SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 12075-2020

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

SYED WASIF ALI Respondent

Before:

Ms A. E. Banks (in the chair)
Mr W. Ellerton
Dr A. Richards

Date of Hearing: 18 August 2020

Appearances

Benjamin Tankel, barrister of 39 Essex Chambers, 81 Chancery Lane, London WC2A 1DD instructed by Capsticks Solicitors LLP of 1 St. George`s Road, London, SW19 4DR, for the Applicant.

Geoffrey Williams QC, barrister of Farrar's Building, Temple, London, EC4Y 7BD for the Respondent.

JUDGMENT

Allegations

1. The Allegations were that between 2015 and 2017, while in practice as a solicitor at Harrow Solicitors (the "Firm"), the Respondent:

1.1. Brought claims which breached his professional obligations not to make submissions that he did not consider, or ought not to have considered, were properly arguable, and in doing so breached any or all of Principles 1, 2 and 6 of the SRA Principles 2011 ("the Principles"), and failed to achieve any or all of Outcomes 5.5 and 5.6 of the SRA Code of Conduct 2011;

1.2. Brought claims which were an abuse of process of the Court, and in doing so breached any or all of Principles 1, 2 and 6 of the Principles;

1.3. Carried out immigration work, by making immigration applications to the Home Office and applications for judicial review to the Court, which had no legitimate purpose in that they had no prospect of his client succeeding, and in doing so breached any or all of Principles 2, 4 and 6 and failed to achieve Outcome 1.5 of the SRA Code of Conduct 2011;

1.4. Failed adequately to advise clients as to the poor merits of their claims, and in doing so breached any or all of Principles 2, 4 and 6 and failed to achieve Outcome 1.5 of the SRA Code of Conduct 2011;

1.5. Failed to supervise adequately the work of unqualified case handlers, and in doing so breached Principle 8 and failed to achieve Outcomes 7.7 and 7.8 of the SRA Code of Conduct 2011.

1.6. Between approximately November 2017 and August 2019, the Respondent was party to applications for British citizenship, and consequential applications for leave to remain, which bore the hallmarks of being an abuse of the immigration system, and in doing so he breached Principles 2 and 6 of the Principles.

2. Allegations 1.1 to 1.3 above were pleaded on the basis that the Respondent knew or recklessly disregarded the fact that his approach to immigration applications and judicial review was impermissible. In the alternative, the Applicant alleged as an aggravating factor that the Respondent was manifestly incompetent. However, neither recklessness nor manifest incompetence were necessary elements of Allegations 1.1 to 1.3.

3. Allegation 1.6 was pleaded on the basis that, in the circumstances known to him, the Respondent recklessly took the risk that he was facilitating an abuse of the immigration system. However, recklessness was not a necessary element of Allegation 1.6.

The case proceeded under the Solicitors (Disciplinary Proceedings) Rules 2019.

Factual Background

4. The Respondent was admitted to the roll on 15 November 2007. At the time of the hearing he held a practising certificate free from conditions. The Respondent was in sole practice at the Firm, and was also the COLP and COFA. The Firm primarily undertook immigration work.

The Hamid hearing

5. The Courts had devised the so-called "Hamid procedure" and "Hamid hearings", after the case of R (Hamid) v Secretary of State for the Home Department [2012] EWHC 3070 (Admin) in which it was first used. In that case the Court held that "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".

6. The Hamid procedure was used where the courts suspected abusive conduct on the part of immigration practitioners, and involved requiring them to attend a public hearing at court in order to explain their conduct to a judge.

7. On 11 June 2018, the Respondent had attended a Hamid hearing before Mr Justice Lane (President of the Upper Tribunal) and Upper Tribunal Judge Lindsley. On 24 August 2018, Mr Justice Lane referred the Respondent's conduct to the SRA. A forensic investigation report ("FIR") was prepared on 29 April 2019.

8. Between January 2017 and March 2018, the Firm brought 36 immigration judicial review claims. Of these, 11 were certified as being totally without merit and 9 were not admitted as they were out of time. The Applicant relied on 6 specimen client cases as the basis of its case.

9. The clients were migrants who faced the prospect of being removed to their countries of origin after several years in the UK. All of the cases were said to involve an unlawful interference in the applicant's private and or family life. Some of the cases, including the specimen case below, involved the possible deportation of young children.

10. The Respondent would make an immigration application, and at the same time would usually also apply for a fee waiver. The Applicant's case was that the applications were hopeless, poorly particularised and badly drafted. The applications almost always made reference to Article 5 of the European Convention on Human Rights (freedom from administrative detention except in certain circumstances), even though none of the clients was said to face the threat of detention upon return to their country of origin. The Respondent would often make subsequent applications, or submit further representations, on the same grounds.

11. In respect of the applications for a fee waiver, the Respondent attached little or no supporting evidence, resulting in their rejection. At his Hamid hearing, the Respondent said that this was because his clients were often working illegally in the UK in breach of immigration law, and were concerned that disclosing bank statements would reveal to the Home Office that they were doing so.

12. As an alternative to having to pay a fee, the Respondent advised his clients that they could pursue their immigration application via the judicial review process. The Applicant's case was that instead of sending a pre-action protocol letter which challenged a decision to refuse an immigration application, the Respondent used the pre-action protocol letter to make a substantive immigration application. The Home Office would reject the pre-action "challenge" and the Respondent then sought to judicially review the Home Office's response to the pre-action protocol letter. The judicial review claims reiterated the same generic submissions contained in the pre-action protocol letters. They did not identify any public law error in a decision of the Home Office. The applications for judicial review were often brought outside the three-month limitation period.

13. In each of the cases, application for permission to bring a judicial review was refused, and the client was ordered to pay the Home Office's costs. In some cases applications were then filed to the Court of Appeal.

