IN THE UPPER TRIBUNAL

R (on the application of Okondu and Abdussalam) v Secretary of State for the Home Department (wasted costs; SRA referrals; Hamid) IJR [2014] UKUT 00377(IAC)

Heard on:

Tuesday, 20 May 2014

BEFORE

THE HONOURABLE MR JUSTICE GREEN

And

UPPER TRIBUNAL JUDGE GILL

Between

ROLAND OKECHUKWU OKONDU

ABDUL WAHAB ADEBAYO ABDUSSALAM

Applicants

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Mr Okondu (the first Applicant) was not present or represented.

Mr S Harding Counsel appeared in the case of Mr Abdussalam (the second Applicant). The Applicant's representatives were G Singh Solicitors.

Mr M Donmall, instructed by the Treasury Solicitor appeared on behalf of the Respondent in both cases.

(1) Section 29 of the Tribunals, Courts and Enforcement Act 2007 confers on the Upper Tribunal a discretionary power to order a legal or other representative to pay “wasted costs” incurred by the other party. “Wasted costs” are defined in section 29(5) as costs incurred by a party: “(a) as a result of any improper, unreasonable or negligent act or omission on the part of any legal or other representative or any employee of such a representative, or (b) which, in the light of any such act or omission occurring after they were incurred, the relevant Tribunal considers it is unreasonable to expect that party to pay.” The words: “improper, unreasonable or negligent act or omission” are explained in Ridehalgh v Horsefield [1994] EWCA Civ 40. Rule 10 of the Tribunal Procedure (Upper Tribunal) Rules 2008 is also relevant. It provides (inter alia) that the Upper Tribunal may not make an order in respect of costs except in judicial review proceedings, under section 29(4) of the TCEA and “if the Upper Tribunal considers that a party or its representative has acted unreasonably in bringing, defending or conducting the proceedings”. The wasted costs jurisdiction applies to all parties. It can arise in the case of a winning party whose conduct, on the way to success, has fallen below the requisite standard and caused wasted costs to be incurred by the losing party.

(2) The overriding duty of all representatives is to the court or the Tribunal. It is improper for any practitioner to advance arguments which they know to be false or which they know, or should know, are inconsistent with their own evidence, including medical or other expert evidence. It is also incumbent upon practitioners to ensure that the Tribunal is provided with a fair and comprehensive account of all relevant facts, whether those facts are in favour or against the legal representative’s

client. It will also not be acceptable to say that as of the date of the service of the application the representative was not in possession of all relevant facts because of time constraints. Time pressures might mean that applications that are less than perfect or comprehensive or complete might in actual fact reflect the very best that can be done in urgent circumstances. However, this does not excuse a failure, following service of the application, to complete the fact finding and verification exercise, and then seek to amend the application accordingly so as to ensure that the Tribunal is fully informed of the relevant facts and matters.

(3) The attention of representatives is drawn to the judgment of the High Court (Divisional Court) in R (on the application of Hamid) v SSHD [2012] EWHC 3070 (Admin), the importance of which is underscored. Given the assumption by the Upper Tribunal of much of the jurisdiction of the High Court for dealing with judicial reviews in the field of immigration, the Tribunal will, as it has in this case, adopt a similar procedure in those circumstances where it considers it appropriate to do so.

(4) The Upper Tribunal recognises that applicants with weak cases are entitled to seek to advance their case and have it adjudicated upon; that is a fundamental aspect of having a right of access to a court. But there is a wealth of difference between the advancing of a case that is held to be unarguable in a fair, professional and proper manner and the advancing of unarguable cases in a professionally improper manner.

JUDGMENT

A. Introduction and Issue

MR JUSTICE GREEN : There are before the Tribunal two renewed applications for permission to apply for judicial review. Both cases raise an issue of some importance concerning the jurisdiction of the Upper Tribunal in relation to the making of wasted costs orders and as to the circumstances when the Tribunal might refer the conduct of legal representatives to the Solicitors Regulation Authority ("SRA"). In both cases, Upper Tribunal Judge Rintoul made a direction in an Order sealed on 3 March 2014 that the parties must lodge with the Tribunal skeleton arguments dealing with, inter alia, the issue of wasted costs against the legal representatives. We heard oral argument on both the jurisdiction of the Tribunal to make such orders and as to the circumstances in which the jurisdiction should be exercised on 20 May 2014. The jurisdiction of the Upper Tribunal to hear judicial reviews is a relatively recently-acquired jurisdiction and it is appropriate, at this early stage, to lay down some markers as to the jurisdiction and power of the Upper Tribunal to ensure that legal and other representatives acting for applicants in judicial review proceedings act in a manner which is commensurate with their duty towards the Tribunal. To date, there have been three cases that deal with the issue of costs in the Upper Tribunal: R (LR) v. First-tier Tribunal (HESC) and Hertfordshire CC (Costs) [2013] UKUT 0294 (AAC); R (Kumar and another) v. SSHD [2014] UKUT 00104 (IAC) and the judgment of the Court of Appeal in R (TH (Iran)) v East Sussex CC [2013] EWCA Civ 1027.

2.
We start by setting out the jurisdiction of the Tribunal with regard to costs. We then consider the application of those powers to the individual applications for permission to apply for judicial review before us and we finally consider alternate powers available to the Tribunal under the heading of a general warning to practitioners.

B. Statutory Framework

3.

The jurisdiction to award costs emanates from section 29 of the Tribunals, Courts and Enforcement Act 2007 (“TCEA 2007”). Section 29 TCEA 2007 confers upon the First-tier Tribunal and the Upper Tribunal a “ discretion” to determine the costs “of and incidental to ” proceedings in the First-tier Tribunal and Upper Tribunal. Indeed section 29(1)(a) and (b) make it clear that this power applies to “ all ” proceedings before the Upper Tribunal. Pursuant to section 29(2) each Tribunal has the “ full power ” to determine both by whom costs are to be paid and as to the extent.

4.
Section 29 also contemplates the making of a “wasted costs” order. The jurisdiction is conferred by section 29(4) which provides as follows:

“(4) In any proceedings mentioned in subsection (1), the relevant Tribunal may –

(a) disallow, or

(b) (as the case may be) order the legal or other representative concerned to meet,

the whole of any wasted costs or such part of them as may be determined in accordance with Tribunal Procedure Rules.”

5.
The powers are subject to Tribunal Procedure Rules: section 29(3) and (4).

6.
Section 29(5) provides a definition of “wasted costs”. These mean:

“(5) ...any costs incurred by a party –

(a) as a result of any improper, unreasonable or negligent act or omission on the part of any legal or other representative or any employee of such a representative, or

(b) which, in the light of any such act or omission occurring after they were incurred, the relevant Tribunal considers it is unreasonable to expect that party to pay.”

Section 29(5) thus makes clear that wasted costs may be costs ordered against a winning or a losing party. Although the point should be obvious this means that wasted costs may be awarded against either side to proceedings and regardless of whether they win or lose.

