the NRC of 1 June 2015 in which the Firm stated: "Due to the fact that you served our client with removal directions on Tuesday 9 June 2015 without any previous notice, we will proceed with an injunction application if you fail to revert to us"; and

- The file note which recorded, "HO has received the application, acknowledged the application but has not processed or made a decision on it. Told her that this is grounds for JR".

163.17 By the time of this application, the Respondent had successfully been involved in preventing the deportations of the four other clients mentioned in this case. He had, in the Tribunal's finding, chosen to delay making submissions for Ms AZ in order to prevent the Home Office from having proper time to consider those submissions (as set out elsewhere in this Judgment). The submissions had been sent to the NRC at Solihull, not the Criminal Casework section, which had been able to consider and respond to the December 2014 submissions within a day. The Respondent made a further threat of JR proceedings for Ms AZ on 1 June 2015. There was nothing to suggest a change in Ms AZ's circumstances in the period since January 2015, save that four months had passed. The Respondent was still advising a client to pursue JR, where the underlying merits were very poor, even after the *Hamid* Hearing. By that time, there could be no doubt that the Respondent was aware of the concerns of the Upper Tribunal about his conduct.

163.18 The Tribunal was satisfied that it was possible for a technically correct procedure to be used which nevertheless amounted to an abuse of process because it was undertaken for an improper purpose. The Tribunal accepted that a finding that a case was TWM did not mean, in itself, that it was an abuse of process to have brought that claim. It also accepted that making multiple applications was not, in itself, an abuse of process.

163.19 What made the Respondent's conduct an abuse of process were a number of factors common to the cases considered. Firstly, the further submissions were made at a late stage, not only after RDs had been set but, in some cases, well after the point at which submissions could have been made after instruction. The clients in the five cases under consideration had all been in the UK for some time but had taken no proper steps to regularise their immigration status until under threat of deportation. Ms T was an "absconder" who had kept herself "under the radar" of the Home Office for many years and Ms AZ had a criminal conviction. Both Ms PZ and Mr GL had experienced delays in the Home Office processing their applications for LTR. However, for the purposes of this case it was the delay between the Firm receiving instructions and making the submissions which was of concern. The Respondent had not made submissions on behalf of Mrs MW for some four weeks after being instructed, in circumstances where Mrs MW was detained and her imminent removal could be expected.

163.20 Secondly, the underlying applications for LTR lacked any merit. This was something the Respondent, as a practitioner in the field of immigration law, must have recognised. He asserted that there were merits, for example because of each clients' private and family life and/or that there were exceptional circumstances. The Tribunal heard submissions on whether "highly unusual" circumstances were needed in order to suggest that the Home Office may decide there were exceptional circumstances in a case. The Tribunal noted in particular the Supreme Court judgment in R (Agyarko) v SSHD [2017] 1 WLR 823 at paragraphs 54 to 60. From this, it could be seen that it was not necessary to show that a client was in a unique or highly unusual situation. The Judgment made clear that there was a test of proportionality to be applied. The Tribunal noted that as at the time of the events in this case, the Respondent's knowledge of the legal position would properly have been informed by cases including MF (Nigeria) v SSHD [2013] EWCA Civ 1192; [2014] 1 WLR 544. This case was referred to expressly in the Grounds in relation to Ms T and Mrs MW (29 July 2014). The Respondent would have been aware that Lord Dyson MR, giving the judgment of the court, said:

> "In our view, that is not to say that a test of exceptionality is being applied. Rather it is that, in approaching the question of whether removal is a proportionate interference with an individual's article 8 rights, the scales are heavily weighted in favour of deportation and something very compelling (which will be 'exceptional') is required to outweigh the public interest in removal".

163.21 There was nothing to suggest there were "very compelling" circumstances such that the Home Office would have used its residual and rarely used discretion in favour of any of these clients, bearing in mind the decision in MF (Nigeria). This was particularly clear in the matter of Ms AZ, a convicted criminal.

163.22 The Respondent had made repeated submissions, with only the most minor variations for all the relevant clients save for Ms T. There was a general lack of care by the Respondent in submitting the injunction/JR applications. The use of precedents could not be criticised – there was no merit in drafting sections on the law afresh for each client – but care had to be taken to make sure that the document presented to the Court properly presented the facts and arguments on behalf of the individual client.

163.23 Further, whilst the Respondent had argued that he had a duty not to pursue cases which were "academic", the Tribunal noted and found that it was for the Court to determine if that was the position, after considering any response by the Home Office/TSol. Simply writing to the Court indicating an intention to withdraw a case was not sufficient.

163.24 In each of the cases under consideration, the ostensible claim was based on a failure by the Home Office to consider paragraph 353 submissions and/or was based on a challenge to a refusal decision. The Respondent relied on several Orders annexed to his second witness statement as demonstrating the duty not to pursue an academic claim. The Tribunal noted that in an undated Order, where a number of details had been redacted and the provenance of the Order was not clear, the Judge stated, "In these circumstances, I consider that the application for permission has been rendered academic and is, accordingly, refused…" The Tribunal did not find that this supported the Respondent's argument as in each of the Orders referred to by the Respondent were Orders made by a Judge after the Home Office had chance to respond. It was not the Respondent's role to remove that supervisory jurisdiction and its powers to determine whether or not a case should proceed. It appeared from the Upper Tribunal Rules that no hearing would be needed to determine whether or not the case should continue; a notice of withdrawal could no doubt be considered on the papers. The Tribunal could see no support for the proposition that the decision on what should happen in a case – particularly where, as in all of the cases in question injunctions had been granted pending some further action or decision – should not be made by the relevant Court.

163.25 The Tribunal had enquired during the hearing about the number of immigration cases the Respondent had at the relevant time, simply to understand whether the five cases referred to were a substantial or small part of the workload. The Respondent's evidence was that there were 46 immigration matters at the time of the Applicant's inspection (June 2015). It was not known how many of those cases were active as at June 2015, whether some were inactive or how many related to non-urgent work. The Respondent had given evidence, for example, that he would work late on Friday evenings as a "drop-in" service, and would then assist clients by making representations for them. It appeared from his evidence that he did not always open files for such clients so, again, the number could not be ascertained. Even if all of the 46 cases, including the five in issue, related to injunction/JR applications, 5 out of 46 was quite a high proportion.

