Neutral Citation Number: [2018] EWHC 957 (Admin)

Case No: CO/5451/2017

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 26/04/2018

Before:

LORD JUSTICE IRWIN
MR JUSTICE LANE

- -

Between:

VAY SUI IP	**Appellant**
- and –	
SOLICITORS REGULATION AUTHORITY	**Respondent**

- -
- -

Dr A Van Dellen (**Direct Access**) for the **appellant**
Mr B Tankel (instructed by **Capsticks Solicitors**) for the **respondent**

Hearing date: 15 March 2018

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Judgment Approved by the court for handing down

See SUMMARY at bottom of this judgment.

Mr Justice Lane:

A. Introduction

1. The appellant appeals against the decision of the Solicitors Disciplinary Tribunal (SDT), taken on 4 October 2017, to strike him off the Roll of Solicitors and to order him to pay the costs of and incidental to the SDT proceedings, fixed in the sum of £10,000. Permission to appeal out-of-time was granted at the hearing on 15 March 2018, in response to the appellant's application, which was not opposed by the respondent. The breach of time limit was relatively minor and the Court was satisfied that the appellant had posted the application from Manchester on 3 November 2017.

2. From 3 November 2011 to 31 December 2015, the appellant was a partner at Sandbrook Solicitors in Manchester. He specialised in immigration work. On 6 May 2015, following a review of five of Sandbrook's cases by Swift J, the Upper Tribunal (Immigration and Asylum Chamber) wrote to Sandbrook, requiring the appellant and his partner, Mr Javid, to appear before the Tribunal in Manchester on Monday 18 May 2015. The purpose of the hearing was to decide whether any action required to be taken, in the light of Swift J's concerns.

3. In R (Hamid v Secretary of State for the Home Department) [2012] EWHC 3070 (Admin), Sir John Thomas, President of the Queen's Bench Division gave judgment in a case involving an application for judicial review brought by an individual who faced removal by the Secretary of State under the Immigration Acts. His judgment ended as follows:-

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

4. The hope expressed in paragraph 11 of Hamid has proved forlorn. Not only have there been subsequent "Hamid" hearings but, in a number of instances, they have resulted in solicitors being referred to the Solicitors Regulation Authority (SRA).

B. The Upper Tribunal hearing on 18 May 2015

5. At the hearing on 18 May 2015, the Upper Tribunal (Green J and HHJ Raynor QC) was addressed by Counsel on behalf of the appellant. Giving the Tribunal's judgment, Green J set the scene as follows:-

> "A. Introduction
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> 1. There is before the Tribunal an issue which has arisen out of a concern that the firm of Sandbrook Solicitors ("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. 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, where 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.
>
> 2. In a recent judgment of the Divisional Court, *The Queen on the application of Adil Akram & Amir Akram v SSHD* (20th April 2015) the President of the Queen's Bench Division stated, also in a case in which the conduct of solicitors acting on behalf of asylum seekers was in issue:
>
> > "It is not surprising that those who seek asylum or to regulate their immigration status in order to remain in this country take whatever steps are open to them in order to do so. To that extent, they are vulnerable and

> those who practise in this area of the law must always be acutely conscious of the need for a thorough understanding of the law, fully appreciating that pursuing litigation without arguable grounds is potentially unprofessional. This Court has demonstrated its intention to take a proactive approach to such cases in order to enforce standards and to ensure that the time of the Court (not to say public and private funding of such litigation) is not wasted. That much is clear from the principles set out in the earlier decisions of the Court in *Hamid* [2012*]* EWCH 3070 (Admin) and *Butt* [2014] EWHC 264 (Admin*).* Similar statements of principle and concern have been made in the context of appeals and jurisdiction conducted before the Upper Tribunal (Immigration and Asylum Chamber) ("UTIAC"): *See Okundu & Abdussalam v Secretary of State for the Home Department* [2014] UKUT 377 (IAC)"

3. In that case the Court emphasised that there was a pressing need for all legal representatives in judicial review proceedings to act in a professional manner both towards their clients but also, and critically, towards the Court, bearing in mind that their paramount duty was to the Court itself and that this took precedence over the duty they owed to their clients. The need for the warning to be taken seriously increases as the resources available to the Courts and Tribunals to act efficiently and fairly decrease. If the time of the Courts and Tribunals and their resources are absorbed dealing with utterly hopeless and/or unprofessionally prepared and conducted cases, then other cases, that are properly advanced and properly prepared, risk not having devoted to them the resources they deserve.

4. The facts that are set out below reflect what has become an all too familiar and depressing pattern in which legal representatives demonstrate a lack of care and concern for the substantive and procedural rules governing claims for judicial review. They suggest, in our view, a deliberate disregard for the professional duties that all legal representatives owe to the Court, and in the present case to the Tribunal.

5. As has now been made very clear in a growing body of case law the Courts and Tribunal have the power and right to refer to relevant authorities, including the Solicitors Regulation Authority ("SRA"), the conduct of legal representatives who seem to the Court or Tribunal to fall below the standards required of professionals appearing on behalf of immigrants and asylum seekers."

6. Having set out the facts of the five cases and its observations on them, the Tribunal had:-

> "…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 the Tribunal." (paragraph 43)

7. The Tribunal concluded as follows:-

> "51. For all the above reasons, we entertain serious concerns as to the conduct of Sandbrook in the conduct of its immigration practice. We reiterate that we make no formal findings of fact against either Sandbrook or any individual solicitor employed therein. However, we refer the conduct of Sandbrook, and its solicitors, to the SRA for investigation. We will send to the SRA the Court files on the cases which are of concern to us together with a copy of this judgment."

C. The SRA's response

8. The SRA began investigating Sandbrook on 8 July 2015. On 27 October 2015, the SRA sent its report to the appellant, together with a letter informing him that it was opening a formal investigation into his conduct.

9. Following exchanges between the SRA and the appellant, on 23 February 2017 the SRA issued a statement pursuant to rule 5(2) of the Solicitors (Disciplinary Proceedings) Rules 2007. Four of the allegations related to the appellant's conduct of the matters in the five cases that had concerned Swift J. The remaining two allegations related to the hearing before Green J and HHJ Raynor QC on 18 May 2015.

10. The allegations were as follows (the appellant for this purpose being the respondent and the Upper Tribunal being referred to as the Court):-

> "**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 and failed to achieve Outcomes 5.1, 5.2, 5.3 and 5.6 of the SRA Code of Conduct 2011.
>
> **Allegation 1.2**
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> 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 SRA Principles 2011 and the Respondent failed to achieve Outcomes 5.1, 5.2, 5.3 and 5.6 of the SRA Code of Conduct 2011.
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> **Allegation 1.3**
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> 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 is further alleged that by so acting he was reckless (although recklessness is not a necessary element of this allegation). This was contrary to Principles 1, 2 and 6 of the SRA Principles 2011 and the Respondent failed to achieve Outcomes 5.1, 5.2, 5.3 and 5.6 of the SRA Code of Conduct 2011.

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 SRA Principles 2011 and failed to achieve Outcomes 5.1, 5.2, 5.3 and 5.6 of the SRA Code of Conduct 2011.

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 SRA Principles 2011 and the Respondent failed to achieve Outcomes 5.3 and 5.6 of the SRA Code of Conduct 2011.

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 SRA Principles 2011 and failed to achieve Outcomes 5.1 and 5.2 of the SRA Code of Conduct 2011.

...

2. Dishonesty is alleged with respect to the allegation at paragraph 1.6 although dishonesty is not an essential ingredient to prove the allegation."

11. The relevant SRA Principles are as follows:-

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

2. Act with integrity;

3. Not allow your independence to be compromised;

6. Behave in a way that maintains the trust the public places in you and in the profession 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;"

12. The relevant SRA Outcomes are as follows:-

"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 that place obligations on you.

5.6 - You comply with your duties to the court."

13. The Outcomes define "court" as meaning "any court, tribunal or enquiry …".

D. The SDT's decision and the appellant's challenge: in outline

14. The hearing before the SDT took place on 21-24 August 2017. Both the SRA (which was the applicant) and the appellant (who was, as previously indicated, the respondent) were represented by Counsel.

15. Applying the criminal standard of proof, the SDT found that allegations 1.1 to 1.3 were proved but that allegations 1.4 to 1.6 were not. Accordingly, although the SDT found the appellant to be lacking in integrity, it did not find him to have acted dishonestly, as the SRA had contended in relation to allegation 1.6.

16. The essential thrust of the appellant's grounds of appeal against the SDT's decision is that striking-off was a disproportionate sanction. The SDT should, according to the appellant, have merely suspended him from practice as a solicitor. The appellant's attack on the decision to strike off is, according to Dr Van Dellen, strengthened by a series of failings in the SDT's overall decision-making.

17. As we have seen, the SRA contended that the appellant had been professionally involved in cases involving last-minute challenges to removal directions set by the Secretary of State for the Home Department, which she had made in respect of individuals she considered to have no legal basis for remaining in the United Kingdom. The cases were said to lack merit. They

were brought in order to exploit what was described by the SDT at paragraph 163.3 of its decision as a "weak spot in the administration of the immigration system".

E. The "weak spot": paragraphs 353 and 353A of the Immigration Rules

18. This so-called "weak spot" involves the interplay between two paragraphs of the immigration rules:-

> "**Fresh Claims**
>
> 353. When a human rights or asylum[1] 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. 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."

19. Several features of paragraphs 353 and 353A are worthy of mention. First, they relate to the treatment by the Secretary of State of <u>further</u> submissions. For the paragraphs to apply, there needs to have been a prior human rights or asylum claim, which was refused, withdrawn or treated as withdrawn. There must no longer be any appeal proceedings pending in respect of that claim.

20. Secondly, paragraph 353 affords a particular meaning to the test of whether the submissions are "significantly different" from previously considered material, such as to amount to a fresh claim. Not only does the content of those submissions need to be previously unconsidered by the Secretary of

[1]The word "protection" was substituted for "asylum" on 6 April 2015.

State; it also needs to create "a realistic prospect of success", taken together with previously considered material. In this context, "success" means success in a hypothetical appeal, brought against the refusal of the human rights or asylum claim, before a hypothetical Judge of the First-tier Tribunal.

21. Thirdly, the effect of paragraph 353A is that where "further submissions" have been made, the Secretary of State's own policy is that the applicant is not to be removed from the United Kingdom before the Secretary of State has considered the submissions. Thus, so long as they are "further submissions", paragraph 353A operates as a fetter on removal, regardless of whether there is any prospect of those submissions amounting to a fresh claim under paragraph 353.

F. The legal landscape

22. The respondent's case is that the appellant was professionally involved in the production of submissions, which he knew had no such prospect of success, and that he exploited the safeguard afforded by paragraph 353A by facilitating last-minute challenges to removal directions, which had been set for a specific time and place by the Secretary of State. As a result, stays on removal were obtained from the Upper Tribunal, because the Secretary of State had not had time to make a paragraph 353 decision in respect of those submissions, regardless of the fact that, in reality, there was no merit in them.