7.
The concepts on “improper” “unreasonable” and “negligent” are well known terms and have been subjected to judicial analysis upon a number of occasions in the context of wasted costs. In Ridehalgh v. Horsefield [1994] EWCA Civ 40 , Sir Thomas Bingham MR, interpreting the words “improper, unreasonable or negligent” in section 51 of the Supreme Court Act 1981, stated:

"Improper" … covers, but is not confined to, conduct which would ordinarily be held to justify disbarment, striking off, suspension from practice or other serious professional penalty. It covers any significant breach of a substantial duty imposed by a relevant code of professional conduct. But it is not in our judgment limited to that. Conduct which would be regarded as improper according to the consensus of professional (including judicial) opinion can be fairly stigmatised as such whether or not it violates the letter of a professional code.

"Unreasonable" also means what it has been understood to mean in this context for at least half a century. The expression aptly describes conduct which is vexatious, designed to harass the other side

rather than advance the resolution of the case, and it makes no difference that the conduct is the product of excessive zeal and not improper motive. But conduct cannot be described as unreasonable simply because it leads in the event to an unsuccessful result or because other more cautious legal representatives would have acted differently. The acid test is whether the conduct permits of a reasonable explanation. If so, the course adopted may be regarded as optimistic and as reflecting on a practitioner's judgment, but it is not unreasonable.

The term "negligent" ..... should be understood in an untechnical way to denote failure to act with the competence reasonably to be expected of ordinary members of the profession.

In adopting an untechnical approach to the meaning of negligence in this context, we would however wish firmly to discountenance any suggestion that an applicant for a wasted costs order under this head need prove anything less than he would have to prove in an action for negligence : "advice, acts or omissions in the course of their professional work which no member of the profession who was reasonably well- informed and competent would have given or done or omitted to do"; an error "such as no reasonably well-informed and competent member of that profession could have made" (Saif Ali v Sydney Mitchell & Co , at pages 218 D, 220 D, per Lord Diplock).

We were invited to give the three adjectives (improper, unreasonable and negligent) specific, self-contained meanings, so as to avoid overlap between the three. We do not read these very familiar expressions in that way. Conduct which is unreasonable may also be improper, and conduct which is negligent will very frequently be (if it is not by definition) unreasonable. We do not think any sharp differentiation between these expressions is useful or necessary or intended."

8.
We use the meanings attributed to those terms in that case as guidance in the present case. There are more recent authorities which will be considered if and when the opportunity presents itself.

9.
Section 29(6) makes clear that a " legal or other representative " who may be made the subject of a wasted costs order in relation to a party to proceedings means any person exercising a right of audience or right to conduct the proceedings on a party's behalf.

10.
The Tribunal Procedure (Upper Tribunal) Rules 2008 ("the 2008 Rules") lay down the relevant rules relating to costs as contemplated by section 29(3) and (4) TCEA 2007. In particular Rule 10(3) states that the Upper Tribunal may not make an order for costs except in certain defined circumstances. For present purposes Rule 10(3) and (d) are relevant. The provision provides as follows:

"(3) ...The Upper Tribunal may not make an order in respect of costs... except –

(a) in judicial review proceedings;

(b) ...;

(c) under section 29(4) of the 2007 Act (wasted costs);

(d) if the Upper Tribunal considers that a party or its representative has acted unreasonably in bringing, defending or conducting the proceedings...".

11.

It is clear from section 29 TCEA 2007 and from Rule 10 that the power to make wasted costs orders applies to all proceedings whether they are in the context of judicial review or otherwise.

12.
Rule 10(5)-(8) lays down the procedure which must be adopted prior to the making of any order for costs. Under Rule 10(5) a person making an application for a wasted costs order must send or deliver a written application to the Upper Tribunal and to the person against whom it is proposed that the order be made; and send or deliver with the application a schedule of the costs or expenses claimed sufficient to allow summary assessment of such costs by the Upper Tribunal. Under Rule 10(6) an application for an order for costs may be made at any time during the proceedings but may not be made later than one month after the date upon which the Upper Tribunal sends a decision notice recording the decision which finally disposes of all issues in the proceedings; or notice of a withdrawal under Rules 17 which ends the proceedings.

13.
Rule 10(7) provides for a person against whom an order is applied for to be given an opportunity to make representations. It provides an important procedural safeguard to such a person. It is in the following terms:

“(7) The Upper Tribunal may not make an order for costs... against a person (“the... person”) without first –

(a) giving that person an opportunity to make representations; and

(b) if the paying person is an individual and the order is to be made under paragraph (3)(a),(b) or (d), considering that person’s financial means.

14.
Rule 10(8) and (9) not only confer a power of summary assessment upon the Upper Tribunal but also provide that the sum to be paid may be determined by agreement between the parties or subject to a process of more detailed assessment. It is not necessary, for present purposes, to address in this judgment the process of assessment.

15.
There may be a parallel jurisdiction which the Upper Tribunal possesses to order costs. Section 25 TCEA 2007 provides that the Upper Tribunal has “...the same powers, rights, privileges and authority as the High Court...” . However, section 25(1) makes clear that such powers, rights, privileges and authority are only in relation to the matters mentioned in section 25(2). Those matters are:

“(a) The attendance and examination of witnesses,

(b) the production and inspection of documents, and

(c) all other matters incidental to the Upper Tribunal’s functions.”

16.
Given that one “function” of the Upper Tribunal is to make orders for costs pursuant to section 29 TCEA 2007, the ability to award wasted costs can be seen as a “ matter incidental to the Upper Tribunal’s functions” for the purpose of section 25(2)(c) TCEA 2007. As we have explained this power has been elaborated upon in the Tribunal Procedure (Upper Tribunal) Rules 2008. However nothing in those Rules expressly limits the powers, rights, privileges and authorities of the High Court. Had the Rules acted so as to circumscribe those powers, rights, privileges and authorities then, pursuant to

Section 25(3) TCEA 2007 those powers, rights, privileges and authorities would have been limited by the Rules. However since that has not happened it follows, it is possible to say, that the Upper Tribunal has a parallel jurisdiction pursuant to Section 25 TCEA which simply places the Upper Tribunal in the same position as the High Court.

17.
On the other hand, such an interpretation would effectively render Section 29 and Rule 10 meaningless. For this reason and given that there is specific provision in section 29 TCEA and in the 2008 Rules with regard to the Upper Tribunal, it seems to us that we should, at least in this case and without prejudice to other cases, exercise those powers and not any parallel powers we may have under Section 25 and the CPR.

C. Abdussalam

(a) Facts

18.
We turn now to the application of these provisions to the two cases before us.

19.
The facts of Abdussalam may be summarised in the following way. On 26 May 2003 the Applicant entered the UK with leave valid until 31 October 2004. However upon the expiry of that leave the Applicant remained present in the jurisdiction. On 9 August 2012 the Applicant applied for leave which application was refused on 28 November 2013. The basis of the application for leave to remain was the Applicant's medical condition. In support of the application various medical reports and psychiatric reports were submitted to the Respondent.