14. In the judgment in respect of the Respondent's Hamid hearing, the following comments, which the Tribunal considered particularly relevant, were made:

> "8. These cases display a number of disturbing features. In almost all, the decision said to be challenged in the claim form and grounds is the Home Office's response to the applicant's pre-action protocol letter. That PAP response is not, as is obvious, the decision with which the judicial review application is concerned. The PAP response is a reply to a letter from the applicant, which puts the Secretary of State on notice of the applicant's alleged concerns regarding a particular decision (or failure to take a decision). A PAP response which defends the position taken in a decision cannot (without more) constitute a discrete decision, which can be separately challenged by judicial review.
>
> 9. Any solicitor specialising in immigration law would be expected to know this. In any event, it would have become apparent, following receipt of the first judicial review decision from the Upper Tribunal, making this point plain, that the approach taken Harrow Solicitors was fundamentally misconceived."
>
> "12. The second general and disturbing feature of the applications is that they are poorly particularised. The No [sic] attempt is made to grapple with the provisions of Part 5A of the Nationality, Immigration and Asylum Act 2002 or with the relevant case law on Article 8 of the ECHR."
>
> "15. In five of the cases that were judged by the Upper Tribunal to be totally without merit, Harrow Solicitors filed an application for permission to appeal to the Court of Appeal. At least, that is what the covering letters indicated. In each case, however, the grounds of application for permission to appeal were no more than a replication of the grounds of challenge that accompanied the application for permission to bring judicial review proceedings. No attempt whatsoever was made to engage with the reasoning of the Upper Tribunal Judge, notwithstanding that, by virtue of section 13 of the Tribunals, Courts, and Enforcement Act 2007, a right of appeal lies to the Court of Appeal against a decision of the Upper Tribunal "only on a point of law arising from a

> decision made by the Upper Tribunal". In none of these cases was there any indication that any thought had been given to whether it was in any sense appropriate to apply for permission to appeal to the Court of Appeal. It is hard to see how this is anything other than an abuse of process."
>
> "23. A case worker, Mr Ali's wife, had prepared the grounds but Mr Ali said that he was not in any way blaming her. In some of the cases, Mr Ali had read the grounds, before submission, but did not check the whole of the bundle in question. We were left unsure of Mr Ali's understanding of his duty to supervise unqualified staff."

15. The Respondent had provided a witness statement for the Hamid hearing and made the following comments which the Tribunal found particularly relevant:

> "4. I realise my mistakes and apologise for filing judicial reviews out of time, drafting and filing of substandard judicial reviews.
>
> 5. I do not have any substantive point to argue against the feedback which I have received from Hon. Justice Mr Lane and therefore apologise unreservedly for my mistakes as stated in my letter dated 21st May, 2018.
>
> 6. I further confirm that at no point of time I. meant to be abusive towards the honourable court and the judiciary."
>
> 8. I have realised my mistake upon receiving Hon. Mr Justice Lane letter and immediately stopped filing of further judicial reviews until I have addressed all the points raised by Hon. Mr Justice Lane.
>
> 9. I am a strong believer in the Judiciary, law and regulations of the United Kingdom when safeguards the rights of people from being breached or denied. My intention in filing Judicial Reviews was always to plead to get fair decisions for my clients.
>
> 10. After receiving the letter of the Hon. Mr Justice Lane, I have immediately suspended filing any further judicial review cases. I will be filing future judicial review only if there is merit in the case. I will be taking assistance of Counsel / Barristers to assess the merit of the all future judicial reviews before being sent to the tribunal or court by Harrow Solicitors."

Exemplified case – SKJ

16. SKJ, his wife, and two children were over stayers in the UK. They had no freestanding right to remain in the UK but sought to argue that they and their children had been here so long that to remove them back to India would breach their right to private and family life in the UK. SKJ was the lead applicant.

17. Between 14 April 2014 and 9 July 2015, SKJ had made three unsuccessful applications for leave to remain in the UK, one of which had also resulted in an unsuccessful appeal to the First Tier Tribunal. These applications were not lodged by the Firm.

18. On 30 July 2015, the Respondent recorded the following in an attendance note:

> "Client came with reference of my existing client. Attended by way of an appointment, seeking immigration advice on his immigration matter. I explained this is a private law firm and we are not legal aid solicitors and legal aid Solicitors would be more appropriate. He was referred to myself by an existing client and requested me to represent his immigration matter.
> He presented some of his documents related to immigration.
>
> Advised him to submit further information in support of immigration matter, passport copy, Home Office documents and current address. I explained the requirement and condition for applying the application form FLR (FP) under Human Rights Article 5, 8 and paragraph 276 ADE (iv) of the Immigration Rules.
>
> FEE
> An estimated fee of £1000 was quoted to the client. He confirmed that he cannot afford full fee payment and requested to pay in instalment."

19. On the same date, the Respondent submitted an FLR(FP) application on behalf of SKJ. On 21 September 2015, the Home Office returned the application as invalid on the grounds that it did not include the correct fee and that there was insufficient evidence to qualify for a fee waiver.

20. On 21 November 2015, the Respondent wrote to the Home Office with a new application and request for fee waiver. In the covering letter, he submitted that his clients were destitute and had no bank account in the UK. The Respondent adduced no new evidence but wrote:

> "Please note that our client has no bank account in the UK. They are suffering from painful life. They are not claiming public recourse funds.
> Now our client informed us that they are destitute and unable to pay the Home office as well as immigration health surcharge...
> Our client does not have adequate accommodation or any means of obtaining it and cannot maintain their other essential daily living needs. My client is suffering hardship in relation to maintaining proper accommodation and even access to essential daily living needs. As a result of this they are suffering from hardship..."

21. The Respondent did not appear to have made any attendance note in relation to the instructions he took in order to advance this submission.

22. On 5 February 2016, the application was again rejected as invalid on the grounds that there was insufficient evidence for SKJ to qualify for a fee waiver.

23. On 20 September 2016, the Home Office wrote to SKJ asking him to attend an interview with the Home Office on 14 October 2016, to discuss his current circumstances and status in the UK.

24. On 28 September 2016, the Respondent wrote to SKJ and concluded the letter as follows:

> "You have taken advice from us and we gave you an option to submit a fresh application together with the Home Office fees based on Human Rights Articles and paragraph 276ADE(vi) of the Immigration rules.
> You informed us that you submitted your application regularly and were not given an in country right of appeal, therefore you decided and requested us to challenge the decision by way of filing the judicial review. We would like to inform you that we think there is slight chance of success by filing the JR.
> Please further note that in case of dismissal of the JR, you must pay the cost."