23. The appellant also made a number of applications, on behalf of clients, for leave to remain in the United Kingdom, by reference to the provisions of the Immigration Rules dealing with private and family life and/or directly by reference to ECHR Article 8. The respondent considered that these "underlying applications for LTR lacked any merit" (paragraph 163.20). According to the respondent, the appellant "as a practitioner in the field of immigration law, must have recognised" that this was the case.

24. It is therefore necessary to look at the legal landscape, as it existed in 2014 and early 2015, when relevant steps in the five cases were taken.

25. At paragraph 163.20 of its decision, the SDT referred to MF (Nigeria) v SSHD [2013] EWCA Civ 1192. A few months earlier, Sales J (as he then was) had handed down judgment in Nagre v Secretary of State for the Home Department [2013] EWHC 720 (Admin). Sales J examined the provisions of paragraphs 276ADE to 276CE of the Immigration Rules, as introduced in

2012, together with Appendix FM (Family Members). The judgment continues as follows:-

"13. Along with the introduction of these additions to the Immigration Rules, the Secretary of State issued instructions regarding the approach to be applied by her officials in deciding whether to grant leave to remain outside the Rules, in the exercise of the residual discretion she has to grant such leave. The Secretary of State requires such leave to be granted in exceptional cases, but in paragraph 3.2.7d of the instructions she has amplified the guidance for the approach to be adopted, in these terms:

> **"3.2.7d Exceptional circumstances**
>
> Where the applicant does not meet the requirements of the rules refusal of the application will normally be appropriate. However, leave can be granted outside the rules where exceptional circumstances apply. Consideration of exceptional circumstances applies to applications for leave to remain and leave to enter. "Exceptional" does not mean "unusual" or "unique". Whilst all cases are to some extent unique, those unique factors do not generally render them exceptional. For example, a case is not exceptional just because the criteria set out in EX.1 of Appendix FM have been missed by a small margin. Instead, "exceptional" means circumstances in which refusal would result in unjustifiably harsh consequences for the individual such that refusal of the application would not be proportionate. That is likely to be the case only very rarely.

In determining whether there are exceptional circumstances, the decision maker must consider all relevant factors, such as:

(a) The circumstances around the applicant's entry to the UK and the proportion of the time they have been in the UK legally as opposed to illegally. Did they form their relationship with their partner at a time when they had no immigration status or this was precarious? Family life which involves the application putting down roots in the UK in the full knowledge that their stay here is unlawful or precarious, should be given less weight, when balanced against the factors weighing in favour of removal, than family life formed by a person lawfully present in the UK.

(b) Cumulative factors should be considered. For example, where the applicant has family members in the UK but their family life does not provide a basis for stay and they have a significant private life in the UK. Although under the rules family life and private life are considered separately, when considering whether there are exceptional circumstances private and family life can be taken into account.

If the applicant falls to be granted because exceptional circumstances apply in their case, they may be granted leave outside the rules for a period of 30 months and on a 10 year route to settlement."

14. The definition of "exceptional circumstances" which is given in this guidance equates such circumstances with there being unjustifiable hardship involved in removal such that it would be disproportionate – i.e. would involve a breach of Article 8. The practical guidance and illustrations given in the passage quoted above support that interpretation. No challenge is brought to the lawfulness of this guidance. In my view, it gives clear and appropriate guidance to relevant officials that if they come across a case falling outside the new rules, they nonetheless have to consider whether it is a case where, on the particular facts, there would be a breach of Article 8 rights if the application for leave to remain were refused.

…

27. There is, in my judgment, nothing untoward in the fact that the new rules do not necessarily track absolutely precisely and provide in detail in advance for every nuance in the application of Article 8 in individual cases. I do not think it would be feasible, or even possible, to produce simple Immigration Rules capable of providing clear guidance to all the officials who have to operate them that did that. That was true of the Immigration Rules prior to their amendment, and it could not be suggested that they were unlawful as a result. As observed by Lord Bingham in *Huang* at [17] "It is a premise of the statutory scheme enacted by Parliament that an applicant may fail to qualify under the rules and yet may have a valid claim by virtue of article 8." In his speech in *Huang*, at [5]-[13], Lord Bingham explained how the law provides that immigration officers, entry clearance officers and all staff at what is now the United Kingdom Border Agency should take decisions in a way that complies with individuals' Convention rights, including under Article 8, and how an appeal will lie in defined cases to what is now the First-tier Tribunal on human rights grounds. At paras. [14]-[18], Lord Bingham explained the task of the appellate immigration authority in just the type of case where an applicant fails under the Immigration Rules but nevertheless has a valid claim under Article 8 to remain in the country. If, in relation to a particular immigration decision, no appeal is provided for, the proper compliance of immigration officials with their obligation (in particular, under section 6(1) of the HRA) to act in a way which is compatible with Convention rights will be enforced by this Court on an application for judicial review, such as has been brought in this case.

28. As appears from the new guidance issued by the Secretary of State in relation to exercise of her residual discretion to grant leave to remain outside the Rules, as set out above, and as Mr Peckover makes clear in his witness statement, the new rules contemplate that there will be some cases in which a right to remain based on Article 8 can be established, even though falling outside the new rules. Therefore, the basic

framework of analysis contemplated by Lord Bingham in *Huang* continues to apply as was recognised by the Upper Tribunal in *Izuazu*.

29. Nonetheless, the new rules do provide better explicit coverage of the factors identified in case-law as relevant to analysis of claims under Article 8 than was formerly the position, so in many cases the main points for consideration in relation to Article 8 will be addressed by decision-makers applying the new rules. It is only if, after doing that, there remains an arguable case that there may be good grounds for granting leave to remain outside the Rules by reference to Article 8 that it will be necessary for Article 8 purposes to go on to consider whether there are compelling circumstances not sufficiently recognised under the new rules to require the grant of such leave.

…

38. The present case does not involve deportation of an individual who has committed serious crimes in the United Kingdom. Rather, it involves a claimant who has overstayed his leave to remain in the country and who, after his leave to remain overstayed his leave to remain in the country and who, after his leave to remain ended, has formed a relationship with Ms Palmer which constitutes family life. There are no children affected by the decision. The family life between the Claimant and Ms Palmer was established at a time when it was known to be precarious, because of the absence of any right on the part of the Claimant to remain in the United Kingdom.

…

41. The approach explained in the Strasbourg case-law indicates that where family life is established when the immigration status of the claimant is precarious, removal will be disproportionate only in exceptional cases; and also that consideration of whether there are insurmountable obstacles to the claimant's resident spouse or partner relocating to the claimant's country of origin to continue their family life there will be a highly material consideration. This is not to say that the question whether there are insurmountable obstacles to relocation will always be decisive. The statement of general approach referred to above refers to a range of factors which may bear upon the question of proportionality. For example, the extent to which there has been delay by the host state in taking a decision to remove a foreign national may be relevant (a factor discussed in *EB (Kosovo)*). Therefore, it cannot be said that in every case consideration of the test in Section EX.1 of whether there are insurmountable obstacles to relocation will necessarily exhaust consideration of proportionality, even in the type of precarious family life case with which these proceedings are concerned. I agree with the statement by the Upper Tribunal in *Izuazu* in the latter part of para. [56],

that the Strasbourg case-law does not treat the test of insurmountable obstacles to relocation as a minimum requirement to be established in a precarious family life case before it can be concluded that removal of the claimant is disproportionate; the case-law only treats it as a material factor to be taken into account.

42. Nonetheless, I consider that the Strasbourg guidance does indicate that in a precarious family life case, where it is only in "exceptional" or "the most exceptional" circumstances that removal of the non-national family member will constitute a violation of Article 8, the absence of insurmountable obstacles to relocation of other family members to that member's own country of origin to continue their family life there is likely to indicate that the removal will be proportionate for the purpose of Article 8. In order to show that, despite the practical possibility of relocation (i.e. the absence of insurmountable obstacles to it), removal in such a case would nonetheless be disproportionate, one would need to indentify other non-standard and particular features of the case of a compelling nature to show that removal would be unjustifiably harsh.

43. On this interpretation of the case-law, the gap between the test for leave to remain under EX.1(b) and the result one would arrive at by direct consideration of Article 8 in the precarious family life class of case is likely to be small. In the majority of such cases, if the applicant for leave to remain cannot show that there are insurmountable obstacles to relocation of a spouse or partner to his or her country of origin so as to meet that part of the test laid down in EX.1(b), they will not be able to show that their removal is disproportionate."

26. In MF (Nigeria), the Court of Appeal essentially endorsed the approach of Sales J, when examining the Immigration Rules relating to the deportation of foreign criminals:-

"42. At para 40, Sales J referred to a statement in the case law that, in "precarious" cases, "it is likely to be only in the most exceptional circumstances that the removal of the non-national family member will constitute a violation of art. 8". This has been repeated and adopted by the ECtHR in near identical terms in many cases. At paras 41 and 42, he said that in a "precarious" family life case, it is only in "exceptional" or "the most exceptional circumstances" that removal of the non-national family member will constitute a violation of article 8. 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. In our view, it is no coincidence that the phrase "exceptional

circumstances" is used in the new rules in the context of weighing the competing factors for and against deportation of foreign criminals.

43. The word "exceptional" is often used to denote a departure from a general rule. The general rule in the present context is that, in the case of a foreign prisoner to whom paras 399 and 399A do not apply, very compelling reasons will be required to outweigh the public interest in deportation. These compelling reasons are the "exceptional circumstances"."

27. In Hesham Ali v Secretary of State for the Home Department [2016] UKSC 60, the Supreme Court endorsed the approach taken in MF (Nigeria), except as regards the Court of Appeal's view that the "new rules" concerning deportation were "a complete code". The Supreme Court held, however, that that error was "insignificant" (paragraph 81). The Supreme Court expressly endorsed the approach taken in MF (Nigeria) to "exceptional circumstances":-

"79. When it analysed the reference to "exceptional circumstances" in the new rule 398, the Court of Appeal in the *MF (Nigeria)* case had well in mind the risk that the phrase might be misunderstood. It concluded at paras 41 and 42, in my view correctly, that the rule was no more laying down a *test* of exceptionality than had been Lord Bingham in the *Razgar* case or indeed than had been the Strasbourg court in its analysis of the situation where family life was precarious. It continued:

> "Rather [the rule means] 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."

Then, at para 43, the Court of Appeal articulated the general rule which I have set out at para 66 above and by which in effect it substituted the phrase "very compelling reasons" for that of "exceptional circumstances". In my view its substitution was wise and, as I have said, its general rule was correct. In July 2014, when introducing changes to the rules to accompany the coming into force of the 2014 Act, the Secretary of State made a corresponding amendment to rule 398 so as, among other things, to substitute the words "very compelling" for the word "exceptional"" (Lord Reed).