20.
The decision letter contains a detailed account of the medical evidence submitted but also of the reasons for rejecting it. Put shortly, the evidence was rejected upon the basis that in the Applicant's home country (Nigeria) the Applicant would not be denied treatment. Further, it was pointed out that removal would not infringe Article 3 of the Convention since it was a well-established principle that a person could not claim an entitlement to remain in the UK to continue to benefit from medical, social or other forms of assistance that had been provided for him or her. It was pointed out by the Respondent that only in exceptional circumstances would a medical claim reach the high threshold required to engage Article 3. In relation to the Applicant's Article 8 claim it was noted that following the expiry of his entry clearance visa on 31 October 2004 the Applicant had made no attempt to regularise his immigration status and had been working in the United Kingdom notwithstanding that he did not have permission to seek or obtain employment. Further, he failed to provide any credible evidence confirming that he had remained in the United Kingdom continuously since his last entry. Indeed the Respondent pointed out that there was no evidence of what the Applicant had been doing in the United Kingdom " apart from remaining here to access free medical care " (Respondent's decision, paragraph 13). Further, it was pointed out that the Applicant had spent almost 30 years living outside of the United Kingdom which far outweighed the time spent in the United Kingdom.

21.
In the light of this an extensive application for permission to apply for judicial review was lodged. This included a summary of the medical evidence and in effect repeated the Applicant's medical case earlier advanced to the Respondent. In particular it was argued that the Applicant was suicidal and psychotic and that the persistent risk of his suicide was high.

22.
In the Respondent’s Acknowledgement of Service and Summary Grounds of Defence the Respondent urged the Tribunal to consider the specific medical evidence itself “ rather than the summary of that evidence within the Applicant’s grounds ” (cf paragraph 17 Grounds). The Respondent pointed out that contrary to the specific averments made in the application for permission a November 2013 report prepared by Dr Amir Bashir for the Applicant diagnosed the Applicant as being “ down in mood ” and “ miserable ”. However paragraph 7.1 of that same report stated that the Applicant “ didn’t have worthlessness of life and there were no suicidal thoughts” . Further it concluded that the Applicant “ didn’t have any psychotic symptoms ”. The report further stated that the Applicant’s cognitive functions were intact and he had insight into his illness. With specific regard to the Applicant’s suicide risk the report stated that in view of the Applicant’s history and mental examination the risk was “low”. The psychiatrist concluded that the Applicant was able to work in a supported environment and was able to travel alone.

23.
The Respondent pointed out that both in the pre-action letter and grounds of claim the summaries provided of the Applicant’s medical evidence were, it was submitted, “ grossly misleading ”. In particular, but by way of example only, the Respondent identified sixteen incidents of statements made by the Applicants which exaggerated the Applicant’s medical condition. The legal representatives for the Applicant submitted: that the Applicant had such a high level of risk to suicide that his removal would breach Article 3; that the Respondent had failed to engage with the medical evidence; and that the Applicant’s medical condition was such that he was so depressed that he might “ kill himself ”. It was submitted that he suffered from post-traumatic stress disorder and depressive order with psychotic symptoms.

24.
Following Judge Rintoul's direction in the order sealed on 3 March 2014, the Applicant lodged an application on 2 May 2014 to withdraw his claim. In a statement dated 14 May 2014 which was sent to the Upper Tribunal with a letter from G Singh Solicitors dated 15 May 2014, the Applicant explained his reasons for withdrawing his claim. It is appropriate to quote his letter:

“I, Abdulwahab Adebayo Abdussalam – 17-03-75, hereby write to inform the Upper Tribunal that the reason for my application to withdraw from judicial review proceedings is because the matter is privately funded and I cannot financially afford to continue.

I am in receipt of judge Rintoul's Order date 03/03/14. The low merits concerning my judicial review application were clearly explained to me prior to issuing proceedings nevertheless it was upon my instructions that my solicitors lodged my permission application to apply for judicial review.

In light of my finances and potential costs issued against me, it is upon my instructions that my solicitors have issued an application notice to withdraw the proceedings.

Kindly treat this as my further letter of authority.”

25.
Pursuant to Rule 17 of the 2008 Rules a party may give notice of the withdrawal of its case or any part of it at any time before a hearing to consider the disposal of the proceedings or orally at a hearing. Rule 17(2) makes that notice of withdrawal subject to the consent of the Upper Tribunal:

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

26.
We do not consider that this is an appropriate case in which to give our consent to the withdrawal, as it is important that we give our views on the merits of the grounds.

(b) Refusal of permission

27.
It is evident from our summary of the report of Dr. Bashir, that there was no medical evidence to support the contentions in the grounds that the applicant was: “mentally stunted” and of low intelligence; that removing him should be considered on the same footing as removing a child who could not fend for himself (para 5 of the grounds); that he had mental retardation (para 14); that he suffered from post-traumatic stress disorder and depressive order with psychotic symptoms (para 18(d); that it was arguable that he would need anti-psychotic medication (para 18(e)); and that he presents morbid/suicidal deliberations, in view of alleged past suicidal attempts (para 18(g)). To the contrary, whilst Dr. Bashir's report stated that the Applicant suffered from Obsessive Compulsive Disorder, he also said that there was no past history of suicide attempts, that the Applicant did not have suicidal thoughts and that his risk of suicide was low. Para 18(b) of the grounds asserted that the Applicant had poor living skills whereas Dr. Bashir’s report said that he was able to cook and look after himself and live an independent life.

28.
The medical evidence before the Respondent showed that the applicant had received treatment for urological symptoms and also asthma. The medication he was receiving was described at para 7 of the decision letter. The Respondent received information from “Project MedCOI” from which she concluded that adequate treatment and medication was available in Nigeria. The grounds do not engage with this assessment.

29.
We can see no arguable error in the Respondent's conclusion, on the evidence of the applicant's medical condition and the information from MedCOI, that the Article 3 threshold was not reached.

30.
Although Article 8 was also pleaded in the grounds, it was not explained why the Respondent's decision on the article 8 was wrong in law even if the Article 3 threshold was not reached.

(c) Wasted costs

31.
We therefore refuse permission. We turn to the wasted costs issue.

32.
In the light of the misstatements in the grounds, the Respondent sought an order for wasted costs upon the basis that the Applicant’s solicitor pay the Respondent’s costs for the preparation and filing of the Acknowledgment of Service and Summary Grounds of Defence; specifically it was submitted that the conduct of the Applicant’s legal representatives was “ at best negligent or at worst, deliberately misleading ” (grounds, paragraph 30). The Respondent set out the foundation for this submission as being the extent of the exaggeration contained in the pre-action letter and that the

grounds “… exaggerate the facts to such an extent that parts of those grounds bear no resemblance to the Applicant’s circumstances at all.”