25. On the same date, the Respondent asked the Home Office to "review your decision and grant [the applicants] live [sic] to remain in the UK as requested or please give them in country right of appeal", without making any attempt to justify the grounds on which the Home Office should do so. The Home Office's policy was only to reconsider decisions to refuse applications where the applicant had (a) provided new evidence to prove the date of the application; (b) provided new evidence that the documents submitted with the application are genuine; or (c) identified evidence which was not available to the caseworker but was received by the Home Office before the decision date, such evidence impacting upon the decision outcome and/or any subsequent appeal rights.

26. On 25 October 2016 the Home Office rejected the reconsideration request.

27. On 17 January 2017, the Respondent sent a letter to the Home Office's pre-action protocol hub. The letter contained the substance of an immigration application. It concluded by saying:

> "Therefore we request you to please grant our client leave to remain status in the United Kingdom on the basis of the Human Rights Article 8 of ECHR, compensate [sic] and compelling circumstances and Paragraph 276ADE (vi) of the Immigration rules in the interest of the child.
> Otherwise
> We are asked to inform you that we have instructed to request the assistance of the Administrative courts by way of Judicial Review should you not be willing to grant our client's application or in country right of appeal as requested."

28. On 20 January 2017 the Home Office sent a pre-action protocol response on 20 January 2017 in which it referred to its letter dated 5 February 2016, which had rejected the applicant's private life application as invalid on the grounds that it had neither been accompanied by the correct fee nor the evidence necessary to qualify for a fee waiver.

29. On 27 January 2017, the Home Office served notice of the applicant's liability for removal.

30. On 20 April 2017, the Respondent brought proceedings for judicial review. The claim form described itself as challenging the Home Office "Refusal Letters" of 20 and 27 January 2017. The grounds were identical to the material contained in the pre-action protocol letter. They did not identify any error in the Home Office's decision.

31. On 17 August 2017, permission was refused and the claim was certified as totally without merit. On 24 August 2017, the Respondent applied to the Upper Tribunal for permission to appeal to the Court of Appeal. The grounds of appeal repeated the same generic and formulaic material and did not identify any public law error in the decision of the Upper Tribunal. The application was out of time and included no application for an extension of time. The client paid a court fee of £100.

32. On 4 September 2017 the application was summarily rejected.

33. On 28 September 2018, the Respondent made a fresh immigration application on SKJ's behalf. This was rejected on 25 February 2019.

34. On 5 March 2019, the Respondent filed "Grounds in appeal" against the Home Office's refusal. This contained much of the same formulaic content that had been criticised at the Hamid hearing.

Investigation

35. The FI Officer asked the Respondent the following questions about the 11 judicial review claims that had been dismissed as 'totally without merit';

> "1. What did you do with the TWM cases to make sure that:
>
> a) There were definitely grounds for a judicial review
> b) How did you reach that decision
> c) There was sufficient evidence to support the application; and
> d) The correct procedure was followed.
>
> 2. Please outline the background and grounds for making an application for judicial review in each case.
>
> 3. What evidence was used to support the grounds for judicial review.
>
> 4. Did you inform clients what the chances of success was on their cases."

36. The Respondent replied and repeated the apologies given at the Hamid hearing. He stated:

> "1.
> a. Yes, there were grounds for the judicial reviews.
> b. The Judicial review grounds were based on Human Rights Article 5, 8, and paragraph 276ADE(IV)
> c. We have included the evidence in the Judicial Review bundles

> d. We have sent pre-action protocol letter to the litigation department in process of filing the judicial review. We served the bundle to the Home Office after filing judicial review and also informing the Upper Tribunal.
>
> 2. [After setting out the factual background to each claim, the Respondent wrote variations of the following] Grounds for Judicial review was based on Article 3 Medical claims and Prohibition of torture, Article 5 Right to liberty and security, Article 8, Private and Family life, Appendix FM 1.0b and Paragraph 276 ADE (VI) of immigration rule.
>
> 3. I have included written statement of documentary evidences which were given to us by our clients to support their Judicial Review case.
>
> 4. I have informed client only error of law can be decided in Judicial Review cases."

37. The Respondent had not submitted any further judicial review applications after the Hamid hearing.

Advice to clients

38. The Respondent advised his clients that the Firm did not undertake Legal Aid work and that their case may be more suitable for a Legal Aid firm. The Respondent also advised the clients in brief terms, as to the chances of success of their judicial review. The chances were variously described by the Respondent as "low", "minimal", "very minimal" in three exemplified cases.

Applications made on behalf of stateless persons (Allegation 1.6)

39. In MK v Secretary of State for the Home Department [2017] EWHC 1365 (Admin), the Upper Tribunal had found that children of Indian national parents were entitled to Indian nationality as of right, but that children born on or after 3 December 2004 needed to register the birth at an Indian Consulate in order to acquire such citizenship. Unless a child was registered for Indian nationality they were technically "stateless".

40. UK legislation provided that stateless children were entitled to British citizenship. In MK the court noted that every Indian consulate was independently responsible for its own registrations of citizenship, and that there was no central database of Indian citizens. Accordingly, unless one obtained evidence from every single consulate, it would be very difficult to prove that someone was not an Indian citizen.

41. The Court recognised that its conclusion "opens an obvious route to abuse". The judgment was handed down on 14 June 2017.

42. On 6 April 2019, the Home Office amended the immigration rules to include new paragraphs 403(e) and (f) of the Immigration Rules, to require an applicant to show that they had sought and failed to obtain or re-establish their nationality with the appropriate authorities of the relevant country; and, in the case of a child born in the UK, provide evidence that they had attempted to register the birth with the relevant authorities but had been refused.