28. In R (Agyarko) v Secretary of State for the Home Department and Another [2017] UKSC 11, Lord Reed returned to what was meant by "exceptional circumstances" in the context of the jurisprudence of the European Court of Human Rights, as well as in the Secretary of State's Immigration Rules and Instructions:-

> "58. The expression "exceptional circumstances" appears in a number of places in the Rules and the Instructions. Its use in the part of the Rules concerned with the deportation of foreign offenders was considered in *Hesham Ali*. In the present context, as has been explained, it appears in the Instructions dealing with the grant of leave to remain in the UK outside the Rules. Its use is challenged on the basis that the Secretary of State cannot lawfully impose a requirement that there should be "exceptional circumstances", having regard to the opinion of the Appellate Committee of the House of Lords in *Huang*."

29. Thus, at the times with which we are concerned, those practising in the field of immigration law would have known that it was very unlikely that a person could succeed by reference to the private or family life aspects of ECHR Article 8, if he or she could not bring themselves within the relevant provisions of the Immigration Rules. So much was clear from Nagre in non-deportation cases and from MF (Nigeria) in deportation cases. The judgments of the Supreme Court in Hesham Ali and Agyarko make it plain that the position has not changed.

G. The SDT's decision in more detail

30. It is now possible to turn to the SDT's findings concerning the five cases. They concern individuals referred to by the SDT as T, PZ, AZ, GL and MW. What follows is merely a summary of the extremely detailed findings of the SDT in a decision which runs to 94 pages.

31. T came into contact with the appellant in August 2014, while she was at Yarl's Wood Detention Centre. She had been an immigration absconder from late November 1999 until she was encountered and detained in July 2014. The appellant's contention was that because T had been in the United Kingdom for nearly fifteen years, "there was a reasonable argument that she might be allowed to remain on human rights or exceptional circumstances ground" (sic) (paragraph 146.1). On 4 August 2014, the appellant made submissions to the Secretary of State, to the effect that leave to remain should be granted to T who "had spent 20 years in this country, which is too insignificant to be overlooked". The references in the submissions to twenty years were untrue. It was not mentioned that T had not been in the United Kingdom between 1997 and 1999.

32. On 15 August 2014, following an application for judicial review, the Upper Tribunal granted a stay prohibiting T's removal until final determination of her application for permission to proceed with judicial review or until further order. The appellant had helped T with her judicial review

application, which contended that paragraph 353A applied "as there is an outstanding application". Since there does not appear to have been any prior human rights or asylum claim, which had been refused by the Secretary of State, that statement is problematic but the point was not noted by the SDT.

33. PZ made an application for leave to remain in 2010, which was apparently not dealt with by the Secretary of State until over three years later. PZ told the appellant she had been in a relationship with Mr Z for well over two years. PZ's judicial review application was based on the refusal of her application for leave to remain. It referred to the delay in the Home Office decision and to her being in what was said to be a permanent and subsisting relationship with Mr Z.

34. On 26 March 2014, an injunction was granted preventing PZ's removal, which had been set for that date. Following a Home Office decision on PZ on 8 October 2014, a further judicial review application was issued on 14 November 2014. The appellant accepted that he had drafted PZ's March 2014 judicial review application but denied involvement in this second application, save for assisting with the claim form itself and checking the paperwork. At paragraph 147.11 of its decision, the SDT rejected the appellant's contention that he did not draft the document or at least have a very significant role in its production. It was accordingly a matter of concern to the SDT that the second JR application made no reference to the first such application. That first application had not been pursued, following the stay on removal.

35. At paragraph 147.14 the SDT held that there was nothing to suggest that PZ's personal circumstances had changed between the application for leave to remain in March 2014 and November 2014, following the refusal of the earlier application by the Home Office's decision of 8 October 2014. The SDT found that the fact the appellant "had tried to distance himself from the second JR application indicated that he did not believe the application was well-founded".

36. A further stay on removal was obtained from the Upper Tribunal in respect of the second JR application.

37. On 4 March 2015, Swift J held that PZ'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".

38. AZ instructed the appellant on 4 December 2014. She too was at the time detained in Yarl's Wood. AZ had entered the United Kingdom in 2007. In

2010 she had had a child, JC, with Mr C. Previous submissions made on AZ's behalf by a previous firm of solicitors in December 2014 had been rejected by the Secretary of State as a fresh claim, applying paragraph 353 of the Immigration Rules. It appeared that AZ's marriage to Mr C was accepted, as was the fact that she had a child aged 4. However, AZ and Mr C had been convicted of running brothels in the United Kingdom and AZ had been imprisoned in connection with that offence. Her relationship with Mr C had begun when her immigration status had been precarious. The Secretary of State considered there were no compelling circumstances, which outweighed the public interest in deporting AZ, nor any human rights issues that affected that conclusion.

39. Permission to bring judicial review proceedings to challenge the Secretary of State's paragraph 353 decision was refused on 2 January 2015 by the Upper Tribunal. That Tribunal also designated the application as totally without merit.

40. At paragraph 148.9 of the decision, the SDT found as follows:-

> "148.9 The Tribunal found it incredible that a solicitor specialising in immigration cases could advise 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 human rights grounds on which she could remain in the UK."

41. The appellant's submissions on behalf of AZ, sent on 26 January 2015, alleged that there were "exceptional circumstances" and referred to AZ being "of good character". There was no mention of the conviction and imprisonment for running brothels. The SDT considered that to be "a significant matter" which meant AZ's ability to remain in the United Kingdom was less likely than would have been the case if she had been of good character.

42. The SDT was concerned that the submissions made by the appellant on behalf of AZ were submitted only five days before the planned deportation, but some 53 days after the appellant had been instructed.

43. At paragraph 148.12 of the decision, the SDT noted the appellant's practice of writing to the Secretary of State, shortly before removal, in terms which the appellant described as "chaser" letters. The appellant told the SDT that these were "simply template letters and did not mean that he was taking responsibility for the JR application". The Tribunal, however, considered that

the judicial review and injunction applications in respect of AZ were drafted or prepared by the respondent. There were striking similarities in the use of language, compared with the grounds seen in other matters with which the appellant had been involved.

44. AZ obtained a stay on removal from the Upper Tribunal. On 12 February 2015, the Secretary of State filed summary grounds of defence, in which she pointed out there was no reference in the application to the refusal of the judicial review claim made by AZ's previous solicitors, which was considered to be a "transparent attempt to mislead the court in order to obtain injunctive relief to prevent lawful removal" (paragraph 148.18). The Secretary of State sought to discharge the injunction, arguing that the application had been an abuse of process. The appellant stated in an email, by way of response, that the application will be contested "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)" (paragraph 148.19). The SDT noted that the appellant could not properly refer to the complexity of the case if he did not know what had been said in the grounds.

45. On 4 March 2015, Swift J refused the application for permission to apply for judicial review, declaring it to be totally without merit.

46. However, despite this, on 8 May 2015, the appellant made further submissions on behalf of AZ to the Secretary of State's offices in Durham. The application referred to the child born in the United Kingdom, but provided no explanation of what had happened to the child during AZ's imprisonment and immigration detention. Nor was there any reference to the fact that AZ had another child, who had been left behind in China.

47. At paragraph 148.22, the SDT noted that it was "a matter of great concern that [the appellant] could have made substantially similar submissions to the Home Office when it was clear that the earlier submissions had not succeeded". The appellant told the SDT that "he had hoped that the Home Office will grant Ms AZ a visa on the basis of "exceptional circumstances"".

48. Even after the Upper Tribunal hearing before Green J and HHJ Raynor QC, at which it had been made abundantly clear that the conduct of the appellant's firm was being called into question, the appellant wrote in June 2015 to the Secretary of State, threatening a further "injunction application if you fail to revert to us". This was on the basis that further submissions had been made on behalf of AZ in May 2015, which in fact had no material differences from those previously put forward.

49. At paragraph 148.26 of the decision, the SDT said that, of the five cases which it had examined, the appellant's conduct in relation to AZ "was the most egregious". In the course of his submissions on 15 March 2018, Dr Van Dellen told us the appellant accepts that, in the case of AZ, he "got it wrong".

50. GL applied for asylum in 2003. Having exhausted his appeal rights, he made further submissions in 2010, which were rejected. Yet more submissions were prepared by the appellant on GL's behalf on 11 April 2013. An application for judicial review was made on 13 April 2013, in GL's own name. That led to the deferral of the removal directions made in his case. The 11 April submissions were rejected by the Secretary of State in May 2013. GL was detained on 12 January 2015 and instructed the appellant two days later.

51. The appellant accepted that he had helped GL with the judicial review application in April 2013. However, he treated GL as a new client in January 2015 and "did not think he was dealing with the same person" (paragraph 149.2). The SDT did not accept the appellant's assertion that he had no recollection of GL's earlier matter. The appellant wrote to the Secretary of State on 20 January 2015, basing further submissions on GL's relationship with a partner. The SDT noted the very similar language used in these submissions, compared with that in the case of AZ, including sentences such as "throughout this time, he has developed as a person and created many heartfelt memories with those closest to him". As for the partner, the length of the relationship was not stated, nor had there been mention of the partner in the judicial review application in April 2013.

52. The SDT noted that the appellant accepted he had assisted in the drafting of the JR claim and application in the case of GL. Although there "was nothing inherently wrong in a solicitor drafting a document for a client to sign, … if the solicitor had taken on that responsibility, it was important to ensure it was accurate and not misleading" (paragraph 149.6). The application made no reference to the relevant previous litigation history of GL.

53. An injunction staying removal was granted by the Upper Tribunal on 23 January 2015, on the basis that paragraph "353A makes it unlawful for removal to take place while further submissions are outstanding. There had been a number of chasing letters seeking a response that have gone unanswered" (paragraph 149.8).

54. Following the hearing before Green J and HHJ Raynor QC on 18 May 2015, the appellant made further representations on behalf of GL, which were in substantially the same terms as those made on 20 January 2015.

55. The SDT did consider that there "may have been some change and so it was not possible for the [SDT] to determine that Mr GL's applications to the court were totally without merit". There was, however, according to the SDT, a clear lack of candour when the application was made in January 2015, in not referring to the relevant history. Furthermore, the judicial review proceedings were not withdrawn or otherwise brought to a conclusion by the appellant or GL.

56. MW instructed the appellant's firm in June 2014. She was in detention at Yarl's Wood. She had entered the United Kingdom in 2003, married Mr Z in 2011 and claimed asylum in 2014. The appellant's submissions on behalf of MW to the Secretary of State were on the basis of MW's family life with her husband in the United Kingdom. He was said to suffer from ill-health and would be unable to afford medical treatment in China if he had to leave the United Kingdom with MW. The submissions did not mention the removal directions which had been communicated by the Secretary of State to MW almost four weeks earlier. The SDT did not consider it had been given a satisfactory explanation for this delay. Indeed, the SDT "could confidently infer that Mrs MW would have informed the [appellant] of the RDs closer to 5 June than to 2 July". On 8 July 2014, the appellant wrote to the Yarl's Wood Detention Centre, enclosing MW's judicial review application against the removal directions set for that day.

57. On the same day, the Upper Tribunal granted a stay on removal until final disposal of the claim or further order. The Judge concerned said that he had seen a number of statements from third parties that were consistent with the marriage with Mr Z being a genuine one. So far as the ill-health of Mr Z was concerned the Judge said "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".