33.
We therefore need to consider whether to accede to the Respondent’s application for an award of wasted costs against the legal representatives for the Applicant. We propose to conduct this exercise pursuant to Section 29(4) and (5) TCEA 2007 and Rule 10 of the 2008 Rules. We start by considering whether the appropriate procedure has been adopted which would enable us to impose a costs order of this sort.

34.
As to this we have no doubt that an application for wasted costs has been made. The requirement that the Applicant’s legal representatives be given notice of the application was plainly satisfied. The application for costs was made on 29 January 2014 and was served not only upon the Upper Tribunal but also upon the Applicant’s legal representatives. Further, directions were given by Upper Tribunal Judge Rintoul on 3 March 2014. The Judge requested a skeleton from both parties dealing both with the merits of the application for permission and wasted costs and the powers of the Upper Tribunal in relation to the same. The Applicant was ordered to lodge a skeleton argument on these issues not less than seven days prior to the hearing. However, the Applicant did not comply with this order. Instead by notice of 2 May 2014 the Applicant sought to withdraw the claim. The Respondent urges the Upper Tribunal to continue, notwithstanding this letter of withdrawal. We are therefore satisfied that the procedure pursuant to which the Upper Tribunal may rule upon an application for wasted costs has been satisfied.

35.
The next procedural matter which we need to address is whether the application to withdraw the claim by the Applicant served to extinguish the Respondent’s application for wasted costs against the Applicant’s legal representatives. As to this we have no doubt but that the Upper Tribunal had continuing jurisdiction to dispose of the appeal until such time as this Tribunal has made an order with regard to the application to withdraw the claim.

36.
We turn now to consider whether we should exercise the jurisdiction to make an order for wasted costs against the Applicant’s representatives. We start by considering whether the conduct of the Applicant’s legal representatives falls within the provisions of Section 29(5) TCEA 2007. The first question to which we must address ourselves is whether the Applicant’s legal representatives through their improper, unreasonable or negligent acts or omissions have caused any party to incur costs.

37.
As to this we have come to the conclusion that this is an appropriate case in which to make an order for wasted costs. The basis for this are the following matters when taken individually and/or collectively: (i) the conduct of the firm in question in this case standing alone; (ii) the conduct of the firm when viewed in the context of the other cases of a similar nature (referred to below); and (iii) the fact that the Tribunal considers that the firm has been less than frank with the Tribunal and with the Respondent in the course of these proceedings. The particular facts and matters upon which we rely are as follows.

38.
First, the very making of this claim in circumstances in which the Applicant had, at all material times, expert evidence available to him which fatally undermined the very claim being made was improper,

unreasonable and/or negligent. We have already set out those portions of the medical evidence of Dr Bashir which fatally refuted the Applicant's grounds. We take the view that we can justify the making of wasted costs order under any one of the three jurisdictional bases (propriety, reasonableness, negligence). In our view it was not "proper" for the legal representatives to advance, on behalf of the Applicant, submissions which were inconsistent with their own expert evidence. We take the view that the firm must have been aware that there was this glaring inconsistency but nonetheless thought that this could be concealed or camouflaged in the drafting of the application. We consider that this was also "unreasonable". We also consider that in advancing these arguments the legal representatives were "negligent" in that the firm has fallen well below the standards with may be expected of a reasonable professional acting in this regard. Accordingly, we take the view that the costs incurred by the Respondent in addressing the application from start to finish were "wasted costs" within the meaning of Section 29(5).

39.
Secondly, we rely upon the facts and matters which we set out below in some detail in relation to our further decision to refer the firm in question to the SRA. As is set out below we conclude that the present case formed part of a course of conduct or series of cases where very similar misleading and deceitful conduct was deployed in the pursuit of a variety of different applications for permission to seek judicial review of decisions of the Secretary of State. This strengthens our conclusion that the conduct in the present case fell far below acceptable standards and warrants an order for wasted costs. We also rely upon the fact, also set out in greater detail below, that the firm in question has failed to act in a candid manner with the Tribunal. A number of matters were only brought to our attention by the Respondent and even then this did not trigger full and frank disclosure by the solicitors.

40.
For these reasons we have decided to exercise our discretion under section 29(4) and order the Applicant's legal representatives to pay wasted costs incurred by the Respondent which we assess summarily at £1,492, inclusive of VAT. In our view the application was flawed from start to finish and it is, in these circumstances, appropriate that we should make an order for wasted costs in relation to the full amount of the Respondent's costs as set out in the served schedule. We add that the Applicant's solicitors did not challenge this figure and, in any event have agreed to pay this sum without admitting negligence or misconduct.

(e) Reference to the SRA

41.
We turn now to consider whether we should make a reference of the firm in question to the SRA. As noted above the facts that we set out below also form a part of our reasoning in relation to wasted costs. When we heard oral argument in this case Mr Achyuth Rajagopal, a representative of the applicant's solicitors, appeared in person to proffer an apology and to provide an explanation for his firm's conduct on behalf of the Applicant. In the event we permitted his position to be explained to us through counsel. Mr Rajagopal is one of the two partners in the firm. He explained to us how the application came to be drafted by a junior member of staff during a busy period prior to Christmas. He explained that there was a regrettable failure on the part of the partners, including himself, to supervise or check the work of the relevant junior staff. He and his firm accepted unreservedly that this amounted to an unacceptable failure. He explained that the firm would no longer permit any junior member of staff to draft substantive grounds which would in the future be prepared either by a partner or by a Counsel.

42.
At that stage, we were provisionally inclined to accept the apology and therefore not refer the firm to the SRA. However, the Upper Tribunal received a letter dated 28 May 2014 from the Treasury Solicitor which drew the Tribunal's attention to the fact that there was a wider group of claims, as identified in a schedule attached to the letter (which we attach as an annex to this judgment). The Respondent's schedule contained details of ten cases, including the instant case, for which claims had been filed by G Singh Solicitors, the earliest of which was filed on 13 September 2013. The claims alleged breaches of Articles 3 and 8 on grounds based upon the adverse mental health of the applicant in question. The claims were supported by reports from Dr. Amir Bashir, with (in most cases) little other medical evidence being provided.

43.
From our analysis of these claims it transpired that grounds that were very similar to those submitted in the present Abdussalam case were being used in this wider group of claims. The grounds are grossly misleading in our view. In many cases, the grounds contended that the applicant in question was mentally retarded or was of low IQ when this was either not stated in the medical evidence or was in fact contradicted by it. The grounds alleged that the applicant had been diagnosed with, for example, PTSD or depressive disorder with psychotic symptoms when this did not appear in the medical evidence or was inconsistent with that evidence. The grounds also alleged that applicants had a history of suicide attempts when it was apparent they either they did not or that the medical evidence was silent upon the issue.