43. The Applicant relied on four specimen cases, one of which is exemplified below.

Exemplified case of MKZ

44. Ms SSP was a client of the Respondent. She was an Indian national and an over-stayer who, at the material time, had no right to remain in the UK. Ms SSP had a child, MKZ, born in the UK in 2014. As Ms SSP was an Indian national, MKZ was entitled under Indian law to Indian citizenship as of right. Since MKZ was born after 2004, he would only acquire Indian citizenship if his birth was registered with an Indian Commission. The Respondent had previously made at least one application for leave to remain on behalf of Ms SSP, and at least one failed application for judicial review.

45. On 8 November 2017, the Indian High Commission issued a letter "To whom it may concern":

> "This is to confirm that [MKZ's details], the birth of the above child has not been registered as a Citizen of India at the High Commission of India, London."

46. No other similar documents relating to other consulates or high commissions appeared on the client file.

47. On or about 22 April 2018, the Respondent assisted in the preparation of an "S3" statelessness application form dated 22 April 2018 on behalf of MKZ. Box 1.19 of the S3 form asked "Please explain the reason why the applicant has been stateless from birth". The answer given was "Please see the attached letter of Indian High Commission and representation." No relevant representation was attached. The covering letter dated 23 April 2018 stated:

> "...the above-named person born and brought up in the UK [sic]. He is not registered in the Indian High Commission. Hence, he is stateless person.
>
> We request you to please consider this application in the light of the judgment of MK (a child by her litigation friend CAE), R (on the application of) V the Secretary of State for the Home Office [sic] and grant him British Citizen [sic]."

48. This did not explain why MKZ's birth had not been registered at an Indian High Commission.

49. On 10 September 2018, MKZ's application for British citizenship was refused. On 20 September 2018, the Home Office wrote directly to Ms SSP advising that she should now register her child at the Indian High Commission and provide confirmation that she had done so. The letter gave instructions for how to go about this.

50. There was no evidence on the client file of any steps taken to follow up the suggestion contained in the letter.

51. Instead, on 26 September 2018, the Respondent made a further (unsuccessful) application for leave to remain on behalf of Ms SSP and her family, seeking to invoke exceptional circumstances.

52. On 6 April 2019, the Immigration Rules were amended as referred to above.

53. Ms SSP made a further "S3" statelessness application on behalf of MKZ on 29 August 2019, apparently with the assistance of the Respondent.

54. On this occasion, the answer to Box 1.19 was left empty. The covering letter was in materially identical terms to the covering letter in the previous application of 22-23 April 2018. The second application was, however, successful and MKZ was registered as a British citizen in November 2019.

55. The Applicant did not know whether any of the clients' applications for British citizenship for their children, and their subsequent applications for leave to remain, were in fact abusive and it did not allege that the Respondent positively advised his clients to make abusive applications.

Investigation

56. On 17 June 2020 the Applicant had written to the Respondent asking him questions about these matters.

57. The Applicant asked whether the Respondent had supplied any representations explaining why his clients' children were stateless, and if so to provide these. The Respondent answered that: "SA wrote letters to the Home Office explaining that the children in question were born and brought up in the UK, they were not registered with the Indian High Commission, they had no passport and hence were stateless persons."

58. The Applicant also asked "When acting in relation to the above applications for British citizenship, what steps did Mr Ali take so as to ensure that his clients had discharged their obligation to attempt to register the birth of their child with an Indian Commission before applying for British citizenship as a stateless person?" The Respondent replied "When the applications were made they were accompanied by letters from the High Commission of India confirming that the births had not been registered. The births were all considerably prior to the relevant applications".

59. The Applicant also asked "What advice did Mr Ali provide to his clients as to their obligation to attempt to register the birth of their child with an Indian Commission before applying for British citizenship as a stateless person". The Respondent's representative answered: "SA was not involved at the time of contact between the parents and the High Commission of India leading to the production of the letters in question. He therefore gave no answer".

Witnesses

60. There were no witnesses and the Respondent did not give evidence.

Findings of Fact and Law

61. The Applicant was required to prove the allegations on the balance of probabilities. 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.

62. The Tribunal considered carefully all the documents, witness statements and oral evidence presented. In addition it had regard to the oral and written submissions of both parties, which are briefly summarised below.

63. **Allegation 1.1**

Applicant's Submissions

63.1 Mr Tankel submitted that the Respondent's approach to judicial review work was deficient in a number of respects. He submitted that the immigration applications were hopeless and had no prospect of success on their merits. They were very poorly particularised and badly drafted. The Respondent would often make subsequent immigration applications, or submit further representations, on the same formulaic grounds, sometimes many times. The Applicant's case was that it was unclear what legitimate aim the Respondent hoped to achieve from these, as they had no prospect of succeeding and served only to burden the Home Office with having to respond to meritless representations.

63.2 In relation to the applications for a fee waiver, the Respondent attached no, or manifestly inadequate, supporting evidence, meaning that they were inevitably rejected. Having had the points made in the purported pre-action protocol letter rejected, the Applicant's case was that the Respondent then sought, impermissibly, to judicially review the Home Office's response.

63.3 The judicial review claims reiterated the same generic, irrelevant, poorly drafted submissions contained in the pre-action protocol letters. They made no attempt to identify any public law error in a decision of the Home Office, to address the merits of the clients' cases, or to put to forward a case that had any prospect of his client succeeding. The grounds made no reference to s.117B of the Nationality, Immigration, and Asylum Act 2002, which contained a set of mandatory considerations for the Upper Tribunal to the effect that only little weight may be given to the types of factors upon which the Respondent habitually relied. In addition the judicial review claims were often brought out of time with no adequate explanation.

63.4 The Applicant's case, as set out in the Rule 12 statement, was that as an experienced immigration practitioner the Respondent either knew or ought to have known, that:

- Immigration applications could not be made without an appropriate fee or evidence to support a request for a fee waiver.

- Repeat immigration applications would need to show some significant change in circumstances.

- The judicial review process could not be used as a means of advancing a new application.

- A pre-action response was not the proper target of judicial review proceedings.

- It was necessary to identify grounds of public law error in a claim for judicial review and on an appeal on a point of law.

- It was necessary to relate pleaded grounds to the particular circumstances of the individual case.

- When applying for an extension of time, it was insufficient simply to say "client instructed late" or claims to that effect.