163.26 For all of the above reasons, and those set out in relation to allegations 1.1, 1.3 and 1.4, the Tribunal was satisfied that the Respondent had engaged in a systematic course of conduct which was designed to, and in fact did, undermine the immigration system. The Respondent's conduct amounted to a persistent abuse of the Court process which

was intended to safeguard the rights of the vulnerable, not to allow those with no proper claim to stay in the UK to remain.

163.27 The Upper Tribunal made no formal findings about the Firm or the Respondent, but referred the Firm to the Applicant for investigation. Having carried out its own detailed consideration of this matter, the Tribunal could respectfully adopt the Judgment of Green J in the *Hamid* Judgment, in particular the following passages:

> "45. First, the merits of each of the cases we have reviewed were hopeless and were found by a High Court Judge to be "totally without merit" … this Tribunal emphasised that the mere fact that legal representatives advanced an application that failed on paper, or upon a renewed oral basis was not, in and of itself, a reason for the Tribunal to impose any sanction. Applicants with weak cases were entitled to seek to advance their case and have the merits of the case adjudicated upon. That is a fundamental aspect of having a right of access to a Court. But the Tribunal emphasised that there was a wealth of difference between the advancing of a case that was held to be unarguable in a fair, professional and proper manner and an unarguable case advanced in a professionally improper manner… It seems to us that [the Firm] had been prepared to advance virtually any ground, however tenuous or hopeless, simply to provide a platform for the interim relief application which then ensues.
>
> 46. Secondly, it is axiomatic that a legal representative applying upon a without-notice basis to a Court or Tribunal was interim relief must comply with the duty of candour. That means that the representative must place <u>all</u> relevant facts on the table before the Court or Tribunal and must, expressly, identify any serious points that exist against the application. In the present case Sandbrook have not placed full facts before Judges hearing applications for interim relief. For example, Judges have not been appraised (sic) of the fact that previous claims have been made for judicial review which, in some cases, have been rejected or not pursued. It is the clear duty of legal representatives seeking without-notice interim relief to place the <u>full</u> facts before the Judge hearing the application and this includes all previous approaches made to a Court or Tribunal. Judges who hear interim applications to restrain removal are routinely told that the case is so urgent that the representative has not been able to obtain full instructions. Frequently, it is clear that there has been some degree of delay. We would observe that all judges hearing such applications should take steps to verify whether there has been delay and to ensure that the representatives have put as full a set of facts as they can before the Tribunal.
>
> 47. Thirdly, once interim relief if granted, the legal representative must, in strict accordance with the rules, serve and pursue the proceedings. It is, in our view, a serious breach of professional conduct rules to obtain the relief sought and then fail to pursue the substantive claim for judicial review… The documents before this Tribunal make quite clear that all interim Orders were contingent upon decisions by future Judges as to permission to apply for judicial review, or a further with notice hearing,

> or further order of the Tribunal… Attempts to undermine the process by not pursuing proceedings amounted to an attempt to undermine the integrity of the Court process and is, as Mrs Justice Swift observed, an abuse of process. There is a very important wider context… It is well known that once interim relief is granted, persons subject to removal directions are then released from detention. It is also a notorious fact that many of those persons abscond. As such, a strategy designed to obtain interim relief but nor pursue hopeless applications thereafter strikes at the very heart of the system of immigration control which Parliament has instituted.
>
> 48. Fourthly, attempts to persuade Tribunal officials that claims for judicial review are academic are also, in our view, improper…
>
> 49. Fifthly, the papers reveal what appear to be repeated failures to respond to queries and requests from Tribunal officials and from the Defendant…
>
> 50. Finally, we have no doubt that but that the strategy which has given rise to the present concerns may be of material benefit to the clients of Sandbrook, all of whom we understand are privately paying clients. There may well hence be an economic incentive for the legal representatives to "play the system". It is therefore necessary to reiterate that all legal representatives owe their primary duty to the Court and Tribunal and to the extent that representatives place the interests of clients above those of the Court or Tribunal, then that may constitute evidence of the representative failing in his or her professional duties." (Emphasis as in the original).

163.28 There could be no doubt, in the light of its findings of fact and analysis of the legal and professional duties which applied to the Respondent, that he had acted in breach of Principles 1, 2, 3, 6 and 8. The Respondent had clearly failed to uphold the proper administration of justice. He had allowed his independence to be compromised, in that he had allowed his clients' interests to take precedence over his clear duties to the Court. The Respondent's conduct would tend to diminish, rather than maintain, the trust the public placed in the Respondent and in the provision of legal services; indeed, it struck at the heart of the trust the public should have in the proper operation of the justice system and in the profession. In allowing his Firm to be reliant to a significant degree on the recommendations of clients for whom the Respondent appeared to have acted in an unusually successful way, the Respondent was in breach of Principle 8. Given the Respondent's knowledge and understanding of the immigration system there could be no doubt that the Respondent had lacked integrity. The applicability of Outcome 5.3 to this allegation was not clear. However, the Tribunal was satisfied that this allegation was proved with regard to Outcomes 5.1, 5.2 and 5.6 together with Principles 1, 2, 3, 6 and 8.

164. **Allegation 1.3 - The Respondent failed to act in accordance with the duty of candour owed by legal representatives upon a without notice application for interim relief and failed to place the full facts before the Court. It was further alleged that by so acting he was reckless (although recklessness was not pleaded as a necessary element of this allegation). This was contrary to Principles 1, 2**

and 6 of the Principles 2011 and he failed to achieve Outcomes 5.1, 5.2, 5.3 and 5.6 of the 2011 Code

164.1 The Tribunal's primary findings of fact in relation to this allegation are already set out under allegation 1.1 above and will not be repeated in full.

164.2 With regard to Ms T, the Applicant's case was that the application of 15 August 2015 failed to put the full facts before the Upper Tribunal by failing to set out a full immigration history. The Respondent accepted that he did not request papers from his client's previous solicitors and instead relied on the Home Office to provide such information, despite considering that the Home Office is "not always correct" on such matters. It was further alleged that by so acting he was reckless.