44.
Our conclusion based upon this schedule is that G Singh Solicitors have been responsible for submitting grossly misleading grounds in nine cases, including the Abdussalam case. This is on any view a significant number.

45.
The next event in the chronology was that G Singh Solicitors sent to the Upper Tribunal a letter dated 28 May 2014 in which the firm stated, inter alia, that it accepted that " common discrepancies and incorrect terminology " were used in the wider group of cases; that it was apparent that the wider group of claims contained identical grounds which should have been omitted or altered; and that this had occurred due to " inattentive approach in tailoring specific submissions " and not with a view to misleading the court.

46.
The next event that we need to record was that G Singh Solicitors sent to the Upper Tribunal a further letter dated 6 June 2014 in which the firm stated: "We write to inform the Tribunal that having carefully considered the matter at length and of our obligation to report the matter to [the SRA] we would like to notify the Tribunal that we are taking steps (within 7 days from the date of this letter) to "Self-Report" ourselves to [the SRA] ".

47.
By an order sealed on 12 June 2014, the Tribunal informed G Singh Solicitors that its provisional view was that the failings were wide ranging and accordingly warranted a referral of the firm by the Tribunal to the SRA and to the Legal Aid Authority if any of the applicants in the wider group were legally aided (which now appears not to be the case). This view was taken notwithstanding the letter from G Singh Solicitors dated 6 June 2014 stating that they were taking steps to self-report to the SRA.

48.
On 17 June 2014, the Tribunal received a yet further letter from G Singh Solicitors with a witness statement dated 17 June 2014 from Mr. Rajagopal. The second paragraph of the letter states that the firm did not know about the other cases on the Respondent's schedule at the time of the hearing but since having them drawn to the firm's attention by the Respondent, the firm had conducted its own investigation and discovered " several others ourselves ". In the third paragraph on the first page, the letter stated that the firm had contacted the SRA with a view to self-reporting and, following their conversation with the SRA and the firm's analysis of the SRA Solicitors Handbook, the firm had taken the " provisional view " that this was not a matter for the SRA, although the penultimate paragraph on the fourth (and final) page of the letter states: " We also would respectfully submit that the Upper Tribunal need to refer the matter onward".

49.
We should make one matter quite clear: Our view as to whether we should refer this case to the relevant regulatory authority is unaffected by any stance or position adopted by the firm of solicitors concerned.

50.
In the circumstances of this case we have decided that we should refer the firm to the SRA. There is no stated test in law which governs when the High Court or Tribunal should refer a firm to the SRA. We consider (without attempting to set out a definitive test) that one such circumstance which warrants the making of a reference is where the individual or firm in question has acted in defiance or breach of the overriding duty owed to the Court and/or acted in a manner which undermines or risks undermining the due administration of justice. Such conduct would amount to a breach of the SRA Code of conduct. Chapter 5 of the SRA Code of Conduct deals with the obligations of solicitors litigators and advocates) to the Court and sets out the expected outcomes which not surprisingly include not attempting to deceive or knowingly or recklessly mislead the court, not permitting clients so to do, and ensuring that advocates and litigators comply with their duties owed to the court.

51.
The mere fact that grossly misleading / incorrect grounds have been submitted in nine cases is sufficient to warrant such a referral not least because the explanation given (failures in supervision) raises serious questions concerning the way in which litigation is regulated and supervised within the firm. However, if the firm has discovered other cases, as it says it has, the concern is even greater. This concern remains notwithstanding the departure of the employee in question and the undertaking that grounds for judicial review will only be settled at partner level or by instructing counsel in the future.

52.
We have also noted that, although the letter dated 17 June 2014 states (in the 7 th paragraph on the second page) that the Tribunal's attention has been drawn to the other cases found by the firm, the Tribunal has not in fact had its attention to any specific cases; it has just been informed in general terms that there is an unspecified number of other unidentified cases.

53.
The SRA ought therefore to be given the opportunity to investigate this matter, including issues as to how widespread the problem of supervision is within the firm and whether, and the extent to which, the firm has written to individual claimants to advise them of its own failings. In this respect, we note that, although Mr. Abdussalam has said in his letter explaining his reasons for withdrawing his claim

(quoted at para 22 above) that the low merits of his judicial review application were explained to him before the proceedings were issued, the letter does not indicate that he had been told that the grounds lodged in his case were misleading and incorrect.

54.
Furthermore, in its letter dated 28 May 2014, the firm stated that, in relation to those cases on the Respondent's schedule which awaited a permission decision, the firm would be seeking permission to add/amend the applicants' grounds for review. This relates to the following five cases: JR/5797/2013, JR/2118/2014, JR/2121/2014, JR/960/2014 and JR/2610/2013. However, as at the date on which the Orders refusing permission in those cases were sealed (3 July 2014), no such applications had been made, save that, in relation to JR/5797/2013, there was an application to withdraw made on 11 June 2014.

55.
Whilst the witness statement of Mr. Rajagopal states: " We enclose herewith letter dated 17 June 2014 addressed to the [SRA] in this matter, which is self-explanatory ", the letter was not in fact attached to the witness statement.

56.
This is not a case where there has been any form of full and frank disclosure to the Tribunal.

57.
We bear in mind that making a reference to the SRA is a serious step for the Tribunal and for the firm concerned. Nonetheless, we have decided that we would be failing in our duty if we did not refer G. Singh Solicitors to the SRA.

58.
We should also make clear that although the problem has been advanced to us as one of failure of supervision it is by no means obvious that this is in actual fact the case and that the unacceptable conduct is limited to the behaviour of junior members of staff, as opposed to reflecting an endemic problem running throughout the firm. Our recitation of the explanations given to us is not therefore to be taken as an acceptance that the explanations are necessarily true. We have however not considered it necessary to decide this issue in order to come to the conclusion that a reference to the SRA is justified. This is a matter upon which the SRA may need to form its own view.

D. Okondu

(a) Facts

59.
The Applicant in this case entered the United Kingdom in or about June 2010 with a visa to enter the United Kingdom as a visitor, having been issued (on 8 June 2010) with an entry clearance Family Visit Visa valid until 8 December 2010 i.e. for six months. On 12 July 2010 he was encountered by police and immigration officials on suspicion of using a false British driving licence in "The Money Shop". On 16 July 2010 he was sentenced to six months' imprisonment at Woolwich Crown Court having been convicted of possessing false/improperly obtained and/or another person's identity documents. On 9 February 2013 he was arrested by officers for criminal and immigration matters involving a sham marriage to a French national who had admitted all offences. On 8 March 2013 at Nottingham Crown Court he was convicted and sentenced for seeking to obtain leave to enter the United Kingdom on an

illegal basis and was sentenced to sixteen months imprisonment. The sentencing judge commented in imposing the custodial sentence upon the Applicant as follows:

“In your case, Okondu, you are 29, a Nigerian National who lived here as a child, went back to Nigeria, came lawfully on a 6-month visa in 2010 and unlawfully overstayed. You have a previous conviction for using a false identity document, a driving licence, to collect some cash. I am told that, that was not in connection with immigration. Logic says that must be right because it was in the period when you were lawfully in this country but logic also tells me that it was overt dishonesty because you must have needed a false identity to pick up money sent in a false name or sent to a genuine person who was not you. You, Okondu, stood to gain status, immigration status in this country.”