58. In fact, the submissions made on 6 July 2014 had been considered by the Secretary of State in a letter dated 8 July 2014. Those submissions had been rejected, with the Secretary of State telling MW that "your purpose in raising these issues so late is simply to frustrate that process [of removal] and to prolong your client's stay in the United Kingdom". In fact, the medical evidence concerning Z pre-dated the hearing in the First-tier Tribunal, which had dismissed MW's appeal. The SDT considered that it had not been explained "why no up-to-date evidence had been sought between the [appellant's] instruction on 4 June 2014 and the letter to the Home Office on 2 July 2014" (paragraph 150.11). A second judicial review application was made for MW on 29 July 2014. The outcome of that application was not apparent to the SDT. The SDT did not believe the appellant's contention that he did not

draft the grounds of the second judicial review application, notwithstanding similarities in the language used in those grounds and in others with which he had been concerned.

59. On 21 November 2014, a third judicial review application was made on behalf of MW. The application materials referred to the Secretary of State's address as "Treasury's Solicitors", a term used in other applications involving the appellant. There were also other noteworthy expressions seen elsewhere in connection with proceedings concerning the five clients, such as "the respectful judge" and "my concern is a number of folds".

60. The November 2014 grounds stated that MW had two outstanding applications before the Secretary of State. The SDT found that to be untrue. Once again, the Upper Tribunal granted a stay on removal, citing undetermined submissions under paragraph 353A of the Immigration Rules. The Upper Tribunal said in its Order that it "proceeds on the basis that the applicant's solicitors would have informed the Tribunal if such matters [the matters advanced in the claims of 3 November 2014] were considered when permission was refused" in the previous judicial review proceedings. At paragraph 150.23 of the decision, the SDT found that the appellant had, in fact, failed in the November 2014 grounds to make clear the basis of the July 2014 injunction, and had failed to point out the substantial overlap between the submissions in early July and those in early November 2014.

61. We have already had cause to note various observations by the SDT regarding the similarity in language used in applications made by or on behalf of the five individuals. Paragraphs 152.1 to 152.6 of the SDT's decision set out in great detail the use of these, and other phrases, by reference to particular letters and grounds used in these cases. Some of these documents were admitted by the appellant to emanate from him, whilst he denied having anything to do with the others.

62. The SDT also noted that all the grounds seemed to be in the same font.

63. At paragraph 153, the SDT held that "cumulatively, the Tribunal was driven to the irresistible inference that the [appellant] had drafted or prepared and/or significantly assisted the clients in submitting the JR applications where his firm was not on record … 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 on how identical sections appeared in documents for Mr GL and PZ".

64. That being the case, the SDT held at paragraph 154 that, given the appellant's involvement in the 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". According to the SDT, 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."

65. At paragraph 156, the SDT held as follows:-

> "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."

66. At paragraph 159, the SDT found on the facts 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)."

67. The section of the SDT's decision dealing with findings concludes as follows:-

> "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 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."

68. Having made these findings, the SDT turned to determine the six allegations against the appellant. At paragraph 162, the SDT set out the reasons for concluding that the appellant had brought judicial review proceedings which were totally without merit and an abuse of process contrary to the principles and outcomes set out earlier.

69. The SDT did not consider that the facts of T's case were an abuse of process. In the case of GL, however, whilst the SDT considered that there may have been enough in the application to enable it to escape proper designation as being totally without merit, the application was nevertheless an abuse of process. This was because "first of all, the firm did not go on the record as acting, when clearly it was responsible for the application and its contents". Furthermore, the grounds "lack candour". There was no mention of the earlier judicial review being brought to an end as being totally without merit. The grounds did not mention GL's long immigration history, including the rejection of his asylum application in 2003 and the fact that his reasons for seeking asylum had been rehearsed in an application of 2013. The grounds did not say anything about the length of GL's purported relationship with a United Kingdom citizen nor whether they cohabited. All this meant it was highly likely 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 [appellant] that the application lacked any real merit, and was therefore an abuse of process. The application achieved the client's desired result, of postponing his deportation" (paragraph 162.3)

70. Turning to PZ, the SDT disagreed with the finding of Swift J in her Order of 4 March 2015, that PZ's first judicial review application was totally without merit. However, the position was otherwise in relation to the second judicial review application because there was nothing to indicate a change in circumstances in relation of PZ after May 2014, when the appellant's firm had made submissions to the Secretary of State. Those had been rejected on 8 October 2014. This meant that making a second judicial review application where there were no outstanding submissions, all relevant issues had been considered and the previous application had been dismissed as totally without merit, was "an abuse of process" (paragraph 162.4).

71. As for MW, the SDT found it was inconceivable the appellant did not know about the removal directions set in MW's case, at least reasonably soon after 5 June 2014. The SDT found the submissions of 2 and 6 July 2014 "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" (paragraph 162.5).

72. MW's third judicial review application had been based on the fact that the Home Office had not responded to the further representations made on 3 November 2014. But the SDT found that there was no evidence that these latest representations could have amounted to a fresh claim under paragraph 353. The grounds, which the appellant accepted he had drafted, did not properly set out the history of the previous two applications and otherwise lacked frankness. The statement that MW had "two outstanding applications with the Home Office" was, the SDT found, "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". Although the Judge who granted the stay had specifically relied on the fact that the appellant's 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 appellant had failed to do this.

73. All of these matters concerning the third judicial review application of MW led the SDT to conclude that the filing of that application "amounted to an abuse of process" (paragraph 162.8).

74. In the case of AZ, the SDT agreed with Swift J who, on 4 March 2015, had held the judicial review application made on 30 January 2015 was totally without merit and an abuse of process. Indeed, the SDT considered that this was "clearly right". The "factual background" of the grounds failed completely to mention AZ's offence and length of sentence, as well as other plainly relevant information concerning past proceedings. The SDT concluded that there was no proper basis for a judicial review and injunction application "save the client's desire to stay in the UK – but issue of the application was an abuse of process" (paragraph 162.10).

75. As we have already noted, Dr Van Dellen conceded there were serious failings on the part of the appellant in relation to AZ.

76. The SDT then made these findings:

> "162.13 The Tribunal was satisfied that bringing the JR applications as he did showed that the [appellant] 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 [appellant] 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 [appellant] 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 [appellant] himself prepared/drafted and had 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 [appellant'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 [appellant] 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."

77. The SDT found that Allegation 1.2 was also proved. This entailed the finding that the appellant "engaged in a systematic course of conduct designed to undermine the immigration system, amounting to a persistent abuse of the process of the Court".

78. At paragraph 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". The expression "systematic" also implied that there was intention. Accordingly, someone acting in a random way without planning or intention would not act systematically.

79. At paragraph 163.3, the SDT characterised paragraph 353A of the Immigration Rules as creating a "weak spot" in the administration of the immigration system. According to the SDT, it could not have been the intention of the Immigration Rules that an individual could make multiple

submissions, based on the same grounds as had previously been considered, to delay or prevent deportation.

80. At paragraph 163.4, the SDT found that the appellant "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". In each of the five cases, applications for an injunction had been successful. Accordingly, the appellant "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".

81. Given the "particularly serious" nature of the allegation of engaging in a systematic course of conduct designed to undermine the immigration system, the SDT reviewed all of its findings of fact (except for those relating to Allegations 1.5 and 1.6, which it held (rightly) were in a different category).

82. In the case of T, the SDT was concerned that, following the grant of injunctive relief, the appellant had advised T that the JR application should be abandoned on the basis that she had achieved what she sought to obtain and there "would be no point in continuing with it because it serves no value" (paragraph 163.6). Furthermore letters to the Upper Tribunal of 27 August and 12 September 2014 from the appellant said that interim relief "rendered the judicial review application "academic"". The appellant, accordingly, failed to pursue the judicial review proceedings to a proper conclusion.

83. The case of T was, furthermore, problematic because the appellant gave evidence that indicated he did not think it necessary or important to obtain and review a client's full immigration history. He merely relied on the fact that some of his clients "did not want him to obtain files from previous solicitors". The decision whether or not a matter could formally be withdrawn was, according to the SDT, one to be made by the Upper Tribunal pursuant to rule 17 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

84. The SDT found that PZ's case disclosed the same approach on the part of the appellant towards judicial review proceedings, once an injunction had been obtained, preventing removal on a particular day. The same was true with MW's case. The history of judicial review applications in the case of MW led the SDT to conclude that the appellant "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. " (paragraph 163.13)

85. The deficiencies identified by the SDT concerning the appellant's actions in the case of GL have already been described. In addition, at paragraph 163.15, the SDT observed that GL had not referred to any supposed partner

in his application for a fee exemption and that GL was recorded as having told the appellant in 2015 that he wanted to be released because "all his friends" were in the United Kingdom. This meant that there was, in effect, a serious issue as to whether GL did have a partner. The appellant, however, had failed to check these "basic facts with Mr GL before advising on the JR application of 23 January 2015" (paragraph 163.16).

86. As for AZ, in June 2015, when the appellant again threatened judicial review on her behalf, there was, the SDT found, "nothing to suggest a change in Ms AZ's circumstances … save that four months had passed". Even after the Upper Tribunal hearing on 8 May 2015, the appellant was "still advising a client to pursue JR where the underlying merits were very poor" (paragraph 163.17).

87. At paragraph 163.18, the SDT said:-

> "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."

88. According to the SDT, what made the appellant's conduct an abuse of process were a number of factors. First, submissions were made at a late stage, in some cases well after the point at which submissions could have been made after instruction. In all five cases the persons concerned had been in the United Kingdom for some time but had taken no proper steps to regularise their immigration statuses until threatened with removal. In several cases the delay between the appellant's firm receiving instructions and making the submissions was of concern to the SDT.

89. The second factor was that, according to the SDT, the underlying applications for LTR lacked any merit. This was "something the [appellant] as a practitioner in the field of immigration law, must have recognised" (paragraph 163.20). The Tribunal considered the case law of MF (Nigeria) v SSHD and R (Agyarko) v SSHD, in which it concluded that it was not necessary to show that a client was in a unique or highly unusual situation in order to demonstrate an exceptional circumstance. At paragraph 163.21, the SDT found that there was "nothing to suggest that 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".

90. Next, the appellant had made repeated submissions, with only the most minor variations for all the relevant clients, except for T. As for not pursuing cases which were said to be "academic", the SDT considered that "simply writing to the court indicating an intention to withdraw a case was not sufficient". In this regard, the SDT noted orders from the Upper Tribunal, upon which the appellant sought to rely in order to justify his stance. In these Orders, judges had indicated that, in similar circumstances, an application for permission "has been rendered academic and is, accordingly, refused". The SDT did not consider that these Orders supported the appellant's argument. In each of them the decisions had been made by a Judge after the Home Office had had a chance to respond: "It was not the [appellant's] role to remove that supervisory jurisdiction and its powers to determine whether or not a case should proceed" (paragraph 163.24). This was particularly so, where injunctions had been granted pending some further action or decision.