- The merits of each of his clients' cases were negligible.

63.5 Mr Tankel referred the Tribunal to the SRA Guidance issued on 7 December 2016 entitled "Risk factors in immigration work", dated 7 December 2016 which stated:

> "If you are considering applying for a judicial review on behalf of an immigration services client you should make sure that:
>
> - you carefully manage your client's instructions and expectations – for example, if your client instructs you to apply for judicial review as a last resort in circumstances where there are no proper grounds for such an application, you should explain to them that you owe duties to the court and that you cannot act on their instructions if doing so is an abuse of process;
>
> - you clearly explain what 'exceptional circumstances' are, if you are relying on them - failing to do so could result in your application being quashed and your client being exposed to unnecessary costs;
>
> - you do not simply submit generic judicial review applications on behalf of your immigration clients;
>
> - your employees have the necessary competence and legal knowledge to prepare judicial review applications - the courts have previously criticised the quality of some immigration judicial review applications. Common failings identified by the courts have included the poor use of English, a lack of detail in the statements being submitted, references being made to out-of-date cases and applications being submitted out of time."

63.6 Mr Tankel submitted that the Respondent had failed to follow this Guidance. In doing so and by making submissions that were not properly arguable, the Respondent had failed to uphold the rule of law and the proper administration of justice, contrary to Principle 1 of the Principles, in that he had wasted the Court's time to the detriment of other more deserving cases, failed to provide full factual summaries including matters adverse to his clients' cases and hindered his clients' lawful removal from the UK.

63.7 Mr Tankel further submitted that the Respondent had lacked integrity in breach of Principle 2 of the Principles with reference to the test in Wingate and Evans v SRA and SRA v Malins [2018] EWCA Civ 366 in that he ought to have refused to take on the claims or, if he did take them on, attempt to advance their clients' cases by properly particularising them rather than issuing purely formulaic claims. The Respondent therefore breached Principle 2 of the SRA Principles.

63.8 Mr Tankel submitted that the Respondent failed to behave in a way that maintained the trust the public placed in the Respondent and the provision of legal services, contrary to Principle 6 of the Principles and failed to achieve Outcome 5.5 which stated that "where relevant, clients are informed of the circumstances in which your duties to the court outweigh your obligations to your client". He had also failed to achieve Outcome 5.6 which stated that "you comply with your duties to the court".

63.9 This Allegation was pleaded on the basis that the Respondent knew or recklessly disregarded the fact that his approach to immigration applications and judicial review was impermissible, in that it had no legitimate purpose. In the alternative it was alleged that he had been manifestly incompetent.

Respondent's Submissions

63.10 Mr Williams told the Tribunal that the Allegation was admitted save for recklessness but including manifest incompetence.

63.11 Mr Williams made a number of general submissions which related to Allegations 1.1-1.5 faced by the Respondent. They are summarised here and are not repeated below for the avoidance of repetition. However the Tribunal had these submissions in mind throughout its consideration of the Allegations.

63.12 Mr Williams told the Tribunal that the Respondent wished to make a clean breast of matters and, notwithstanding some denials in his Answer, he now admitted the Allegations save for those alleging recklessness.. He had never disputed the facts. The Respondent was wholly contrite.

63.13 Mr Williams told the Tribunal that the Respondent was 56 years old and was admitted in 2007, having come to the UK from India in 2005, where he had obtained a PhD in social sciences. Mr Williams submitted that the Respondent was of "exemplary character". He had never previously been the subject of disciplinary proceeding and had not been accused of any dishonesty. The Respondent had fully engaged with the process including co-operating with the FI officer.

63.14 The Respondent had always held, and still did hold, an unconditional practising certificate. Although the SRA had not imposed conditions, he had imposed restrictions on himself by not doing any judicial review work after the Hamid hearing.

63.15 Mr Williams told the Tribunal that the Respondent had managed approximately 500 cases at his Firm, having run 180 cases a year when he was previously employed. The cases that went wrong and were the subject of these proceedings amounted to 1.4% of the cases he had handled in his career. There had been no complaints from clients in that time. There was no suggestion that the deficiencies involved enrichment or

overcharging. Mr Williams reminded the Tribunal of the importance of not speculating on matters that were not pleaded and not alleged.

63.16 Mr Williams submitted that the Respondent should have realised that the judicial review applications were being rejected and that there was therefore something wrong with them. However he had not done so and he had frankly admitted to incompetence in this regard.

63.17 In relation to the fee waiver applications, Mr Williams submitted that there was no evidence that the Respondent was in possession of instructions that he had not deployed. The Respondent's clients were often coy about their working activities as some of them were working illegally. Some of the work on judicial review cases had been undertaken by the Respondent's wife. However Mr Williams told the Tribunal that the Respondent did not blame her for a moment and he took full responsibility himself.

63.18 Mr Williams submitted that a finding of recklessness would require the Tribunal to find that the Respondent was aware of a risk and went on to take it. Mr Williams submitted that lack of competence could feed into lack of awareness. It was not reckless to submit the applications having advised clients that their cases were weak. The Respondent was a careful man and not a risk taker. Given the proportion of his work that was carried out properly, Mr Williams submitted that the Respondent had not been reckless.

The Tribunal's Findings

63.19 The Respondent had admitted the factual basis of Allegation 1.1, though it was clear that the admission was on the basis that he ought to have considered that the claims were unarguable rather than actually considering, at the time, that they were unarguable. The Respondent did not dispute the deficiencies that had existed and he had made that clear in the Hamid hearing.

63.20 The Tribunal reviewed the pre-action protocol letters and noted that they did not address the decision in question and did not provide adequate grounds or address points of law. They amounted to a repetition of earlier inadequate and unsuccessful grounds, an example being the reference to Article 5.

63.21 The Tribunal noted that this was the Respondent's area of expertise. He had conducted immigration work for many years, as Mr Williams had pointed out in his submissions, and would have known, based on that experience, how those applications ought to be handled.