60.
In deciding to remove the Applicant the Respondent considered his position under Article 8 of the Convention and took into account not only the history of criminality but also his family position. In this regard he claimed to be in a civil partnership but failed to supply any details of the civil partner. The Respondent concluded that he was not in a genuine and subsisting relationship or, otherwise, met the conditions for being granted leave. It was also considered that there were no exceptional circumstances granting leave outside of the Rules.

(b) Refusal of permission

61.
An application seeking permission to apply for judicial review was submitted on 6 November 2013 prepared by the applicant’s solicitors. It is, almost on any sensible reading, an extraordinary document. In Section 6 detailing the remedy sought the following was stated:

“1. Order that I must be removed from the UK.

2. Order that the decision of the Defendant is disproportionate and thereby unlawful.

3. Order that the decision not to grant me a right of appeal is not in accordance with the law and thereby unlawful.

4. Order that right of appeal be granted to me.

5. Order that the costs be paid by the Defendant.”

62.
The statement of facts and grounds of application runs to ten short paragraphs spanning just over a single side of A4. It contains nothing more than a bare recitation of various abstract grounds under the headings “Illegality”, “Irrationality”, “Procedural Impropriety” and “Other Grounds”. Under these headings no particulars or evidence are referred to and no case law is cited. No facts relating to the Applicant or his personal circumstances are set out. No reference is made to his history of criminality. There is no reference to the decision of the Respondent or its contents; indeed it was not even annexed to the application and only the removal directions were attached.

63.
A statement of truth was however signed by a solicitor (who we have since been told is the principal (the Principal)) of the firm (Moorehouse Solicitors). The Statement of Truth provides: “I believe (The Applicant believes) that the facts stated in this claim form are true”. The application was accompanied by an equally terse document purporting to be the Applicant’s witness statement. It is not signed in

the document submitted to the Tribunal. It is as opaque and brief as are the grounds. Equally, it fails to set out any of the Applicant's history of criminality.

64.
No material changes or amendments were made to this application between the date of its service (November 2013) and the date of the oral hearing (May 2014).

65.
The Respondent, in support of her application for wasted costs, complains that the grounds are almost entirely lacking in particularity and that it is difficult to discern upon what basis the Applicant is in fact contesting the impugned decision other than that it was a decision said to be "without right of appeal". However, it is plain from the decision itself that the Applicant was notified that he had an in-country right of appeal which had to be exercised, if it was to be exercised at all, within five business days. It is plain that the Applicant elected not to exercise this right and on 22 October 2013 he was served with a notice of deportation arrangements for removal on 6 November 2013. He issued the judicial review proceedings on 6 November 2013, but service was not effected until 18 November 2013 by which time he had been removed.

66.
It is in our view manifest that there never was even a remotely arguable basis for applying for judicial review. We therefore refuse permission.

(c) Wasted costs

67.
We turn now to consider whether we should exercise our power to award wasted costs against the solicitors who prepared and advanced this hopeless application. In order to explain our decision we need to set out the main stages in the chronology which has led up to the decision to make the order for wasted costs.

68.
First, so far as procedure is concerned, the Applicant's solicitors were notified of the application for wasted costs, not least by virtue of the direction of Judge Rintoul referred to in paragraph 1 above. Indeed, on the day of the oral hearing, we ensured, through the administrative office of the Upper Tribunal, that the solicitors were in actual fact aware that the hearing was to take place. We wished to avoid any possibility (however remote) that for some reason the solicitors had not been notified of the forthcoming hearing to deal with costs. Calls were made. The administrative office was notified that the solicitors considered the case to be closed and that they would not be attending the hearing. Nobody from the solicitors' firm therefore attended to proffer an explanation for the firm's conduct or an apology for the manner in which it was presented. There was no compliance with the direction from Judge Rintoul that skeleton arguments be served on the Tribunal in relation to the issue of costs. We take these matters into consideration.

69.
By an order sealed on 6 June 2014, the Upper Tribunal ordered the solicitors to show cause in writing by 4 pm, seven calendar days from the date of the order, why the Upper Tribunal should not refer the firm to the SRA, stating, inter alia, that the Tribunal considered that the deportation of the applicant did not detract in any way from the seriousness of the issues raised in the Respondent's summary grounds of defence and the Order of Judge Rintoul dated 3 March 2014.

70.
On 13 June 2014, the Tribunal, very belatedly, received a letter dated 7 June 2014 from the Principal of the firm. She apologised profusely and repeatedly to the Tribunal and to us for the firm's failure to attend the hearing. More importantly, she explained the very detailed steps she had taken to ascertain what had happened. In summary, she explained that the Applicant telephoned the firm on 22 October 2013 seeking legal representation. He said he had just been served with a deportation order and that he was going to be removed on 6 November 2013 notwithstanding the fact that he had claimed asylum in detention and the Respondent had not decided the asylum claim. The caseworker in question asked the Applicant to fax to the firm his immigration papers. The firm only received the directions for the Applicant's removal on 6 November 2013. The Applicant was informed of the firm's fees. However, the fees were not paid until the morning of 5 November 2014. Due to the time constraints and the removal that was scheduled to take place (on 6 November 2013 at 20:50) the firm lodged a judicial review claim notwithstanding that it had limited information on file.

71.
The Principal confirmed that the firm had no objection to paying the Respondent's costs. She went on to explain the steps she had taken to investigate the matter internally and said she was satisfied that the Applicant had failed to disclose that he had been convicted and that he had been given a right of appeal which he failed to exercise and that the lodging of the claim eventuated from the time constraints the caseworker faced when taking instructions from the Applicant as he was due to be removed the following day.

72.
The Principal said that the firm had not received the Notice of hearing for the hearing on 20 May 2014 and that the firm and other law firms in the same building had experienced similar difficulties since January 2014. On 19 January 2014, the Applicant’s file was collected by his relative who informed the firm that he had been instructed to take over conduct of the matter. As a result of these events, individually and cumulatively, the hearing date was not entered in the firm's electronic diary. These were the reasons why the caseworker had informed the administrative staff of the Tribunal that the case had been closed and no one from the firm would be attending the hearing.

73.
The Principal gave undertakings to ensure that this incident would not be repeated.

74.
We note the apology and the detailed explanations given both as to the events that led to this claim being lodged in these terms and as to the steps she has undertaken to put in place in order to prevent a similar situation occurring again.

75.
On the material before us we accept that this might represent a one-off problem. Nonetheless, we consider that on the specific facts of this case wasted costs remain warranted.