164.3 Whilst the correspondence with the Home Office had been incorrect with regard to the length of time for which Ms T had been present in the UK, the JR application itself was broadly candid and contained the correct information. The Tribunal was not satisfied that this allegation had been proved with regard to the case of Ms T.

164.4 In the matter of Mr GL, it was alleged by the Applicant that in the application of 23 January 2015, the Respondent did not properly set out Mr GL's immigration history. The Tribunal found that it was inconceivable that the Respondent was unaware of the 2013 JR application, on which he had advised. The Respondent's evidence, that he neither remembered nor checked if he had acted for Mr GL less than two years earlier, was not credible. Even if the Respondent did not know the full history, he should have checked. The Respondent failed to put the full facts before the Court.

164.5 With regard to the matter of Ms PZ, the Applicant alleged that the second JR application (in November 2014) made no reference to the first application either having been made or abandoned. It stated that Ms PZ had made no applications for JR in the past three months despite her previous application only having been concluded the previous month (in October 2014). In any event, the Respondent failed to correct this error when he was later acting on behalf of Ms PZ thereafter.

164.6 The Tribunal was satisfied that the reference in the Grounds of 14 November 2014 referred to the RDs of 19 March 2014 and stated, "It was successfully deferred". There was no reference to this being because an injunction, based on a JR application, had been made. Although it was, strictly, correct that there had been no new application for JR brought within the previous three months, the March proceedings had been brought to an end on or about 29 September 2014; there had been extant JR proceedings within the three months prior to the November 2014 application. The Respondent had not provided full information to the Court.

164.7 In the matter of Mrs MW, the Applicant alleged that in the 21 November 2014 application to the Court, in which the Firm brought a further JR claim on Mrs MW's behalf, it was incorrectly stated that Mrs MW had "2 outstanding applications". This was not correct. The LTR application made on 2 July 2014 and further submissions of 6 July 2014 had been considered and refused on 8 July 2014. The first JR proceedings (8 July 2014) were refused on or about 2 October 2014. The second JR application (29 July 2014) were not active. All the submissions which had been made

were refused on or by 27 October 2014. The only outstanding representations as at 21 November 2014 were those made on 3 November 2014 which, as noted elsewhere, were in substantially the same terms as the submissions which had already been rejected. The JR application on 21 November 2014 failed to set out the history of JR applications and a proper history of the submissions which had been made and refused. It was notable that in this matter, the Judge specifically referred to his reliance on the Respondent's solicitors. For this reason, steps taken by the Respondent after 21 November 2014 had to be considered in the light of his knowledge of the importance the Court attached to the accuracy and fullness of the information provided by solicitors.

164.8 In the matter of Ms AZ, it was alleged that the JR application of 30 January 2015 made no reference to the application of 2 December 2014 (just two months earlier) either having been made or abandoned/dismissed. The Respondent knew about that application as he had received the file of papers from GA on or around 9 December 2014. As noted elsewhere, the Tribunal was satisfied that the Respondent was involved in issuing and drafting the JR application for Ms AZ, despite his Firm not being on the record. The Respondent had failed to mention a very important fact in the course of making a without notice application. The Tribunal found this particularly serious, given that from 21 November 2014 the Respondent should not only have been aware generally of his duty to the Court, but had been reminded of that duty in the matter of Mrs MW.

164.9 In four of the client matters under consideration, the Respondent had clearly failed to act in accordance with his duty of candour to the Court in making urgent, without notice applications. He had failed to place the full facts before the Court. The Applicant alleged that this conduct was reckless, although a finding of recklessness would not be necessary in order to prove the allegation. The Tribunal had not been addressed on the test for recklessness, but noted the test for recklessness, which was adopted in the disciplinary context in the case of Brett v SRA [2014] EWHC 2974 (Admin). "Recklessly" was settled as being settled, or satisfied:

> "…with respect to (i) a circumstance when he is aware of a risk that it exists or will exist and (ii) a result when he is aware that a risk will occur and it is, in circumstances known to him, unreasonable for him to take the risk"

as set out in R v G [2004] 1AC 1034.

164.10 Here, the Respondent was aware that unless care was taken to include a full history and explanation in an ex parte application there was a risk that the Court would not have the full facts and that the Court may therefore proceed on a misunderstanding of the true situation. As a solicitor involved in drafting and issuing JR/injunction applications, the Tribunal found it was completely unacceptable for the Respondent to take the risk of submitting incomplete information as the Respondent had duties to the Court which took precedence over the instructions of a particular client. The Tribunal was satisfied that with regard to this allegation, the Respondent had acted recklessly.

164.11 The breach of the duty to the Court was clearly sufficient to substantiate that there had been a breach of Principle 1. The Respondent's conduct would tend to diminish rather than maintain the trust the public placed in the Respondent and in the provision

of legal services and was therefore in breach of Principle 6. In taking substantial and unreasonable risks and failing to ensure that the Court had proper and full factual accounts available when considering the urgent applications, the Respondent had failed to act with integrity. As noted in relation to allegation 1.1, the relevance of Outcome 5.3 was unclear; there were no Court orders with which the Respondent failed to comply. The Tribunal was satisfied, however, that the Respondent had failed to achieve Outcomes 5.1, 5.2 and 5.6.

164.12 The allegation was proved, to the extent set out above, with regard to the client matters of Mr GL, Ms PZ, Mrs MW and Ms AZ, but not with regard to Ms T.

165. **Allegation 1.4 - The Respondent failed to follow correct Court procedures by failing to pursue judicial review claims and/or serve a Notice of Discontinuance following the grant of interim relief. This was contrary to Principles 1, 2, 6 and 7 of the Principles and he failed to achieve Outcomes 5.1, 5.2, 5.3 and 5.6 of the 2011 Code;**

165.1 Mr Tankel for the Applicant submitted that it was now accepted by the Applicant that in the Upper Tribunal there was no such form as a Notice of Discontinuance form. However, there were other ways in which proceedings could be brought to an end, for example, submitting a consent order if the case were not pursued to a contentious hearing. Mr Malik submitted that there had been "shifting goalposts" on this allegation and that it could not now be considered as meaning that a failure to file a Consent Order, for example, would support the allegation.