91. At paragraph 163.28, the SDT found the appellant "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".

92. Allegation 1.3 was also found and proved. This involved the appellant failing to act in accordance with the duty of candour owed by legal representatives upon a "without notice" application for interim relief and failing to place the full facts before the Tribunal. The appellant was held to have acted recklessly.

93. In the case of GL, the SDT found the appellant's failure even to check whether he had acted for GL less than two years earlier was not credible and that the appellant had failed to put the full facts before the Tribunal. PZ's second judicial review application of November 2014 stated that she had made no applications for judicial review in the past three months. That was untrue. A previous application had been concluded only in October 2014. The appellant also failed to correct this error when he was later acting for PZ.

94. In the case of MW, it had been incorrect to state that she had "two outstanding applications". The LTR application of 2 July 2014 had been refused on 8 July 2014 (which also dealt with further submissions of 6 July 2014). The first judicial review proceedings had been refused in October 2014. The second judicial review application of 29 July 2014 was not active. The only outstanding representations as at 21 November 2014 were those made on 3 November 2014, which had been in substantially the same terms as the submissions that had already been rejected.

95. In the case of AZ, the application of 30 January 2015 made no reference to the application of 2 December 2014 either having been made; or abandoned or dismissed. The appellant had, accordingly, failed to mention a very important fact in the course of making a without notice application.

96. In four of the five cases, the SDT considered that the appellant had "clearly failed to act in accordance with his duty of candour to the Court in making urgent, without notice applications". He had also failed to place the full facts before the Tribunal.

97. In all the circumstances, the SDT held that the appellant had been reckless:-

> "As a solicitor involved in drafting and issuing JR/injunction applications, the Tribunal found it was completely unacceptable for the [appellant] to take the risk of submitting incomplete information as this [appellant] had duties to the [Upper Tribunal] which took precedence over the instructions of a particular client. The Tribunal was satisfied that with regard to this allegation, the [appellant] had acted recklessly."

98. Allegation 1.4 was that the appellant had failed to follow correct court procedures by failing to pursue judicial review claims. Part of this allegation related to the SRA's contention that the appellant had not served judicial review proceedings on the Secretary of State, as required by the Rules. In several of the cases, however, the SDT acknowledged an argument that "technically [the appellant] could not be criticised for not serving the proceedings as he was not on record". Where the appellant had been on record and had not served the Secretary of State, the SDT declined to make a finding against him. This was for technical reason relating to the admissibility in evidence before the SDT of an order of Swift J.

99. Allegations 1.5 and 1.6 concerned the hearing before Green J and HHJ Raynor QC in the Upper Tribunal on 18 May 2015. These allegations were found not to be proved. The significance of these findings for present purposes is that Allegation 1.6 involved dishonesty. Accordingly, the SDT made no finding that the appellant had been dishonest. This point is taken by the appellant, in contending that the sanction of striking off is disproportionate.

H. Discussion

(a) The appellant's involvement in producing judicial review grounds

100. With this necessarily detailed summary of the SDT's findings, it is possible to turn to the grounds of appeal. Although Dr Van Dellen advanced the ground

relating to sanction first, it is logical to begin with the challenges to the SDT's findings and reasons for concluding that Allegations 1.1 to 1.3 had been proved. This is because if any of these grounds is found to be made out, they necessarily impact on the appellant's submission that striking-off was a disproportionate sanction.

101. The appellant's stated practice was that, upon encountering a new potential client, he would agree to act, on the record, for the purposes of regularising the client's status in the United Kingdom. Although the appellant did go on the record in order to act in some of the judicial review proceedings challenging the setting of specific removal directions, his case was that he had not been involved in preparation of the grounds which accompanied the claim form relating to the second judicial review brought by PZ (paragraphs 147.9, 147.18). In relation to AZ's judicial review application, the appellant said he had not checked the substance of the grounds (paragraphs 148.14, 148.15). In the case of GL he had, he said, merely checked that all the relevant documents were collated but, in oral evidence, he went further, accepting that he had assisted in the drafting of the judicial review claim and application (paragraph 149.6). In the case of MZ, the appellant asserted that he had not drafted the second judicial review application of July 2014 (paragraph 150.16).

102. The SDT rejected the appellant's claims that he had not prepared the grounds for the relevant judicial reviews relating to PZ, AZ and MW. As we have seen, the SDT conducted a highly detailed analysis of the various grounds, which revealed a number of striking similarities in terminology, including errors therein. In addition, there was the issue of identical fonts. At paragraph 147.11, the SDT noted that not only the fonts used in the first and second judicial review applications relating to PZ were the same; so too were the layout and indentation of certain paragraphs. This led the SDT to be satisfied, so that it was sure, that the appellant had drafted the second judicial review application relating to PZ.

103. In the case of AZ, the grounds were similar to those prepared for MW. The Tribunal rejected the appellant's contention that he had had no role in drafting the grounds. But "if the Tribunal was wrong about the [appellant'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" (paragraph 148.16).

104. As for MW, the SDT, again, rejected the appellant's stance that he had not drafted the grounds or been involved in preparing the judicial review application. The similarities with other documents which were clearly

prepared by the appellant "was overwhelming" (paragraph 150.16). The appellant's suggestion that someone else had helped Mr Z in preparing MW's application was not credible, according to the SDT, given that the appellant was the instructed solicitor who was helping MW.

105. The appellant, in his grounds, says that the SDT's findings on the issue of his involvement in drafting these sets of grounds were inconsistent. At paragraph 147.11, the Tribunal held that it was "believable" that "clients who were detained in the same immigration detention centre might pass documents around between themselves". That was a finding made in relation to PZ. The same point had, however, been made by the appellant in relation to MW, as noted by the SDT at paragraph 148.15.

106. I am entirely unpersuaded by this argument. The SDT gave cogent reasons for rejecting the suggestion that the passing around of documents in Yarl's Wood Immigration Detention Centre could account for the striking similarities it had observed in the sets of grounds. As pointed out by Mr Tankel in his skeleton argument, paragraph 147.10 of the decision makes it clear that the grounds relating to PZ contained a factual background that was specific to her case. There was also the powerful point, made by the SDT at paragraph 147.11 that there was "no reason at all for Mr Z to have the documents drafted by someone else, particularly when the [appellant's] assistance in the first JR application had achieved the result Ms PZ wanted".

107. In the case of AZ, the appellant also suggested, as an explanation for the similarities, the fact that clients may have passed documents between themselves "as they knew each other from the detention centre" (paragraph 148.15). The SDT, however, held that "it was not at all likely that Mr C would have obtained advice from anyone but the [appellant] in order to prepare the document". Again, that was a finding that was entirely open to the SDT, on the evidence.

108. The same suggestion was made by the appellant in relation to MW. The SDT, however, found that "the similarities with other documents which were clearly prepared by the [appellant] was overwhelming". Here again, the SDT considered that, given the appellant's prior involvement in the case of MW, any suggestion that Mr Z had been able to make the application without the appellant's assistance was incredible. Once again, I am entirely satisfied that that was a finding open to the SDT.

109. In conclusion on this issue, there is no contradiction between the SDT's acceptance that documents might be passed between detainees in Yarl's Wood and the SDT's findings regarding the appellant's responsibility for drafting those judicial review grounds he disclaimed. The appellant's

explanation simply did not get off the ground. In all the circumstances, the alternative scenario – that the appellant had drafted the grounds – was so compelling as to enable the SDT to conclude, to the higher standard, that it was sure this scenario represented the reality of the matter.

110. For the sake of completeness, Dr Van Dellen, in oral submissions, hypothesised that a solicitor might draft grounds, which would come into the hands of a client, before the solicitor withdrew on the basis that, for example, the client wished specifically to advance a matter that the solicitor could not advance, compatibly with his or her professional responsibilities. In such a case, Dr Van Dellen said, the pleadings, as they then stood, would be in the hands of the client and the solicitor would have no means of preventing their amendment and subsequent use by the client.

111. Dr Van Dellen accepted, however, that the hypothetical example formed no part of the case advanced by the appellant before the SDT. It therefore takes the appellant's case nowhere.

(b) Going "on the record"/limitations in retainer

112. Our conclusions on this issue throw into sharp focus a related ground advanced in some detail by Dr Van Dellen at the hearing on 15 March. This is that the SDT "failed to appreciate that the appellant could not be held liable or responsible for issues that fall outside the scope of his retainer" (grounds, paragraph 13). Dr Van Dellen mounted a particular attack upon the SDT's criticism, contained in paragraph 162.3, that the appellant's firm "did not go on the record as acting, when clearly it was responsible for the application and its contents". This criticism was echoed in paragraph 191 of the decision where, in considering what sanction to impose, the SDT said:-

> "The Tribunal considered that as this was a case in which the [appellant] 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."

113. In support of this aspect of the grounds, Dr Van Dellen sought to rely upon the judgments of the Court of Appeal in Minkin v Landsberg [2015] EWCA Civ 1152. The issue for the Court in Minkin was whether a solicitor, who had been instructed by a wife in divorce proceedings, to put into acceptable form the terms of a consent order that had been agreed between her and her husband, owed the wife a duty that extended beyond drafting the consent

order, so as to impose an obligation to warn the wife about the advisability of entering into the order on the agreed terms and an obligation to investigate whether the wife had been subject to duress in agreeing to those terms.

114. The Court of Appeal held that, in the circumstances of the case, no such obligations arose.

115. Jackson LJ set out the background as follows:-

> "3. The defendant solicitor in this case was instructed to put into an acceptable form the terms of a consent order agreed between the husband and the wife following divorce. Although the underlying matrimonial proceedings were in progress at a time when legal aid was available, the issues thrown up by this case have now assumed wider importance. That is because legal aid is no longer available for divorcing couples seeking to resolve their financial disputes. As King LJ explains in her judgment, it is now commonplace for the parties to negotiate their own agreements and then to instruct solicitors for limited purposes, such as drawing up a consent order for the court's approval under section 25 of the Matrimonial Causes Act 1973. Therefore it is now often the case in the matrimonial context that solicitors undertake a limited retainer of the kind which is in issue in the present case."

116. At the hearing on 15 March, attention focused on the following paragraphs of the concurring judgment of Sharp LJ:-

> "74. Following a contested financial remedy case where there are no lawyers representing the parties, the District Judge will draft an order which reflects his or her decision; there is no scope for ambiguity or misunderstanding as he or she knows precisely what he wishes to achieve and drafts the order accordingly. When however two unrepresented parties come before the judge with an agreement, the situation is entirely different. The district judge has neither the time, nor should he or she attempt, to interpret the minutiae of the agreement and draft/redraft the proposed consent order. That is not to say that he will not correct obvious errors and technical defects, but his task is to approve the order, not to sit with the parties and painstakingly work through with them every possible parameter of the draft in order to ensure they have considered every angle and future eventuality; to do so runs the risk that the judge will be seen to be given advice or is seeking to interfere or undermine an otherwise unimpeachable agreement reached between the parties.
>
> 75. In order to address this problem a number of solicitors specialising in matrimonial finance cases now offer (as they have in personal injury cases for sometime), bespoke or "unpacked" services whereby they will undertake to act for a litigant in person in relation to a discrete part of a

case which is particularly challenging to a lay person. Most commonly in matrimonial finance cases, this is the drafting of the Form E (financial disclosure), or, as here, the drafting of the order. This service is invaluable to both courts and litigants alike, saving as it does court time but also stemming the increasing number of applications to the courts in relation to the working out of orders which do not accurately reflect the true intentions of one or other of the parties.