76.
First, the Principal accepts that the caseworker and the firm did not make adequate enquiries before lodging the claim. We are satisfied that, if the firm had made adequate enquiries, even allowing for the time constraints in the light of the Applicant's impending removal it would have become readily apparent that the case was an entirely hopeless one. For instance it appears that no one actually sought or obtained the relevant decision letter; if the client did not provide it then it was always open

to the firm to contact the Home Office for relevant information once the firm had been duly instructed and was in possession of the applicant's Home Office reference number.

77.
Secondly, even accepting that in cases of real urgency and time pressure there may arise errors and mistakes in the formulation of the application for judicial review by reason of the firm not being able to obtain full and accurate instructions there can be no excuse for the firm not to take steps, once the application has been lodged, to complete the verification exercise and to then make any corrections necessary to the documents as served. The duty to act reasonably and professionally does not come to an end with the service of the application. It is a continuing duty. In the present case the firm was content to lodge an application without even having seen the decision letter that was the subject of the application yet it took no steps to correct that application or to place before the Tribunal the full and proper facts. The firm remained on the record for some months following service and no remedial steps were taken.

78.
When the application is measured and assessed as of the date of the hearing it therefore remained utterly defective. First, the application omitted to provide full and frank disclosure of the Applicant’s prior criminality. It failed to address any of the matters set out in the impugned decision of the Respondent, of which the solicitors were fully aware, certainly by the time of the hearing. We cannot conceive of any circumstances where solicitors could maintain an application for judicial review without annexing and addressing the actual decision impugned. If, in order to test the proposition, the solicitors are not given the decision by their client they would be perfectly entitled to obtain a copy from the Respondent upon proof that they had lawful authority to act for the client. If time prevents this from happening prior to the lodging of the application it can be done immediately thereafter. Secondly, the drafting of the application remained so far below the minimum standard which may reasonably be expected of any competent legal representative that it was always bound to fail. It is, put simply, improper for legal representatives to maintain an application upon the basis that it is ostensibly complete when in actual fact it is so sparse on relevant details that it cannot, sensibly, be adjudicated upon without substantial further amendment. Thirdly, we would emphasise that the statement of truth is not mere flummery. When it is signed it stands as a representation by responsible legal advisers that the matters they advance in the application are true to the best of their knowledge and belief. It assumes, at the very least, that they have done their level best to verify facts. If, as we have observed, time pressures mean that as of the date of signature the signatory cannot be sure that the application reflects the full picture then it is that representative’s duty to conduct further, post-service, checks to ensure that the Tribunal is given the full facts since only in those circumstances can the statement of truth have real meaning.

79.
For all these reasons we consider that the conduct of the solicitors constituted negligent acts and omissions which gave rise to wasted costs on the part of the Respondent. We also consider that the conduct was “improper” in the broader sense set out in Ridehalgh (ibid).

80.
The Respondent has submitted a schedule of costs for summary assessment. We conclude that the failings on the part of the Applicant’s solicitors occurred from the very outset and that, in the circumstances, all of the Respondent’s costs may properly be recovered under the “wasted costs” jurisdiction. We therefore exercise our discretion under section 29(4) and order the Applicant’s

representatives to pay the wasted costs incurred by the Respondent which we summarily assess at £932, inclusive of VAT.

(d) Reference to SRA

81.
We consider next whether on the facts of this case we should refer the case to the SRA and/or to the Legal Aid Authority. We have decided not to do so. This is essentially for the reason that, on the material before us, we accept that the errors were one-off failings and we have noted the apology of the firm in question and the undertaking to ensure against future repetition. Had there been a prior history of similar failings then we might well have taken a different view. The fact that no reference is being made in this case does not mean that in the future, and depending upon the circumstances, the Tribunal would necessarily refrain from referring a firm to the SRA and/or Legal Aid Authority upon a first occasion.

E. General Warning

82.
We take this opportunity to remind all representatives of applicants applying for permission for judicial review (and indeed all acting in any other proceedings before the Tribunal) that the overriding duty of all representatives is to the court, and in this context this means the Tribunal. It is improper for any practitioner to advance arguments which they know to be false or which they know, or should know, are inconsistent with their own evidence, including medical or other expert evidence. It is also incumbent upon practitioners to ensure that the Tribunal is provided with a fair and comprehensive account of all relevant facts, whether those facts are in favour or against the legal representative's client. It will not be treated as an acceptable explanation for an alleged failure to say that this was inconsistent with the representative's duty to the client; that would be an abnegation of the representative's duty to the court and to the due administration of justice. It will also not be acceptable to say that as of the date of the service of the application the representative was not in possession of all relevant facts because of time constraints. The Tribunal accepts that time pressures might mean that applications that are less than perfect or comprehensive or complete might in actual fact reflect the very best that can be done in urgent circumstances. However, this does not excuse a failure, following service of the application, to complete the fact finding and verification exercise, and then seek to amend the application accordingly so as to ensure that the Tribunal is fully informed of the relevant facts and matters.

83.
We would specifically draw the attention of representatives to (and endorse) the judgment of the High Court (Divisional Court) in R (on the application of Hamid) v SSHD [2012] EWHC 3070 (Admin) which concerned failings on the part of legal representatives to act professionally in the preparation of applications for judicial review. At paragraphs 6-11 the President of the Queen's Bench Division, Sir John Thomas, stated:

"6. The court has required the attendance of the solicitor today. It has received an apology on his behalf. Neither he nor the caseworker appreciated that this information is now required. It is for that reason that on this occasion we do not name either the employee or the firm.

7. However, we will for the future do the following. If any firm fails to provide the information required on the form and in particular explain the reasons for urgency, the time at which the need for immediate consideration was first appreciated and the efforts made to notify the defendant, the court

will require the attendance in open court of the solicitor from the firm who was responsible, together with his senior partner. It will list not only the name of the case but the firm concerned. Non-compliance cannot be allowed to continue.

8. That will not be the only consequence of failing to complete the requirements set out in this form. First, one consequence may be that, if the form is not completed, the judge may simply refuse to consider the application. Second, if reasons are not properly set out or do not explain why there has been delay or the reasons are otherwise inadequate, the court may simply refuse to consider the application for that reason and that reason alone.

9. These remarks apply equally to the form soon to be introduced for out of hours applications and the form for renewals when an application has been refused on the papers.

10. These late, meritless applications by people who face removal or deportation are an intolerable waste of public money, a great strain on the resources of this court and an abuse of a service this court offers. The court therefore intends to take the most vigorous action against any legal representatives who fail to comply with its rules. If people persist in failing to follow the procedural requirements, they must realise that this court will not hesitate to refer those concerned to the Solicitors Regulation Authority.

11. That is a warning for the future. We hope it will be unnecessary to have to have any further hearings of this kind or to refer anyone to the Solicitors Regulation Authority, but we will not hesitate to do so where there is a failure to comply with the court's requirements."