63.22 The Respondent would have seen that the applications kept getting refused. The Tribunal found that the Respondent's failure to engage with the points taken by the Home Office was evidence that the Respondent considered the claims to be unarguable. The repeated nature of the rejections means that the Respondent must have become aware that they were unarguable but had taken no notice of those rejections and continued despite them. At the same time he was clearly aware that the chances were minimal as he was advising clients to that effect.

63.23 The Tribunal was satisfied on the balance of probabilities that the Respondent considered that the claims were unarguable. The Tribunal therefore found the factual basis of Allegation 1.1 together with the failures to achieve Outcomes 5.5 and 5.6 proved on the balance of probabilities on that basis.

Principle 2

63.24 In considering whether the Respondent had lacked integrity it applied the test for integrity set out in Wingate. At [100] Jackson LJ had stated:

> "Integrity connotes adherence to the ethical standards of one's own profession. That involves more than mere honesty. To take one example, a solicitor conducting negotiations or a barrister making submissions to a judge or arbitrator will take particular care not to mislead. Such a professional person is expected to be even more scrupulous about accuracy than a member of the general public in daily discourse".

63.25 The Respondent admitted that he had lacked integrity. The Tribunal was satisfied that this admission was properly made based on the evidence and the Tribunal's factual findings. The Tribunal found the breach of Principle 2 proved on the balance of probabilities.

Principle 6

63.26 The Respondent had admitted breaching this Principle and the Tribunal was satisfied that the admission was properly made for the reasons set out above. The Tribunal found the breach of Principle 6 proved on the balance of probabilities.

Recklessness

63.27 In considering the Allegation of recklessness, the Tribunal applied the test set out in R v G [2003] UKHL 50 where Lord Bingham adopted the following definition:

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

63.28 This was adopted in the context of regulatory proceedings in Brett v SRA [2014] EWHC 2974 (Admin).

63.29 The Tribunal considered whether the Respondent had perceived that there was a risk that he was bringing claims which breached his professional obligations not to make submissions that he did not consider were properly arguable. The Tribunal had already found that the Respondent believed that the claims were unarguable for the reasons set out above.

63.30 On 18 April 2017 the case of B had been certified as being "totally without merit". The Upper Tribunal Judge had referred to the grounds as "totally unarguable".

63.31 On 11 May 2017 the case of S had been certified as being "totally without merit" and described in the judgment as an abuse of process.

63.32 On 31 January 2018 the case of M had been certified as being "totally without merit". In that judgment the Upper Tribunal Judge had noted that "The grounds contend that the respondent acts unlawfully in a totally unparticularised fashion".

63.33 The Tribunal was entirely satisfied that in the knowledge of these judgments, the Respondent knew that there was a risk that he was making unarguable submission and thereby breaching his professional obligations as he was submitting almost identical claims to those which had been emphatically rejected and which he therefore knew were unarguable.

63.34 The Tribunal was also satisfied that the Respondent had not acted reasonably in pursing the claims in the knowledge of that risk. The Tribunal found the Allegation of recklessness in relation to Allegation 1.1 proved on the balance of probabilities.

64. **Allegation 1.2**

Applicant's Submissions

64.1 The Applicant submitted that the Respondent had abused the process of the Court by conducting the matters in the manner set out above. He had wasted the Court's time, to the detriment of more deserving cases and at a cost in public funds and resources. He had therefore breached Principle 1 of the Principles. The Applicant also submitted that the Respondent failed to act with integrity, contrary to Principle 2 of the Principles and had also breached Principle 6.

64.2 It was also alleged that the Respondent had acted recklessly in relation to the factual matrix of Allegation 1.2.

Respondent's Submissions

64.3 The points made on the Respondent's behalf by Mr Williams are set out above and were also relevant to this Allegation.

The Tribunal's Findings

64.4 The Respondent had admitted this Allegation in full with the exception of the element that alleged recklessness. The Tribunal was satisfied that the admissions to the factual basis of the Allegation as well as the breaches of Principles 1, 2 and 6 were properly made and found them proved on the balance of probabilities.

Recklessness

64.5 The Tribunal considered whether the Respondent perceived that there was a risk that he was bringing claims which were an abuse of process. The Respondent had been told in May 2017 that the S case was an abuse of process. Although the phrase was not used in every refusal, it was clear that the claims were in that category given that they were submitted on almost identical grounds and rejected for almost identical

reasons. The Tribunal was satisfied on the balance of probabilities that the Respondent was aware of the risk that he was bringing claims that were an abuse of process. The Tribunal further found that the Respondent acted unreasonably in continuing to bring claims in the knowledge of that risk. The Tribunal found the Allegation of recklessness in relation to Allegation 1.2 proved on the balance of probabilities.

65. **Allegation 1.3**

Applicant's Submissions

65.1 Mr Tankel submitted that by carrying out immigration work that had no legitimate purpose in that it had no prospect of succeeding, the Respondent had failed to act in the best interests of clients, contrary to Principle 4 and Outcome 1.5. Most of the clients were required to pay the Firm's costs as well as those of the Home Office when the claims failed. The Respondent should not have pursued the judicial review claims as this was not consistent with acting in their clients' best interests.

65.2 Mr Tankel also submitted that the Respondent had lacked integrity in breach of Principle 2 and had also breached Principle 6.

65.3 The Applicant also alleged recklessness in respect of this Allegation.

Respondent's Submissions

65.4 The points made on the Respondent's behalf by Mr Williams are set out above and were also relevant to this Allegation.

The Tribunal's Findings

65.5 The Respondent had admitted this Allegation in full with the exception of the element that alleged recklessness. The Tribunal was satisfied that the admissions to the factual basis of the Allegation as well as the breaches of Principles 2, 4 and 6 and the failure to achieve Outcome 1.5 were properly made and found them proved on the balance of probabilities.

Recklessness

65.6 The Tribunal found recklessness proved on the balance of probabilities as the logical conclusion from its findings in relation to Allegations 1.1 and 1.2 and its factual findings in relating to Allegation 1.3. The Tribunal was satisfied that the Respondent perceived that there was a risk that he was bringing claims that had no legitimate purpose in that they had no prospect of succeeding. In continuing to bring them he had not acted reasonably and so recklessness was proved to the requisite standard.