76. There would be very serious consequences for both the courts and litigants in person generally, if solicitors were put in a position that they felt unable to accept instructions to act on a limited retainer basis for fear that what they anticipated to be a modest and relatively inexpensive drafting exercise of a document (albeit complex to a lay person) may lead to them having imposed upon them a far broader duty of care requiring them to consider, and take it upon themselves to advise on aspects of the case far beyond that to which the believe themselves to have been instructed.

77. It goes without saying that where a solicitor acts upon a limited retainer, the supporting client care letters, attendance notes and formal written retainers must be drafted with considerable care in order to reflect the client's specific instructions. It may well be that with further passage of time, tried and tested formulas will be devised and used routinely by practitioners providing such a limited retainer service. In the present case the defendant, as identified by Jackson LJ, did not observe best practice having failed to set out with precision the limits of the retainer in the client care letter. Notwithstanding that error, I too am entirely satisfied that the defendant was acting under a limited retainer and carried out the work which the claimant had instructed her to undertake."

117. I do not find that Minkin provides any assistance to the appellant. As is plain, the issue for the Court in that case was the extent of a solicitor's obligation towards her client. The case was not concerned with the extent of a solicitor's obligations to a court or tribunal.

118. In his oral submissions, Dr Van Dellen appeared at one point to suggest that a solicitor's duty to the court should be coterminous with the solicitor's obligation to his client. If that was Dr Van Dellen's submission, it must be rejected. Whether or not an express or implied term of the agreement between a solicitor and client is that the solicitor will not go "on the record" with the court or tribunal, the solicitor remains bound by the SRA Principles to uphold the rule of law and the proper administration of justice, and to act with integrity. In terms of Outcomes, the solicitor must not "attempt to deceive or knowingly or recklessly mislead the court". Whether the solicitor is on the record or not, he therefore cannot prepare grounds, which he knows

will be used by his client in an application to a court or tribunal, which are false or which give a seriously incomplete account of the true position. If, by the mere expedient of not going on the record, a solicitor were able to free himself from these professional obligations, the consequences for the regulation of the profession, and its status in the eyes of the public, would be profound.

119. Accordingly, the only significance of a client care letter, however well or badly drafted, is, for present purposes, to shed light on whether the solicitor is involved in the preparation of material, which is to be used to make the client's case in legal proceedings. A client care letter cannot re-write the terms of the SRA's Principles and Outcomes.

120. It is also important to emphasise that a client care letter is not necessarily a determinative statement of what the solicitor may, in practice, undertake to do for the client. If, as the SDT found in the present case, a solicitor agrees to do work for a client, which is not of a kind mentioned in the client care letter, the solicitor's obligations to the court/tribunal and to the client will extend to that work.

121. As already noted, at paragraph 162.3 of the decision, the SDT criticised the appellant for not putting his firm on the record as acting for GL, when he was responsible for the relevant judicial review application and its contents. Dr Van Dellen attempted to characterise this statement as the SDT's erroneous view that a solicitor, in those circumstances, has a duty to go on the record.

122. I do not find that the SDT fell into error on this matter. In paragraph 162, the SDT considered that not going on the record was one of a number of reasons why the judicial review application of GL "was an abuse of process".

123. I shall have more to say about abuse of process when dealing with the so-called "weak spot" involving paragraphs 353 and 353A of the Immigration Rules. For the moment, however, it is important to make the following point. The concept of "abuse of process" presupposes that the process which is being abused is a valid one. The right of access to courts and tribunals is governed by rules of procedure. An abuse of process occurs when a person, through their actions, abuses the right of access conferred by those rules; for example, by bringing multiple, unfounded claims against third parties.

124. The SDT's conclusion that the appellant's failure to go on the record with regard to the relevant applications was an abuse of process therefore makes complete sense. Although there is no rule of procedure that mandated the appellant to go on the record in the cases of PZ, AZ, GL and MW, the fact that he did not do so was, in the particular circumstances, an abuse. It impeded

the Upper Tribunal's ability to realise that untrue and/or significantly incomplete statements made about applicants for judicial review in cases that were lacking in merit were the work of a solicitor, acting in breach of his obligations under the SRA's Principles and Code of Conduct.

125. Although the Upper Tribunal is not, of course, the statutory regulator of solicitors, it has a legitimate interest in knowing about such matters, as does the High Court. So much is evident from the cases involving the so-called "Hamid" jurisdiction.

126. The practical effect of this abusive behaviour is graphically demonstrated in the decision of the SDT, where considerable forensic time and effort had to be spent in uncovering the true position.

(c) Applications for LTR: chances of success

127. One of the reasons why the SDT found that the appellant's conduct amounted to an abuse of process was that the "underlying applications for LTR" of the five clients lacked any merit (paragraph 163.20). The appellant contends that, with the exception of AZ, the cases had at least some merit.

128. The first point to make about this ground is that the SDT's finding about the LTR applications was merely one of a large number of adverse findings concerning the appellant's behaviour. The appellant would, therefore, have difficulty establishing that any error was material.

129. In any event, I reject the criticisms made by the appellant. In the light of the prevailing case law, as set out above, the appellant's applications lacked merit.

130. Although there had been a delay in the Home Office making a decision in respect of PZ, her relationship fell to be examined on the basis of her "precarious" status. Our attention was not drawn to anything in the materials that might have shown there were relevant obstacles to PZ's partner continuing any family life with PZ, outside the United Kingdom.

131. Similar points arise in relation to GL. Furthermore, as the SDT noted, there were very serious issues as to whether GL, in truth, had a partner at all.

132. The SDT categorised the appellant's handling of AZ's case as "egregious". That categorisation was entirely justified and Dr Van Dellen did not seek to persuade us otherwise.

133. MW's representations of July 2014 were based on a claimed marriage to a partner who had indefinite leave to remain. However, in May 2014 the First-tier Tribunal had doubted the strength of that relationship and made adverse credibility findings on other issues, in dismissing MW's appeal. Here too, regardless of the credibility issues, the fact that MW could not meet the relevant requirements of the Immigration Rules meant that she stood no chance of persuading the Secretary of State or a tribunal that her case was "exceptional".

134. Turning to T, Mr Tankel accepted that there was a tension between the observations of the SDT, as recorded at paragraph 146.1, that it could not assess the argument that there were exceptional circumstances, and the inclusion of T's case in the statement in paragraph 163.20 that there was no merit in the LTR applications. However, as Mr Tankel submitted in speaking to the respondent's notice on this issue, the LTR submissions made by the appellant on behalf of T on 4 August 2014 stood no chance of success.

135. As previously noted, T had been in the United Kingdom for fifteen, rather than the twenty years required by the Immigration Rules. Although the letter of 4 August made reference to family members being in the United Kingdom, no details were supplied. I agree that the relevant passages of the letter fall to be categorised as entirely generic in nature.

136. Significantly, under the heading "Exercise your discretion", what appears to have been relied upon was the fact that T was said to be "a genuine and well mannered person, who has established a wide circle of close and supportive friends and thus, consolidated her connections with the country". The Home Office was requested to "exercise their discretion to allow her to remain here with her friends". There then followed the admittedly incorrect reference to twenty years' residence.

137. I have no hesitation in concluding that no Tribunal Judge, properly applying the law, could have regarded the case being put on behalf of T as an exceptional one, such as to render her removal a disproportionate interference with her Article 8 rights.

138. It follows that, in the multiple instances where the SDT found that there had been no material change in circumstances, the further submissions drafted by the appellant stood no chance of persuading the Secretary of State (or the Upper Tribunal on judicial review) that those submissions should be treated as a fresh claim within the meaning of paragraph 353 of the Immigration Rules. There had been no change in a case which, at the outset, was unable to succeed.

139. Before leaving this topic, I need to address the submission at paragraph 18 of the grounds that the SDT went too far in suggesting, at paragraph 163.21 of the decision, that none of the sets of circumstances were "very compelling", such that the Secretary of State would have used her residual and "rarely used discretion in favour of any of these clients". Paragraph 18 of the grounds submits that, if that were the position, then "an application seeking to rely on the Home Office's residual and rarely used discretion is an application lacking any merit".

140. This submission is misconceived. It is evident from the judgment in Nagre that it would be only in an exceptional case that a person, relying on Article 8 ECHR, who did not satisfy the requirements of the Immigration Rules, would be entitled to demand the exercise of the Secretary of State's power under the Immigration Act 1971 to grant leave to remain, outside those Rules, on the basis that to do otherwise would place the Secretary of State in breach of her obligations under section 6 of the Human Rights Act 1998.

141. In paragraph 163.21, the SDT was clearly not saying that any application properly advanced on such a basis would be lacking in merit, merely because its success depended on a case being made outside the Immigration Rules.

(d) The "weak spot"

142. This brings us to the ground which concerns the so-called "weak spot" within paragraphs 353/353A of the Immigration Rules. I have set out what the SDT had to say about this at paragraph 163.3 of its decision.

143. At paragraph 163.19, the SDT explained that what made the appellant's conduct an abuse of process was a number of factors that were common to the cases considered by it. First, the submissions were made at a late stage; sometimes well after the point at which submissions could have been made after instructions. The second factor, articulated in paragraph 163.20, was that the underlying applications for LTR lacked merit. The reality of the matter, according to the SDT, was that the appellant was exploiting the promise in paragraph 353A that the Secretary of State would not remove until she had considered the further submissions. The appellant's purpose was to defeat what would otherwise have been an entirely lawful removal of an individual who had no entitlement under the Immigration Rules or the ECHR to remain in the United Kingdom.

144. Paragraph 21 of the grounds makes the following bold claim:-

> "21. … the SDT was incorrect to hold that by the appellant strictly complying with the rules, he could frustrate the proper administration of justice … If the SDT is right in this, then registrants can have no succour that they have protection from regulatory sanction by strictly complying … with the rules."

145. In oral submissions, Dr Van Dellen sought to categorise paragraph 353A as akin to a "technical defence", which might be available to an accused person in criminal proceedings.

146. I reject these written and oral submissions. As has already been explained, the concept of an abuse of process presupposes the validity and utility of the process. The SDT was aware of this very point:-

> "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."