165.2 The Tribunal noted and accepted that the part of the allegation relating to failure to serve a Notice of Discontinuance would fail; there was no such procedure in the Upper Tribunal. However, the allegation was pleaded as an "either/or" allegation, so it would be sufficient for the Applicant to prove that the Respondent failed to follow correct Court procedures by failing to pursue JR applications.

165.3 The Tribunal noted and accepted Mr Malik's submission that cases which became "academic" should not be pursued. However, it was important that there was full transparency in determining whether a case had become "academic". The Respondent's position appeared to be that obtaining the injunction preventing removal was the main point of the JR application and that once the injunction was obtained, nothing else had to be done; it would simply be up to the Home Office to consider whatever outstanding submissions under paragraph 353 there might be. The Tribunal determined that "failing to pursue" JR proceedings encompassed matters such as failing to serve the proceeding and failing to ensure they were brought to a proper conclusion. There was a procedure, under Rule 17 of the Upper Tribunal Rules to do this, as the Respondent knew or should have known as he carried out work in the Upper Tribunal. That Rule provided that a case could be withdrawn by serving a "notice of withdrawal" (not a "notice of discontinuance") but that would not take effect unless the Upper Tribunal consented. That process allowed the Upper Tribunal to be aware of applications made and withdrawn. Such awareness was less likely if a case were simply not served or allowed to lie dormant until dismissed or struck out.

165.4 In the matters of Ms PZ and Ms AZ, the allegation was simply put on the basis that the Respondent had failed to serve a Notice of Discontinuance. As noted above, the allegation put in this way could not succeed. In the matters of Mr GL and Mrs MW it was alleged that the Respondent failed to serve the Claim Forms (of 23 January 2015 in the matter of Mr GL and both 8 July and 21 November 2014 in the matter of Mrs MW). The Respondent was not on record in the first or second of these matters. Although he was substantially involved in the proceedings, and should undoubtedly have ensured that the proceedings were properly served, there was an argument that technically he could not be criticised for not serving the proceedings as he was not on record. In the JR application for Mrs MW dated 21 November 2014, the Respondent was on the Court record as acting. The Tribunal had not taken into account the Order of Swift J, for reasons set out above and therefore had no direct evidence that the proceedings had not been served.

165.5 In these circumstances, whilst the Respondent's conduct could be taken into account with regard to other allegations, this allegation was not proved.

166. **Allegation 1.5 - The Respondent failed to co-operate with the Court by not responding to correspondence in a timely manner and not being able to answer specific queries in relation to the relevant files at the hearing of 18 May 2015. This was contrary to Principles 1, 2, 6 and 7 of the Principles and the Respondent failed to achieve Outcomes 5.3 and 5.6 of the 2011 Code;**

166.1 The Applicant's position with regard to this allegation was that Respondent's response to being required to attend before the Upper Tribunal and account for the matters fell far short of the standard to be expected of a solicitor. It was alleged that the Respondent did not respond promptly, did not respond at all until pressed to do so, and ultimately attended the hearing entirely unprepared to assist the Upper Tribunal with the task it had indicated it would be carrying out. As observed by the Upper Tribunal, "at best this was an opportunity which has been conspicuously rejected; at worst the approach adopted was a continuation of the obstructive approach reflected in the court papers on the five cases we have reviewed. The end result is that the specific questions that we had identified and were seeking answers to were not addressed" (*Hamid* Judgment).

166.2 In considering this allegation, the Tribunal took into account the Respondent's evidence. This included a letter of 14 November 2016 in which he stated that he had, "believed that the hearing was for directions and the substantive hearing would be at a later date". The Applicant's position was that the letter of 6 May 2015 gave no basis whatsoever upon which the Respondent could reasonably or legitimately have believed that the *Hamid* hearing of 18 May 2015 would be a preliminary hearing. The letter referred to only one hearing date, and plainly stated that the relevant individuals were "required to attend on that date to show cause why you should not be dealt with in accordance with the principles set out in Hamid *[...]*".

166.3 The Tribunal noted and found that the letter of 6 May 2015 did not call for a response. When there was a further letter, on 13 May 2015, which requested a response, the Respondent answered. He confirmed that he would attend the hearing. The failure to respond to the letter of 6 May 2015 did not indicate any lack of co-operation with the Court.

166.4 It was correct that the Respondent, through his advocate on 18 May 2015, indicated that the Respondent could not give specific information in relation to the client files in issue. This was highly regrettable. A careful solicitor would have checked with the Court what exactly was expected at the hearing and/or taken advice from counsel or a solicitor with experience in this area. The *Hamid* Hearing procedure was little over two years old by the time of the Respondent's *Hamid* Hearing and there was no rule, practice direction or similar to indicate how such proceedings would operate. Whilst there was nothing in the correspondence from the Court to indicate the hearing on 18 May would be a preliminary or directions hearing, nor was there anything spelling out exactly what was expected of the Respondent or the Firm. It was of concern that the Respondent appeared to have allowed the Court to believe that a Mr H had been involved in the cases. The Respondent, as already noted, had been directly involved in the five cases in question and could have reacquainted himself with the facts before the hearing or, at least, taken the files to Court with him. However, the Applicant had not satisfied the Tribunal that the Respondent should have taken the files to Court on 18 May 2015, and that the Respondent knew that. In those circumstances, the Tribunal was not satisfied that the allegation had been proved to the required standard.

167. **Allegation 1.6 - The Respondent misled the Court at the hearing of 18 May 2015 by stating himself, and through his representative, that the reason for Mr Javid's non-attendance at that hearing was Mr Javid's ill health. This was contrary to Principles 1, 2 and 6 of the Principles and the Respondent failed to achieve Outcomes 5.1 and 5.2 of the 2011 Code.**

167.1 It was incontrovertible, in the light of the transcript of the *Hamid* Hearing, that the Respondent and his advocate had indicated to the Court that Mr Javid had not attended due to ill health. The statement of Mr Javid indicated that he had not been ill on the relevant date. Rather, there was evidence that Mr Javid either did not want to attend, or did not think he needed to do so. There was, in particular, an email from Mr Javid to the Respondent on 13 May 2015, stating that he would not be attending the Court due to prior commitments. It was the Applicant's position, therefore, that the Respondent was not surprised when Mr Javid did not appear at Court, as it had previously been made clear that Mr Javid was not planning on attending. It was also submitted by the Applicant that the only mention of the possibility of Mr Javid being ill before the Respondent provided this explanation to the court was the conjecture of a Mr Liu who was himself calling the Respondent to ask about Mr Javid's whereabouts (and until this telephone call, had understood Mr Javid to be at Court).