66. **Allegation 1.4**

66.1 The Respondent had admitted this Allegation in full and the Tribunal found these admissions to have been properly made. The Tribunal accepted that the Respondent had advised his clients that their prospects were very low or even minimal. However

for the advice to have been adequate he should have advised his clients that the claims were in fact unarguable, especially when he was receiving the refusals on other cases. The advice should have been reviewed in accordance with his on-going duty to advise on the prospects of success.

66.2 The Tribunal found this Allegation proved in full on the balance of probabilities.

67. **Allegation 1.5**

67.1 The Respondent had admitted this Allegation in full and the Tribunal found these admissions to have been properly made. The Tribunal found this Allegation proved in full on the balance of probabilities.

68. **Allegation 1.6**

Applicant's Submissions

68.1 Mr Tankel submitted that the Respondent should have taken steps to satisfy himself that the applications were not abusive. He could have made enquiries with his clients as to whether they had made any attempt to register the birth of their child or whether it had been registered elsewhere. If the Respondent could not satisfy himself of those matters then he ought to have refused to act. It was submitted that the grant of British citizenship was "a permanent, serious, matter" and so the Respondent's professional obligations were heightened. The potential for harm was that individuals not otherwise entitled to it may have obtained citizenship in Britain and all their future descendants would also be British citizens.

68.2 Mr Tankel submitted that a solicitor of integrity should not exploit a known weakness in the immigration system in order to obtain British citizenship and leave to remain for a person who would not otherwise have been entitled to it. The public would be alarmed about such a solicitor acting in such a manner.

68.3 Mr Tankel submitted that the Respondent had acted recklessly in that he must have been aware of the risk that the applications were abusive. In the knowledge of the following circumstances, he submitted that the Respondent had acted unreasonably in proceeding to make the applications:

> "The Respondent knew or ought to have known that applicants should attempt to register the birth of their child before applying for British citizenship, in that:
> a. The Upper Tribunal in MK(India), upon which the Respondent relied in these applications, held at [37] that this was an "obvious route of abuse".
> b. The S3 application form expressly asks why the applicant has been stateless from birth. This question was never properly answered.
> c. In at least two of the matters in question, the Home Office had expressly invited clients to register the birth of their children.
> d. At least in relation to the second MKZ application, the immigration rules had been amended to include a requirement that clients attempt to register the births of their Indian child."

Respondent's Submissions

68.4 Mr Williams told the Tribunal that the Respondent admitted this Allegation save for the element of recklessness, which was denied.

68.5 Mr Williams reminded the Tribunal that the Applicant had not pleaded that these applications were actually abuses of the immigration system. There was no evidence that anyone had lied or that there had been any improper conspiracy.

68.6 Mr Williams reminded the Tribunal that this Allegation had been made in a supplementary statement after the initial statement pleading Allegations 1.1-1.5 had been served. The addition of Allegation 1.6 had arisen after specialist counsel reviewed the papers. It had not been identified by the SRA or by the solicitors for the SRA. Mr Williams told the Tribunal that specialist counsel was not something that the Respondent had had access to at the time he was making these applications. Mr Williams submitted that the failure of the Respondent to see the problems should be viewed in that light.

68.7 Mr Williams noted that there was no evidence that the parents were aware of the loophole and it was not known if they had tried to register the births and failed as opposed to not trying at all. In order for the Respondent to have established the situation, enquiries would have had to be made at every Indian consulate in the UK. In those circumstances unless the Respondent had been instructed to do this or chosen to do this he had to rely on his instructions. Mr Williams submitted that what the Respondent should have done was probe the situation with the clients and got the full facts and if necessary given advice to register the births. That is all he could have done. Mr Williams emphasised that there was no evidence that the parents were doing anything other than acting honourably.

68.8 Mr Williams also reminded the Tribunal that he was advising the parents several years after the births had taken place. NKZ had been born in 2014, BAK in 2013, SDP in 2012, and RUS also in 2012. The earliest that the Respondent received instructions was 2017. The Respondent had done as he was instructed and he had only stated what he believed to be true. The Respondent had no reason to disbelieve his instructions.

The Tribunal's Findings

68.9 The Respondent had admitted the factual basis of this Allegation together with the breaches of Principles 2 and 6 of the Principles.

68.10 The Tribunal found these admissions to have been properly made based on the evidence.

Recklessness

68.11 The Tribunal considered whether the Respondent had perceived that there was a risk that he was party to applications for British citizenship, and consequential applications for leave to remain, which bore the hallmarks of being an abuse of the immigration system.

68.12 The Tribunal noted that it was not pleaded by the Applicant that the applications were an actual abuse of process. However the procedure was described in those terms in MK when the Court recognised "that this conclusion opens an obvious route to abuse". The Respondent was clearly aware of this case as he cited it in the applications.

68.13 This had been followed by an amendment to the law in April 2019 and subsequent guidance from the Home Office in October 2019. The effect of this was to require evidence of unsuccessful attempts to register a birth. The Respondent continued making applications after this time without adequately or at all explaining what attempts had been made.

68.14 The Tribunal was satisfied on the balance of probabilities that the Respondent was aware that there was a risk that he was involving himself in applications that bore hallmarks of being an abuse. The decision to continue to make applications which did not address the key question of attempts made to register births was not reasonable in those circumstances. The Tribunal found the allegation of recklessness proved on the balance of probabilities.

Previous Disciplinary Matters

69. There was no record of any previous disciplinary findings by the Tribunal.

Mitigation

70. Mr Williams had covered a number of points that were relevant to mitigation in his submissions in respect of the Allegations themselves. In addition to those, matters he made the following points in mitigation:

- The Respondent had no previous matters recorded against him;
- He was an honest man and it had not been suggested otherwise;
- The Respondent had demonstrated "complete contrition" and was in possession of insight;
- He had fully co-operated with the SRA investigation, the Hamid hearing and the disciplinary process;
- He had behaved impeccably in relation to client funds and there had been no allegations that he had breached the Solicitors Accounts Rules;
- The Respondent had been under pressure due to his workload, which Mr Williams had referred to previously. He had now arranged to recruit an associate solicitor to assist him once these proceedings were concluded;
- He had given up judicial review work in light of the conclusions of the Hamid hearing;

- Mr Williams referred to health problems experienced by the Respondent, the details of which are not set out here but which the Tribunal had regard to;

- The numbers of cases in which there had been problems represented a tiny fraction of the cases he had handled over the years;

- There was no prospect of repetition. The failure was not picking up the problems as they became apparent.