147. At the hearing, the Court drew the attention of Counsel to the judgment of the Lord Chief Justice in SB (Afghanistan) v Secretary of State for the Home Department [2018] EWCA Civ 215, in which there is the following passage:-

> "54. The making of last minute representations to the Secretary of State, which are claimed to amount to a "fresh claim" for asylum or leave to remain for the purposes of para. 353 of the Immigration Rules, and the making in parallel of an application for urgent interim relief to prevent the removal of an immigrant pending consideration of those representations, can be highly disruptive of attempts by the Secretary of State to remove individuals who in truth have no right to be here. Where a removal which is planned and in progress is stopped at the last moment, there may be a significant delay before the Secretary of State can set up suitable new arrangements for removal. Also, it is likely that the substantial cost of the aborted removal will be wasted.
>
> 55. The courts have had experience of some applications for interim relief being made by legal advisers where there is no real merit in them, but as an abuse of process to disrupt the removal operations and to buy more time in the UK for their clients. The courts have therefore already had occasion to give guidance emphasising the professional obligations of legal advisers to make applications for interim relief to prevent removal promptly and with a maximum of notice which is feasibly possible to be

given to the Secretary of State: see, in particular, *R (Madan) v Secretary of State for the Home Department* and the *Hamid* case, both referred to in the Administrative Court Guide.

56. It is unnecessary to set out again in this judgment the guidance which has already been given so clearly in those cases. We take this opportunity, however, to reiterate the importance of that guidance. The basic principles are clear: (i) steps to challenge removal should be taken as early as possible, and should be taken promptly after receipt of notice of a removal window of the kind which SB received on 4 July 2017 in this case; and (ii) applications to the court for interim relief should be made with as much notice to the Secretary of State as is practicably feasible."

148. SB (Afghanistan) serves to confirm the correctness of the SDT's approach in the present case. As Mr Tankel was at pains to emphasise, it was the interplay of the factors identified by the SDT, beginning at paragraph 163.19, which rendered the appellant's conduct an abuse of process.

149. Before the SDT, the appellant's stance was, in effect, that it was not his fault if there was a "weak spot" in paragraph 353/353A. It was for the Secretary of State to rectify the matter, if she saw fit, by amending the Immigration Rules.

150. Such a stance is entirely misguided. The fact that a provision, such as paragraph 353A, is open to abuse, far from diminishing a solicitor's professional obligations to the court or tribunal, underscores the expectation that those obligations will be fully met. The duty not to mislead or to be complicit in another person's misleading a court or tribunal is vital where, as in the present cases, the application has been made *ex parte*. Notwithstanding the possibility that the judge considering the application for a stay on removal might be able to make some limited enquiries (as to which, see paragraphs 60 and 61 of SB (Afghanistan), he or she will be dependent upon the solicitor complying with the duty of candour inherent in these proceedings, as well as with the other obligations recognised by the SRA's Principles, if the judge is to make a decision that does justice.

(e) Effect of stays in cases challenging removal directions

151. As I have recorded, the SDT found that Allegation 1.4, regarding an alleged failure to follow correct court procedures, was not proved. Nevertheless, it is apparent from paragraph 163.26 that the SDT considered it was an aspect of the appellant's "systematic course of conduct which was designed to, and in fact did, undermine the immigration system", that the appellant contended he "had a duty not to pursue cases which were "academic"". The Tribunal

held that simply writing to the Tribunal, indicating an intention to withdraw a case, was not sufficient.

152. The appellant informed the SDT that its thinking in this area had been influenced by a refusal of permission to bring judicial review proceedings, contained in an Order of the Upper Tribunal made by McCloskey J on 11 June 2014. The judicial review claim in that case had challenged the Secretary of State's removal directions and a stay on removal had been granted. McCloskey J said that "to maintain [the applicant's] challenge for removal directions which were not implemented and have no present impact or effect is pointless. I consider this application academic".

153. As the SDT found and as is, I consider, self-evident, neither that Order nor the others relied on by the appellant lend any support to the appellant's behaviour in this regard. A judicial review brought merely in respect of a removal direction which had been set for a particular day, and which results in a stay on removal leading to the cancellation of that direction, remains a legal proceeding which must be brought to an end in a proper manner. A solicitor acting for an applicant in judicial review proceedings before the Upper Tribunal owes the Tribunal a duty under rule 2(4)(b) of the Tribunal Procedure (Upper Tribunal) Rules 2008 to co-operate with the Tribunal generally. That includes taking appropriate action formally to end judicial review proceedings, which (for whatever reason) may have become academic.

154. The SDT identified that rule 17 (withdrawal) of the Procedure Rules enables a party to give notice to the Tribunal of the withdrawal of its case. Such a notice will not take effect unless the Upper Tribunal consents to the withdrawal. The SDT correctly pointed out, there may be costs issues to be resolved, in order for the proceedings to be formally concluded. In this respect, there is an analogy with discontinuance under the CPR.

155. The SDT was, accordingly, entitled to find that the appellant's failures in this area were part of the systematic course of misconduct in which he had engaged.

(f) The Upper Tribunal's judgment

156. Paragraphs 21 to 24 of the grounds contend that the SDT wrongly treated the judgment of the Upper Tribunal in the case heard before Green J and HHJ Raynor QC on 18 May 2015 as "prima facie evidence", whereas the Tribunal had specifically stated that it did not come to any findings of fact.

157. There is nothing in this criticism. As paragraph 163.27 of the decision makes abundantly clear, the SDT recorded that "the Upper Tribunal made no formal findings about the Firm or the [appellant] but referred the Firm to the [SRA] for investigation". That was entirely correct.

158. The words in paragraph 163.27 that follow that passage are destructive of this ground: "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 … ".

159. As will by now be evident, the SDT carried out a painstaking and comprehensive fact-finding exercise. The SDT found that the only material factual disagreement between the parties related to the involvement or otherwise of the appellant in preparing the grounds in connection with certain of the applications for judicial review. As will also be evident, the SDT made sound findings on that matter.

160. Accordingly, from the vantage point it had carefully constructed for itself, the SDT was entitled to look at the judgment of Green J and see whether the SDT agreed with it.

(g) Integrity and morality

161. At paragraph 162.13 of the decision, the SDT found the appellant's bringing of judicial review proceedings showed he had failed to uphold the rule of law and the proper administration of justice. The appellant's actions lacked integrity.

162. The SDT's finding on integrity had been informed by its self-direction at paragraph 160 of the decision. Paragraph 11 of the grounds takes issue with the phrase "unable to appreciate" in the phrase "a person lacks integrity if unable to appreciate the distinction between what is honest or dishonest by ordinary standards" in paragraph 160. The grounds also contend that the SDT was wrong at paragraph 162.13 to say that "in assessing whether the conduct also lacked integrity, the Tribunal found that the [appellant] knew what he was doing was inappropriate but carried on regardless".

163. Mr Tankel pointed out that, if the SDT did err in this regard, then it did so by setting itself too high a threshold for a finding of integrity.

164. Paragraph 10 of the grounds submits that the SDT incorrectly adopted an approach at paragraph 144 of its decision, which involved assessing the morality of the appellant rather than whether he was a person of integrity. At paragraph 144, the SDT assessed the appellant –

> "… as someone who lacked a steady adherence to a moral code; that it did not appear to have occurred to him that he should act as a "filter" to ensure that the system would not be clogged up with hopeless, urgent applications which neither the court nor the Home Office will consider favourably with knowledge of the true facts and circumstances; and that he 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."

165. Read as a whole, there is nothing remotely troubling with paragraph 144. On the contrary, the SDT's approach to integrity is entirely compatible with the judgment of Jackson LJ in Wingate and Another v Solicitors Regulation Authority; Solicitors Regulation Authority v Malins [2018] EWCA Civ 366:-

> "94. The general law imposes criminal and/or civil liability for many, but not all, dishonest acts or omissions. As explained most recently in *Ivey*, the test for dishonesty is objective. Nevertheless, the defendant's state of mind as well as their conduct are relevant to determining whether they have acted dishonestly.
>
> 95. Let me now turn to integrity. As a matter of common parlance and as a matter of low, integrity is a broader concept than honesty. In this regard, I agree with the observations of the Divisional Court in *Williams* and I disagree with the observations of Mostyn J in *Malins*.
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> 96. Integrity is a more nebulous concept than honesty. Hence it is less easy to define, as a number of judges have noted.
>
> 97. In professional codes of conduct, the term "integrity" is a useful shorthand to express the higher standards which society expects from professional persons and which the professions expect from their own members. See the judgment of Sir Brian Leveson P in *Williams* at [130]. The underlying rationale is that the professions have a privileged and trusted role in society. In return they are required to live up to their own professional standards.
>
> 98. I agree with Davis LJ in *Chan* that it is not possible to formulate an all-purpose, comprehensive definition of integrity. On the other hand, it is a counsel of despair to say: "Well you can always recognise it, but you can never describe it."

99. The broad contours of what integrity means, at least in the context of professional conduct, are now becoming clearer. The observations of the Financial Services and Markets Tribunal in *Hoodless* have met with general approbation.

100. 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.

101. The duty to act with integrity applies not only to what professional persons say, but also to what they do. It is possible to give many illustrations of what constitutes acting without integrity. For example, in the case of solicitors:

    i) A sole practice giving the appearance of being a partnership and deliberately flouting the conduct rules (*Emeana*);

    ii) Recklessly, but not dishonestly, allowing a court to be misled (*Brett*);

    iii) Subordinating the interests of the clients to the solicitors' own financial interests (*Chan*);

    iv) Making improper payments out of the client account (*Scott*);

    v) Allowing the firm to become involved in conveyancing transactions which bear the hallmarks mortgage fraud (*Newell-Austin*);

    vi) Making false representations on behalf of the client (*Williams*).

102. Obviously, neither courts nor professional tribunals must set unrealistically high standards, as was observed during argument. The duty of integrity does not require professional people to be paragons of virtue. In every instance, professional integrity is linked to the manner in which that particular profession professes to serve the public. Having accepted that principle, it is not necessary for this court to reach a view on whether *Howd* was correctly decided."

(h) Sanction

166. I can now address the ground relating to sanction. I do so on the basis that the SDT's findings of fact, its view of the culpability of the appellant arising

from those findings and its decision that Allegations 1.1 to 1.3 were proved to the criminal standard, have all survived the appellant's challenges.

167. The SDT's reasons for deciding to strike the appellant off the Roll of Solicitors were as follows:-

> "191. Mr Malik had urged on the Tribunal consideration of imposing a suspension, perhaps combined with a restriction on the [appellant's] practice at the end of the suspension. This was put on the basis that the [appellant] 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 [appellant] would remain a hazard to the profession and to the public. As the [appellant] 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 [appellant] 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 [appellant] 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 on the [appellant]. The Tribunal considered that as this was a case in which the [appellant] 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 [appellant]."

168. The reference to Bolton is to Bolton v Law Society [1993] 1 WLR 512, in which the Court of Appeal held 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. Lapses from the required high standard may, of course, take different forms and be of varying degrees. The most serious involves proven dishonesty, whether or not leading to criminal proceedings and criminal penalties. In such cases the tribunal has almost invariably, no matter how strong the mitigation advanced for the solicitor, ordered that he be struck off the Rolls of Solicitors. Only infrequently, particularly in recent years, has it been willing to order the restoration to the Roll of a solicitor against whom serious dishonesty had been established, even after a passage of years, and even where the solicitor had made every effort to re-establish himself and redeem his reputation. If a solicitor is not shown to have acted dishonestly, but is shown to have fallen below the required standards of integrity, probity and trustworthiness, his lapse is less serious but it remains very serious indeed in a member of a profession whose reputation depends upon trust. A striking off order will not necessarily follow in such a case, but it may well. The decision whether to strike off or to suspend will often involve a fine and difficult exercise of judgment, to be made by the tribunal as an informed and expert body on all the facts of the case. Only in a very unusual and venial case of this kind would the tribunal be likely to regard as appropriate any order less severe than one of suspension."