84.
Regrettably, and notwithstanding the warning from the President, solicitors have continued to bring meritless claims before the High Court and the procedure has been evolved pursuant to which judges considering permission applications who consider that the application in question is hopeless can (when refusing paper leave) require the senior partner of the representative firm to write and explain their conduct to the court. This has, on occasion, led to further hearings before a full Divisional Court during which the solicitors concerned are required to explain themselves. The Administrative Court Office has also maintained records of solicitors who may be treated as "repeat offenders". In some circumstances files have been referred to the relevant regulatory authorities, including the Legal Aid Authority. The Upper Tribunal's decision in a recent case gave rise to a request by the Legal Aid Agency to inspect the Tribunal's file, which was granted.

85.
We conclude with three observations.

86.
First, the mere fact that legal representatives advance an application that fails on paper, or on a renewed oral basis, is not in and of itself a reason for the Tribunal to impose any sanction. Applicants with weak cases are entitled to seek to advance their case and have it adjudicated upon; that is a fundamental aspect of having a right of access to a court. But there is a wealth of difference between the advancing of a case that is held to be unarguable in a fair, professional and proper manner and, which is what we have been concerned with in these cases, the advancing of unarguable cases in a professionally improper manner.

87.

Secondly, although in these cases we are dealing with failed applications for permission we have explained in the section above dealing with statutory framework that the costs jurisdiction applies to all parties and can, for example, arise in the case of a winning party whose conduct, on the way to success, has fallen below the requisite standard and caused wasted costs to be incurred by the losing party.

88.
Thirdly, we underscore the importance of the observations made by the President of the QBD in Hamid . Given the assumption by the Upper Tribunal of much of the jurisdiction of the High Court for dealing with judicial reviews in the field of immigration, the Tribunal will, as it has in this case, adopt a similar procedure in those circumstances where it considers it appropriate to do so.

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SCHEDULE OF CASES ATTACHED TO RESPONDENT'S LETTER DATED 28 May 2014

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Case Name and AC/UT Reference	**TSol ref**	**TSol Case Officer**	**Notes**	**Stage**
ABDUSSALAM JR/6038/2013	Z1400244		As set out in our summary grounds: • Misrepresents claimant's diagnoses • Claims the Claimant is mentally retarded when it is clear the Claimant has a history of pursuit of higher education (came to UK for his Masters) • Significantly exaggerates suicide risk in both the PAP and the grounds of claim. • States previous suicide attempts occurred when they have not. • Confuses Claimant's gender several times (suggests template grounds).	Oral hearing of 20 May 2014 (no paper decision) – Decision reserved.
JR/5797/2013	Z1329078		Significantly misrepresents claimant's diagnoses. Medical evidence only discloses a diagnosis of depression of moderate severity	Respondent has offered reconsideration but consent order not yet finalised.

			and makes no comment on suicide risk at all. Grounds however, include: • Mentally stunted, low level intelligence, mental retardation, below average IQ • Psychotic symptoms • "Real risk of claimant committing suicide" .	
JR/2976/2013	Z1320746		Significantly misrepresents claimant's diagnoses: • Mentally stunted, low level intelligence, mental retardation, below average IQ (do not appear in medical evidence). • Generalised anxiety disorder, post-traumatic stress disorder, depressive order with psychotic symptoms (none of which appear in the medical evidence) .	Permission refused on 7 March. Costs to SSHD. Not renewed.
JR/2118/2014	Z1406584		Arguably the most misleading of this group of cases. Grounds misrepresent the claimant's diagnoses (psychiatric report diagnoses Adjustment Disorder and Alcohol – Problem Drinking) , whereas the grounds: • Claim he is mentally retarded, low IQ, low intelligence, mental hindrance – in fact the Claimant completed two years of an engineering degree and came to the UK to pursue higher education. • Claims 'depressive order with psychotic symptoms' – this is not in the evidence.	AoS/Grounds filed 27 March 2014. Await permission decision.

			• Significantly exaggerates suicide risk in the grounds of claim. Suicide risk in the report is given as 'low'. • Claim he has suffered 'physical, emotional and carnal abuse' – none of which appears in the Claimant's history in the report. The medical report actually suggests how the Claimant could return to India safely, noting the family connections he has and how those could be used to support his return. The grounds do not engage with this point, rather they state the claimant "has no network to support him or help him seek out the appropriate care".	
JR/5800/2013	Z1329017		Significantly misrepresents claimant's diagnoses. Medical evidence shows the Claimant struggling with depression but frequently states no suicidal thoughts/intentions and no previous suicidal attempts, no psychotic symptoms. Grounds however, include: • Mentally stunted, low level intelligence, mental retardation, below average IQ • Generalised anxiety disorder, post-traumatic stress disorder (which do not appear in the medical evidence); and psychotic symptoms (which is directly contradicted by the medical evidence). • Claims that there are suicidal deliberations and past suicide attempts when there are none and were none.	Permission refused 7 March 2014. Costs to SSHD. Not renewed.

			• Frequently confuses the claimant's gender • Claims that the claimant has lived a life deprived of basic needs and suffered "physical, emotional and carnal cruelty" throughout existence – this is not mentioned in the patient's history section of the medical evidence. The medical evidence does make comment that there would be a higher suicide risk on return to Nigeria.	
JR/5581/2013	Z1328912		• Misrepresents claimant's diagnoses (the following appear in the grounds but not in the medical evidence: mental retardation, low IQ, generalised anxiety disorder, depressive order with psychotic symptoms). • Exaggerates suicide risk (claimant specifically noted as having no suicidal intentions). • Confuses claimant's gender (suggests template grounds).	Permission refused 15 March 2014. Costs to SSHD. No renewal.
JR/2121/2014	Z1405198		Misrepresents claimant's diagnoses. Claimant was diagnosed with a depressive episode of moderate severity with somatic symptoms . The following appear in the grounds but not in the medical evidence: • Mental retardation, low IQ • Depressive order with psychotic symptoms • Post traumatic stress disorder Grounds claim previous suicide attempts occurred when they are	AoS/Grounds filed 7 April 2014 Await permission decision

			not mentioned in the medical report. Grounds claim physical, emotional and carnal cruelty suffered by the claimant but none of this is mentioned in the background summary in the medical evidence.	
CO/15505/2013 (Admin Court)	Z1323566		• Misrepresents claimant's diagnoses (the following appear in the grounds but not in the medical evidence: mental retardation, low IQ, depressive order with psychotic symptoms). • States previous suicide attempts occurred when they have not.	AoS/Grounds filed on 12 March 2014. Await permission decision.
JR/513/2014	Z1322178		[OMITTED]	[OMITTED]
JR/960/2014	Z1403157		Misrepresents claimant's diagnoses (the following appear in the grounds but not in the medical evidence: mental retardation, low IQ, post-traumatic stress disorder and depressive order with psychotic symptoms).	AoS/Grounds filed on 27 March 2014. Await permission decision.