- In respect of Allegation 1.6, the warnings signs had been far from obvious to the extent that they were not spotted until specialist Counsel reviewed matters

71. In relation to sanction, Mr Williams invited the Tribunal to impose one sanction for all matters. He invited the Tribunal to assess culpability on the basis of the submissions made at the hearing and to find that it was not in the highest band, which was reserved for dishonesty and deliberate malicious conduct. Any harm that had been caused was not deliberate and had not been planned. The Respondent's clients had not been taken advantage of and there was no element of concealment.

72. Mr Williams submitted that a suspension or strike-off would destroy the Respondent's practice and cause financial hardship to him and his family. Mr Williams submitted that this would be disproportionate. There was no risk to the public save in limited field of judicial review. This could be addressed by an indefinite restriction order preventing him doing judicial review work. Mr Williams submitted that the Tribunal may also want to consider imposing a requirement that the Respondent work with an associate or partner.

73. Mr Williams submitted that the Respondent's clients were among the most disadvantaged in society. The Respondent had acted diligently and served them honourably and well with the exception of these matters. He had much to offer the profession. Mr Williams referred the Tribunal to character references in support of the Respondent.

74. Mr Williams invited the Tribunal to impose a financial penalty coupled with a restriction order, taking into account the Respondent's means.

Sanction

75. The Tribunal had regard to the Guidance Note on Sanctions (November 2019). The Tribunal assessed the seriousness of the misconduct by considering the Respondent's culpability, the level of harm caused together with any aggravating or mitigating factors.

76. In assessing culpability, the Tribunal was unable to establish the Respondent's motivation. The Respondent had considered that the applications for judicial review were unarguable and therefore the decision to continue to make those applications involved a degree of planning. The misconduct had continued over a significant period of time. The Respondent was solely responsible for the misconduct as he was not only a sole practitioner but was also the COLP and COFA. He was also a significantly experienced solicitor.

77. In assessing the harm caused, the Tribunal noted that there was no evidence before it of harm to a specific individual. However the potential for harm to individuals certainly existed in that by clogging up the system with unarguable judicial reviews that were an abuse of process, this delayed the consideration of claims that were arguable and had merit. Those individuals had to wait longer for their cases to be heard, with all the stress and anxiety that this delay could cause given the importance of the case to them.

78. There was also harm to the reputation of the legal profession by lodging repeated judicial reviews which attracted such severe criticism from judges. This undermined the public trust in the profession and undermined the court system.

79. The misconduct was aggravated by the fact that it was repeated. There was an element of calculation in that the Respondent knew that these were hopeless cases. He knew or ought to have known that he was in material breach of his obligations.

80. The misconduct was mitigated by the fact that the Respondent had shown a degree of insight into his failings and had fully co-operated with the SRA and the Hamid procedure. He had taken full responsibility in his witness statement for the Hamid hearing. He had also made a number of admissions in these proceedings, some of which were set out in his Answer and others which were made very shortly before the hearing.

81. The Tribunal found that making 'no order' or imposing a Reprimand was insufficient to reflect the seriousness of the misconduct. The level of culpability, the potential for significant harm, the fact that these were not simply minor breaches of regulation and the protection of the public and the reputation of the legal profession required a greater sanction. The Tribunal had found the Respondent to have lacked integrity in several instances and to have acted recklessly.

82. The Tribunal determined that the seriousness of the misconduct was such that the appropriate sanction was a financial penalty. The Tribunal had considered whether to impose a suspension but, on balance, it was satisfied that this was not necessary provided that the financial penalty was linked to a restriction. The Tribunal had taken into account the Respondent's health, his workload, his previously unblemished career, the lack of any client complaints and the character references submitted on his behalf.

83. The Tribunal considered the level of the fine with reference to the Indicative Fine Bands. The misconduct required a significant fine be imposed and the Tribunal determined that the appropriate level was Level 5 on the basis that the Respondent's conduct was significantly serious, though not so serious as to require a suspension. The starting point for this band was Level 5 was £50,001 with a range that was unlimited. The Tribunal weighed all the matters placed before it. The Tribunal concluded that in all the circumstances the appropriate level of fine was £60,000.

84. The Tribunal reviewed the Respondent's statement of means and considered whether to reduce the level of fine on account of his means. The Tribunal accepted that the Respondent did not have an income that would enable him to pay the full sum immediately. However he did have significant equity in his property and those

involved in enforcement had options including taking instalments or placing charging orders on property. The Tribunal was not minded to reduce the fine on account of means for those reasons.

85. The Tribunal found that it was necessary for the protection of the public to impose a restriction on the Respondent's ability to undertake judicial review work for an indefinite period. The Tribunal did not consider it necessary to impose any additional restrictions, noting that the SRA had the ability to do so if it felt appropriate and so far it had not.

Costs

86. The parties had agreed that the Respondent would pay the Applicant's costs fixed in the sum of £24,800. The Tribunal was content to make an order in that sum, having been satisfied that it was a reasonable and proportionate sum.

87. **Statement of Full Order**

1. The Tribunal Ordered that the Respondent, SYED WASIF ALI, solicitor, do pay a fine of £60,000.00, such penalty to be forfeit to Her Majesty the Queen, and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £24,800.00.

2. The Tribunal further Ordered that the Respondent shall, commencing on 18 August 2020 for an indefinite period, be subject to condition imposed by the Tribunal as follows:

2.1 The Respondent may not:

2.1.1 Undertake any work involving applications for judicial review.

3. There be liberty to either party to apply to the Tribunal to vary the conditions set out at paragraph 2 above.

Dated this 10th day of September 2020
On behalf of the Tribunal

A. E. Banks
Chair