167.2 Against this, the Tribunal noted the evidence of the Respondent about a heated discussion on 15 May 2015, the working day before the *Hamid* Hearing, which he said concluded with Mr Javid accepting that he would attend Court on 18 May. There was nothing in Mr Javid's statement about whether or not there had been any such discussion. In those circumstances, there was nothing to gainsay the Respondent's evidence that he thought Mr Javid would attend. Mr Javid would not have been able to contradict the evidence of the Respondent about the telephone call from Mr Liu on the morning of 18 May.

167.3 It was correct that there was no definite statement by Mr Liu that Mr Javid was ill; he speculated on this, but given that Mr Javid sometimes suffered with hay fever and appeared ill, the speculation was not entirely without foundation. On reading the

transcript of the hearing, it appeared that the information that Mr Javid was ill was given to the Court in more certain terms than properly justified. However, the Tribunal was not satisfied to the required standard that this was not due to some misunderstanding between the Respondent and his advocate. The true reason from Mr Javid's failure to attend – when the Court had indicated it expected him to do so – was not that Mr Javid was ill. Mr Javid may have failed to attend because he did not want to do so, preferred to fulfil other commitments or did not think it necessary to attend. None of these would have been attractive scenarios to put before a Court dealing with a *Hamid* Hearing. The Tribunal noted that the Respondent was probably reluctant to criticise his business partner before the Court. It was possible there had been a misunderstanding about whether Mr Javid was ill. This created a reasonable doubt on the Applicant's case that the Respondent had misled the Court. Accordingly, the allegation was not proved.

168. **Dishonesty was alleged with respect to the allegation at paragraph 1.6 although dishonesty was not pleaded as an essential ingredient to prove allegation 1.6.**

168.1 As allegation 1.6 had not been proved, the linked allegation of dishonesty was not found proved.

Previous Disciplinary Matters

169. There were no previous disciplinary matters in which findings had been made against the Respondent.

Mitigation

170. The Tribunal adjourned after announcing its findings, to allow Mr Malik time to take instructions before making submissions in mitigation.

171. Mr Malik told the Tribunal that whilst the Respondent could not agree with the Tribunal's findings, given the nature of his defence, he respected the decision. Given the nature of the allegations, in particular allegations 1.2 and 1.3, the Respondent acknowledged that the Tribunal might consider striking off or suspension as the sanction, if the allegations were proved.

172. Mr Malik acknowledged that, as set out in the Tribunal's Guidance Note on Sanction, the most significant purpose of sanction in the Tribunal was the maintenance of the reputation of the profession, although there would also be an element of punishment. The approach to sanction set out in Fuglers and others v SRA [2014] EWHC 179 was common sense; the Tribunal should assess the seriousness of the misconduct, consider the purpose of sanction and then choose the sanction which was most appropriate. This last part of the process would involve a qualitative assessment of the case, and consideration of the proportionality of the sanction.

173. In assessing the seriousness of the misconduct, the Tribunal should note that this was not a case where the trust of any client had been breached. The Respondent had not sought or received any immediate financial gains. It was submitted that the Respondent may have been misguided and he had been found to have acted inappropriately. However, his motivation had been to help his clients; he had liked

helping people and his good deeds were recognised within the Chinese community, for example on WeChat, a social network used by many Chinese people. The Respondent had been proud of that recognition. The Respondent had wanted to help, not hinder, his clients. With regard to whether the conduct had been deliberate, Mr Malik could not go behind the Tribunal's finding that there had been systematic misconduct. Whilst any systematic misconduct would tend to increase the severity with which the Respondent was viewed, it was submitted that this Respondent's misconduct was at the lower end of the spectrum. Only five out of about 40 cases had been brought into issue as manifestations of some deliberate misconduct. Mr Malik had not yet seen the Tribunal's detailed reasons but, it was submitted, as a matter of logic misconduct in two cases would not be "systematic"; a bare minimum of three cases would be needed to establish there was a "system". Only four or five cases had caused concern, so this case could be viewed as in a different category to those where many instances of misconduct were found.

174. No dishonesty had been alleged or found, albeit the Tribunal had found a lack of candour on the Respondent's part. The matters did not involve the commission of any criminal offence. Whilst there had been repetition, it was limited and the relevant cases had been scattered over a period of about 18 months. It was submitted that there was no direct relationship between the cases in issue. The clients had been vulnerable, and the Respondent had tried to help them. It was submitted that the Respondent's instincts had been noble, even if he had gone about matters in the wrong way.

175. The Respondent had not misled the regulator or concealed his wrongdoing. There had been no suggestion that the Respondent had been uncooperative or obstructive during the investigation.

176. Mr Malik told the Tribunal that the Respondent's Firm had closed on 31 December 2015 for two main reasons. Firstly, the Respondent had had conditions imposed on his Practising Certificate arising from the matters which had been investigated. Secondly, because of the investigation, the Firm could not obtain professional indemnity insurance. Mr Malik told the Tribunal that since that time the Respondent had not practised as a solicitor. He lived with his partner and had used his savings. Mr Malik told the Tribunal that the Respondent's medical condition had not affected his conduct, but his physical and mental health had deteriorated since the investigation. It was submitted that this was to a greater extent than would normally be expected. Tribunal proceedings were stressful, but the impact on this Respondent was marked. Mr Malik submitted that the Tribunal may have found the Respondent to be a nervous witness; the Respondent's instructions were that he was not a nervous person a few years ago. It was submitted that the Tribunal should take into account the Respondent's deterioration. Further, he had in effect already served an 18-month suspension as he had not worked since the Firm closed.