169. Dr Van Dellen submitted that, following the coming into force of the Human Rights Act 1998, the weight that should be given to the view of a disciplinary tribunal, such as the SDT, had been diminished and Bolton needed to be read in that light. He relied for this proposition on the judgment of the Divisional Court in Yerolemou v The Law Society [2008] EWHC 682 (Admin), where Lloyd Jones LJ said:-

> "6. In **Nahal v The Law Society** [2003] EWHC 2186 Admin, Dyson LJ considered the effect of the Human Rights Act 1998 on **Bolton v The Law Society** and, at paragraphs 31 to 33, he adopted the general approach taken by Sir Thomas Bingham in **Bolton**. He considered the Human Rights Act in no way disturbed or qualified the principles themselves. However, Dyson LJ did consider that that Act affected the general approach of the court to an appeal of this kind. He referred to **Langford v Law Society** [2002] EWHC 2802 Admin and to the leading judgment of Rose LJ in that case. Rose LJ considered that a greater flexibility is now appropriate in dealing with these appeals. Rose LJ expressed it in this way:
>
> > "We must now apply a less rigorous test. We should simply look at the Tribunal's decision in the light of the whole circumstances of the case, always having due respect for the expertise of the Tribunal and giving to their decision such weight as we should think appropriate."

Later Rose LJ added:

> "Nevertheless, in following this approach we think that it is good sense to keep in view the obvious reasons that have been repeated over the years for according respect to the views of specialist Tribunals in appeals of this kind."

…

8. It is, of course, clearly established that solicitors may be struck off the Roll for offences not involving dishonesty or personal gain. That follows from the passage in **Bolton** which I have cited above. Moreover, Mr Miller, who appears on behalf of the respondent, has referred us to other authorities where the draconian sanction of striking off the Roll has been applied, notwithstanding the fact that the cases have not involved dishonesty in any sense. He has referred us to **Weston v The Law Society**, 29th June 1998. CO/225/1998, and to **Williamson v The Law Society** [2007] EWHC 1258 Admin. Nevertheless, it is important to bear in mind that we are here concerned with a case in which there are no allegations of dishonesty but rather with allegations of a persistent neglect of the interests of the client and a persistent failure to respond to reminders, both from the client and in turn from the professional body, the Law Society."

170. For his part, Mr Tankel drew attention to the judgments of the Divisional Court in Law Society v Emeana and Others [2013] EWHC 2130 (Admin). Dealing with the issue of the appropriate sanction, Moses LJ held:-

> "22. This court must bear in mind that the Tribunal is an expert and informed tribunal, best able to assess what is needed to uphold standards of integrity, probity and trustworthiness in the profession of solicitor. But it is not restricted to interfering only in "very strong cases". It should interfere where the sanction was "clearly inappropriate" (*Law Society v Salsbury* [2008] EWCA Civ 1285 [30])."

171. I agree with Mr Tankel that in the Human Rights Act environment in which public authorities (including courts and tribunals) have operated for some eighteen years, it remains the position that significant weight should be afforded to the views of a specialist tribunal in matters of the present kind. Such a tribunal will be aware of its responsibilities under the 1998 Act. Although this Court must, of course, be alive to its own duty to ensure that decisions do not stand which are incompatible with the United Kingdom's obligations under the ECHR, this does not take the appellant's case near to showing that the Court should take issue with the reasoning of the SDT in paragraphs 191 to 193 of its decision. The SDT's conclusions followed, not only from the finding that the appellant had systematically abused process;

but also that he had "departed from the standards of integrity, probity and trustworthiness rightly expected of a solicitor in his conduct of ex parte applications in particular" (paragraph 184).

172. Another important matter that informed the SDT's conclusions on sanction was the issue of deterrence:-

> "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."

173. The fact that problematic professional behaviour can be found in the conduct of some immigration proceedings is evident from the Hamid line of cases. Against that background, the SDT was quite right to include deterrence as an aspect of its overall considerations, when determining sanction. In so doing, the SDT could not properly be categorised as making any generalised criticisms of those who choose to practise in this difficult and demanding area of the law. On the contrary, it is only by the maintenance of high professional standards that solicitors who are discharging their professional responsibilities can safely enjoy the recognition they deserve.

174. In all the circumstances, I consider that the SDT was entirely justified in imposing a sanction of striking off. I would add that, as has already been observed, the appellant's problematic behaviour continued even after he had appeared before the Upper Tribunal on 18 May 2015. That depressing observation supports the decision to strike off. The appellant had shown no insight regarding the behaviour that led to his appearance.

(i) Costs

175. Finally, there is the issue of costs. Having heard submissions from Counsel on behalf of the appellant, and having considered his statement of means, the SDT decided to order the appellant to pay costs in the sum of £10,000, rather than the £40,000 that was being sought by the SRA.

176. The appellant submits that this decision was disproportionate. He so contends, not because £10,000 is, in its own terms, a disproportionately high fraction of the total claim but because the SDT failed to have proper regard to the extremely limited means of the appellant.

177. I am not persuaded there is any merit in this ground. It is plain from paragraph 205 of the decision that the SDT was aware of the appellant's financial circumstances. Also of note was the stance of Counsel for the appellant at the hearing before the SDT, as recorded in paragraph 199 of the decision. Counsel (not Dr Van Dellen) did not advance any argument of the kind now put forward. Instead, he indicated that he would not seek an order that would mean any order for costs could not to be enforced without further permission, provided that the SDT "were confident that the applicant would not act unreasonably in pursuing whatever costs were ordered".

178. To accede to the suggestion that the appellant should pay only £1,000 (which is what he had in savings at the time) would place a disproportionate burden on the solicitor's profession, which has to cover the shortfall. Having regard to all the circumstances, including the seriousness of the allegations proved against the appellant, I conclude that the order for costs in the sum of £10,000 was entirely appropriate.

Irwin LJ:

179. I agree with the full and compelling judgment of Lane J, which carries particular authority from his long experience and his Presidency of the Upper Tribunal (Asylum and Immigration Chamber).

180. The Courts well understand the vulnerability of many of those at risk of removal or deportation from the country. They can be desperate to remain. They are often prepared to grasp at straws. The Courts are also fully alive to the technicality and difficulty of immigration law, and of the Immigration Rules. These factors add to the difficulty of representing such clients. However, they also add to the responsibility of solicitors engaged for such clients.

181. It is critical that solicitors, and others, representing such clients, are scrupulous in observing professional standards. The cost of not doing so to the system is obvious and has been emphasised many times. Spurious, or merely hopeless, applications to courts and tribunals add greatly to the burden on the system of justice, and to the costs of government. However, it should not be forgotten that such applications also cost the applicants, both financially and in engendering prolonged and unjustified expectations. In addition, poor, and where it arises unscrupulous, representation must, to

some degree at least, overshadow careful and expert immigration lawyers. The Solicitors Disciplinary Tribunal is entirely justified in taking very seriously cases such as this.

SUMMARY

1. Between November 2011 and December 2015, Mr Ip was a partner in Sandbrook Solicitors in Manchester, specialising in immigration work. An aspect of that work involved Mr Ip being engaged to make, or otherwise assist with, applications for leave to remain in respect of persons who required leave from the Secretary of State in order to be in the United Kingdom legally, but who did not have such leave.

2. In 2015, issues were raised regarding the activities of Sandbrook Solicitors in connection with the making of last-minute applications to the Upper Tribunal. These applications were for injunctions (or "stays"), preventing the Secretary of State from removing individuals from the United Kingdom until she had made a decision on an application for leave or on submissions that were said to give rise to a fresh human rights or asylum claim, following the rejection of an earlier claim.

3. In October 2015, the Upper Tribunal held a hearing to examine these issues. The Tribunal concluded that it had serious concerns regarding the conduct of Sandbrook's immigration practice. The Upper Tribunal referred the matter to the Solicitors Regulation Authority (SRA).

4. After conducting a formal investigation, the SRA made six allegations against Mr Ip, concerning alleged failures to comply with the SRA Principles 2011 and the SRA Code of Conduct. Following a hearing on 21-24 August 2017, the Solicitors Disciplinary Tribunal (SDT) found that three of the allegations were proved. It ordered Mr Ip to be struck off the roll of solicitors.

5. The proven allegations were that Mr Ip brought judicial review applications that were totally without merit and an abuse of process; that he engaged in a systematic course of conduct designed to undermine the immigration system, amounting to a persistent abuse of process; and that he 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 put the full facts before the judge.

6. Mr Ip appealed to the Court against that decision. The Divisional Court has dismissed his appeal. It found that there was no valid criticism in any of the challenges made to the SDT's findings.

7. A particular finding of the SDT was that Mr Ip had exploited a "weak spot" in the immigration rules, whereby the Secretary of State has said that, if a person makes submissions which are said to amount to a fresh claim (see para 2 above), the Secretary of State will not remove that person from the United Kingdom, until she has reached a decision on whether the submissions amount to a fresh claim. The SDT considered that Mr Ip had assisted individuals in making last-minute submissions, which were lacking in substantive merit and were merely designed to disrupt the Secretary of State's arrangements for removing the individual on a particular date.

8. The Court finds that the SDT was entitled to conclude that Mr Ip's actions in this regard amounted to an abuse of process. The fact that the immigration rules are open to abuse underscores the expectation that a solicitor's obligations to the Tribunal will be fully met.

9. In certain instances, Mr Ip decided not to go "on the record" with the Tribunal, despite the fact that he was professionally assisting individuals to make the injunction applications. The Court finds the fact that Mr Ip was not on the record did not affect his duties to the Upper Tribunal. He therefore was required to be candid with the Tribunal, so as to ensure that the relevant immigration history of the individuals was made plain. In a number of cases, he failed to do so.

10. Overall, the Court finds the SDT was entirely justified in imposing the sanction of striking off. The SDT was right to include deterrence as an aspect of its overall considerations, in deciding the appropriate sanction. In so doing, the SDT was not making any generalised criticism of those who practise in the difficult and demanding area of immigration law. On the contrary, it is only by the maintenance of high professional standards that solicitors who are discharging their professional responsibilities can safely enjoy the recognition they deserve.

11. The Courts well understand the vulnerability of many of those who are at risk of removal or deportation. They can be desperate to remain and are often prepared to grasp at straws. These factors add to the difficulty of representing such clients.

12. In conclusion, the Court considers it is critical that solicitors and others representing such clients are scrupulous in observing professional standards. Spurious or merely hopeless applications to courts and tribunals add to the burdens on the justice system and to the costs of government. However, they also involve costs to applicants, both financially and in engendering prolonged and unjustified expectations.