177. Mr Malik submitted that it was likely that the Tribunal would consider striking off the Respondent, given that the Hamid issues were a "hot topic", there had been some attention given to the case in the legal press, the level at which the allegations had been pitched and that the complaint to the Applicant had been made by a High Court Judge. Against that, the Tribunal should consider that there were only four cases in which specific misconduct had been found, there was no dishonesty, no taking

advantage of vulnerable clients and no financial gain. There was a sense in which the Tribunal could conclude that the Respondent had noble instincts but had been misguided and handled the cases in an unacceptable way. It was submitted that the Tribunal could consider how to address the Respondent's failures in a way which would give him the opportunity to learn from his mistakes. Where dishonesty was found in a case, the Tribunal might well conclude that such misconduct could not be rectified. Other types of misconduct could attract a sanction which would allow for the Respondent to learn and correct the misconduct.

178. It was submitted that if the Tribunal adopted that approach, an immediate suspension of six to 12 months might be appropriate, perhaps coupled with a further one-year suspended suspension, and conditions on the Respondent's practise. These could last indefinitely. It was submitted that the conditions could be along the lines of the conditions which had been imposed by the Applicant, including: not allowing the Respondent to carry out judicial review work, in particular in immigration cases, or injunctions in immigration matters; working as a solicitor only in employment approved by the Applicant; and immediately informing any actual or prospective employer of these conditions and the reasons for the them. Mr Malik submitted that the Respondent was well aware that if he avoided being struck off, it would be by a whisker.

179. Mr Malik indicated that his client wished to address the Tribunal briefly. The Tribunal noted that this was unusual where a Respondent was represented, but he was free to do so if he wished. In the event, the Respondent found it hard to speak and Mr Malik therefore passed on the Respondent's apology for what had happened.

Sanction

180. The Tribunal had regard to its Guidance Note on Sanction (December 2016), to all of the facts of the case and the mitigation on behalf of the Respondent.

181. The Tribunal assessed the seriousness of the misconduct in this case by considering the Respondent's culpability, the harm caused and the presence of any aggravating or mitigating factors.

182. In considering culpability, the Tribunal considered the Respondent's motivation for what he had done. The Tribunal found that the Respondent had been motivated by a desire to obtain and keep a good reputation in his community. He was not acting entirely altruistically, as he was aiming to build up his business by obtaining referrals. The Respondent put himself in a position to obtain apparently good results where others, who abided by the rules of professional conduct, could not. His apparent success in getting his clients' removal deferred, and securing their release from detention, had been achieved because he had failed to be candid with the Court, had made late submissions which had been substantially devoid of merit and had then failed to pursue the proceedings to a proper conclusion. He had remained "under the radar" of the Court on some applications, where he had drafted the papers but did not go onto the record.

183. The Respondent's actions were planned rather than spontaneous. He had in some cases deliberately delayed making submissions, and had written to various Home Office departments, which may well have added to the confusion. The failure to refer to Ms AZ's criminal conviction was particularly serious. The Tribunal had found that the Respondent had engaged in a systematic course of conduct designed to undermine the immigration system, amounting to a persistent abuse of the process of the Court; the Respondent's conduct could not be characterised as being an error on just one or two occasions. A solicitor dealing with Court proceedings was in a position of trust, as the Court relied on that solicitor to be candid and to deal with proceedings properly. The Respondent had breached that trust. The Respondent was solely responsible for the files in question and had direct control of the advice given and steps taken. Whilst the Respondent was not especially experienced, he was not inexperienced, and by the time of the events in issue was in his late 30s.

184. The harm caused by the Respondent's misconduct was very serious. It had damaged the reputation of the profession, had undermined the justice system (particularly the part dealing with immigration matters) and the public purse in allocating resources to claims which were not meritorious. Further, he had given his clients false hope about the merits of their applications to remain in the UK. It was clear from the Hamid case and others that there was a concern on the part of the judiciary about the immigration system being undermined by solicitors and others. The Tribunal had found that the Respondent had departed from the standards of integrity, probity and trustworthiness rightly expected of a solicitor in his conduct of ex parte applications in particular. Judges should be able to rely on solicitors to make applications properly, giving full and proper information, and then pursue the matter in accordance with the appropriate rules. The Respondent had kept his Firm's name off some of the Court proceedings, but this did not mean he could avoid responsibility for those cases.

185. The Tribunal noted that the Respondent had not misled the regulator and had engaged with the investigation process and the proceedings before the Tribunal. Indeed, the Respondent had been keen for the hearing to take place at the earliest realistic date. No dishonesty had been alleged, but the Respondent had lacked integrity. The conduct had been repeated, in a period of about a year in five different client matters. As the Respondent's evidence was that he had had about 46 immigration cases, the matters in issue represented about 10% of the immigration caseload. It was not known what proportion of the cases had involved JR/injunctions. Whilst there had been no problems arising in the Respondent's other immigration cases, five cases which had caused the judiciary to express concerns represented a significant proportion of the Respondent's workload. The Respondent had not been misled by any third parties, although he may have been too trusting that his clients had reasonable grounds for remaining in the UK. The Respondent had not made open or frank admissions and had not shown any genuine insight. Throughout the hearing, he had maintained the fiction that he had not drafted some of the JR applications and had maintained the attitude that he did not have any objective duty to give unpalatable advice; for example by advising clients that whilst they could make an application, it would not improve their proper prospects of remaining in the UK in the long term.

186. Overall, the Respondent's misconduct had been at the upper end of the scale of seriousness. As noted in the Tribunal's Guidance Note on Sanction, the case of Bolton v The Law Society [1994] 1 WLR 512, set out the fundamental principles and purpose of sanctions by the Tribunal, as follows:

> "Any solicitor who is shown to have discharged his professional duties with anything less than complete integrity, probity and trustworthiness must expect severe sanctions to be imposed upon him by the Solicitors Disciplinary Tribunal."
>
> "… a penalty may be visited on a solicitor… in order to punish him for what he has done and to deter any other solicitor tempted to behave in the same way…"
>
> "… to be sure that the offender does not have the opportunity to repeat the offence; and…"
>
> "… the most fundamental of all: to maintain the reputation of the solicitors' profession as one in which every member, of whatever standing, may be trusted to the ends of the earth… a member of the public… is ordinarily entitled to expect that the solicitor will be a person whose trustworthiness is not, and never has been, seriously in question. Otherwise, the whole profession, and the public as a whole, is injured. A profession's most valuable asset is its collective reputation and the confidence which that inspires".

187. Further, it was stated,

> "… It often happens that a solicitor appearing before the tribunal can adduce a wealth of glowing tributes from his professional brethren. He can often show that for him and his family the consequences of striking off or suspension would be little short of tragic. Often he will say, convincingly, that he has learned his lesson and will not offend again… All these matters are relevant and should be considered. But none of them touches the essential issue, which is to the need to maintain among members of the public a well-founded confidence that any solicitor whom they instruct will be a person of unquestionable integrity, probity and trustworthiness… The reputation of the profession is more important than the fortunes of any individual member…"

188. The personal mitigation offered on behalf of the Respondent related to the impact of these proceedings on his health and on his financial position, which was precarious. In this instance, the Respondent had not produced any testimonials although the value of those in cases of such seriousness would be limited. The Tribunal noted and accepted the Respondent's simple apology for his misconduct. The Tribunal understood that the Respondent had undergone a period, since the Firm closed, which was akin to a period of punishment or suspension. The Tribunal had a duty in imposing sanction to maintain the reputation of the profession as one whose members could be trusted "to the ends of the earth".

189. In considering which of the sanctions best reflected the seriousness of the misconduct and the need to preserve the reputation of the profession, the Tribunal noted that any sanction may well contain a punitive element, although that was not the primary purpose of the sanction. In this instance, the Tribunal considered that a sanction which could act as a deterrent to other members of the profession tempted to make court applications which lacked candour or amounted to an abuse of the court system was appropriate.

190. The Tribunal noted that Mr Malik had, properly, accepted that this was not a matter in which a financial sanction was appropriate. The Tribunal found that "no order", a reprimand and/or a fine were indeed not sufficiently grave sanctions to reflect the misconduct in this case.

191. Mr Malik had urged on the Tribunal consideration of imposing a suspension, perhaps combined with a restriction on the Respondent's practice at the end of the suspension. This was put on the basis that the Respondent had acted from noble intentions and could learn from his errors. However, the Tribunal was very concerned that due to his lack of insight into what he had done wrong the Respondent would remain a hazard to the profession and to the public. As the Respondent had engaged in a course of conduct which had undermined the justice system, it was hard to contemplate that the public and profession would be able to trust him as a solicitor. Rather than showing insight he had stuck to evidence which lacked credibility. His answers betrayed a lack of comprehension of his role as a solicitor in the wider context of upholding the rule of law and the proper administration of justice. He had not demonstrated that he had understood and learnt lessons and there was no reason to think he would do so at this late stage. The Respondent had not shown the objectivity or the resilience a solicitor needed to be able to advise clients against certain courses of action. Whilst he may have had a partially altruistic motivation, the Respondent had been motivated by the desire to achieve successes for his clients (however obtained) which would enhance his reputation and his business. In addition to considering whether suspension for a period would be appropriate, the Tribunal considered what restrictions, if any, could enhance the trust the public would be able to place in the Respondent. The Tribunal considered that as this was a case in which the Respondent had circumvented the relevant rules and processes – in particular by "running" JR cases on which he remained off the record – there could be little confidence that he would adhere to a restriction not to be involved in urgent immigration cases.

192. Whilst the Tribunal considered the option of suspension, it concluded that this was not sufficient to protect the public or the reputation of the profession given the significant misconduct in this case, whether or not restrictions could be imposed at the end of the period of suspension.

193. On the facts of this case, and conscious of the purpose of sanction set out in Bolton, the Tribunal concluded that the reasonable and proportionate sanction was to strike off the Respondent.

Costs

194. Mr Tankel for the Applicant made an application that the Respondent should pay the Applicant's costs of the proceedings and referred to the Applicant's schedules of

costs. The first of these calculated costs to the date of issue at £24,048.06, which included investigation costs of £9,215.26, the fees of two counsel in drafting the Rule 5 Statement totalling £8,054.17, solicitors' fees calculated at £145 per hour, plus VAT where applicable. The second schedule, covering work done from 10 April up to and including the hearing, showed a fixed fee payable to Capsticks LLP of £10,000 plus VAT and counsel's fees for of £12,885 plus VAT, being a total of £27,462. The latter schedule showed the number of hours work but no hourly work (as it was put forward as a fixed fee). The Tribunal noted that the number of hours worked within the fixed fee equated to an hourly rate of around £140 per hour.

195. Mr Tankel submitted that whilst the hours spent by Capsticks might include some duplication, there was no practical impact on the amount of fees as these were on a fixed fee. Mr Tankel told the Tribunal that there may have been duplication as other counsel had drafted the Rule 5 Statement. Mr Tankel told the Tribunal that he had calculated the value of the work he had done which was not directly linked to preparation for or conduct of this hearing at £4,885 plus VAT; a significant proportion of that may have involved duplication of work in reading in etc. which the other counsel may not have needed. Mr Tankel told the Tribunal that at the CMH in April, the Tribunal had been told that the Applicant's counsel was not available during August, and had asked for the case to be listed in September. The case had been listed in August, and Mr Tankel had then been instructed.

196. Mr Tankel submitted that the Applicant would prefer for a normal costs order to be made, not one which could not be enforced without further permission of the Tribunal. Such orders added to the Applicant's administrative burden in checking a Respondent's ongoing financial position. Mr Tankel accepted that the Respondent's financial statement showed that he was of limited means.

197. Mr Malik noted that some of the allegations had not been proved, and submitted that, in accordance with Broomhead v SRA [2014] EWHC 2772 (Admin) ("Broomhead") the Tribunal should consider whether the Respondent should pay the costs in relation to those allegations which he had successfully defended. Mr Malik noted that allegation 1.6 had been dismissed by the Tribunal before the conclusion of the Respondent's evidence which brought into question the propriety of bringing that allegation on the evidence available to the Applicant. Mr Malik submitted that allegations 1.1 to 1.4 were linked, being based on substantially the same facts and matters, and would generally stand or fall together. However, not all of those allegations had been proved and it may be that if the Tribunal assessed the evidence as weak it should give the Respondent some credit for that in assessing costs.

198. Mr Malik accepted that a fixed fee of £10,000 plus VAT appeared reasonable for work of this kind. There may have been some overlap with the earlier work, but the fixed fee was modest. Mr Malik noted Mr Tankel's concession that there was some duplication in the work he had done and that of previous counsel. Mr Malik submitted that the decision to list the case in August was made by the Tribunal. The Respondent had been entitled to submit that he wanted the case to be heard as soon as practicable. The Respondent should not be fixed with the Applicant's additional costs occasioned by the original counsel's unavailability.

199. Mr Malik referred to the Respondent's statement of means which, he submitted, was self-explanatory and showed that the Respondent was impecunious. The Respondent was at risk of insolvency. If the Respondent were not struck off, his ability to practise would be ended if he were made bankrupt. However, if the Tribunal were confident that the Applicant would not act unreasonably in pursuing whatever costs were ordered then the question of an order not to be enforced without further permission would not be pursued.

The Tribunal's Decision

200. In considering the appropriate costs order, the Tribunal assessed the reasonable and proportionate costs of the case, considered whether there should be any reduction because not all of the allegations had been proved and then took into account the Respondent's ability to pay.

201. The overall costs set out on the Applicant's two schedules totalled over £51,500. This was a document-heavy case and this figure was not obviously disproportionate to the issues and complexity of the case.

202. The Tribunal noted that the decision to proceed with the hearing in August 2017, which enabled the Tribunal to deal with the case within its target date for conclusion, had been a decision made by the Tribunal. This had, in practice, meant that the Applicant had to instruct alternative counsel. Mr Tankel had, very properly, conceded that a significant proportion, but not all, of the figure of £4,885 plus VAT which he had calculated represented duplication of counsels' fees. The Tribunal therefore decided to reduce the overall reasonable costs by £5,000 (including VAT) to reflect the overlap. There was no reason for the Respondent to be fixed with the additional costs involved.

203. The Tribunal was satisfied that the rates charged and work done, including the costs of the investigation, were broadly reasonable after that deduction was made. However, the Tribunal noted that allegations 1.5 and 1.6 had not been proved. These matters were less complex than allegations 1.1 to 1.4 and had taken less time in the hearing and, it could be presumed, in the preparation of the case. The Tribunal decided, in accordance with Broomhead, to reduce the costs by a further 10% to reflect the fact that these allegations had not been proved.

204. The Tribunal concluded that the overall costs which were reasonable in this case totalled in the region of £40,000, after the deductions noted above.

205. The Tribunal then took into account the Respondent's ability to pay, as disclosed on his financial statement. The Tribunal was aware that any costs not paid by the Respondent would have to be met by the profession but noted that the Respondent had very limited ability to pay. The allegations proved against the Respondent were very serious, and it was right that he should be ordered to pay something. Taking into account all of the circumstances and the Respondent's financial position, the Tribunal ordered the Respondent to pay £10,000 towards the overall reasonable costs of £40,000.

206. The Tribunal decided that there was no need to make that order unenforceable without its further permission. Such orders meant that the Applicant had to identify a change in a Respondent's financial circumstances before it could even seek permission to enforce, which added to the administrative burden and to costs, if the Applicant had to make an application. The Tribunal would expect the Applicant to proceed reasonably and proportionately in seeking to enforce the costs order, for example by reaching a workable arrangement with the Respondent at the appropriate time to pay the costs by instalments.

Statement of Full Order

207. The Tribunal Ordered that the Respondent, VAY SUI IP, solicitor, be STRUCK OFF the Roll of Solicitors and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £10,000.00.

Dated this 4th day of October 2017
On behalf of the Tribunal

J. C. Chesterton
Chairman

APPENDIX

Extracts from the SRA Principles 2011 and the Code of Conduct 2011

Principles

There are ten mandatory Principles which apply to all those regulated by the SRA, as follows.

You must:

1. Uphold the rule of law and the proper administration of justice;

2. Act with integrity;

3. Not allow your independence to be compromised;

4. Act in the best interests of each client;

5. Provide a proper standard of service to your clients;

6. Behave in a way that maintains the trust the public places in you and in the provision of legal services;

7. Comply with your legal and regulatory obligations and deal with your regulators and ombudsmen in an open, timely and co-operative manner;

8. Run your business or carry out your role in the business effectively and in accordance with proper governance and sound financial and risk management principles;

9. Run your business or carry out your role in the business in a way that encourages equality of opportunity and respect for diversity;

10. Protect client money and assets.

Code of Conduct 2011
Outcomes:

5.1 You do not attempt to deceive or knowingly or recklessly mislead the court;

5.2 You are not complicit in another person deceiving or misleading the court;

5.3 You comply with court orders which place obligations on you;

5.6 You comply with your duties to the court.

Immigration Rules

"353. When a human rights or protection claim has been refused or withdrawn or treated as withdrawn under paragraph 333C of these Rules and any appeal relating to that claim is no longer pending, the decision maker will consider any further submissions and, if

rejected, will then determine whether they amount to a fresh claim. The submissions will amount to a fresh claim if they are significantly different from the material that has previously been considered. The submissions will only be significantly different if the content:

(i) Had not already been considered; and

(ii) Taken together with the previously considered material, created a realistic prospect of success, notwithstanding its rejection. This paragraph does not apply to claims made overseas.

353A. …an applicant who has made further submissions shall not be removed before the Secretary of State has considered the submissions under paragraph 353 or otherwise."

The Tribunal Procedure (Upper Tribunal) Rules 2008 (as in force 2015)

"17. (1) Subject to paragraph (2), a party may give notice of the withdrawal of its case, or any part of it –

(a) by sending or delivering to the Upper Tribunal a written notice of withdrawal; or

(b) Orally at a hearing.

(2) Notice of withdrawal will not take effect unless the Upper Tribunal consents to the withdrawal except in relation to an application for permission to appeal…"