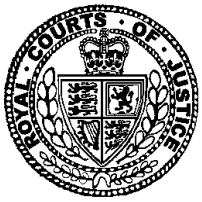

Neutral Citation Number: [2024] EWHC 665 (Admin)

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 22/03/2024

Before :

PRESIDENT OF THE KING'S BENCH DIVISION
MR JUSTICE LINDEN

- -

IN THE MATTER OF REFERRALS UNDER THE *HAMID* JURISDICTION MADE BY ORDERS OF COLLINS RICE J (16 MAY 2023), LINDEN J (9 JUNE 2023) AND CHAMBERLAIN J (26 AND 30 JUNE 2023)

AND IN THE MATTER OF STERLING WINSHAW, A FIRM OF SOLICITORS

AND IN THE MATTER OF LARKHILL LAW, A FIRM OF SOLICITORS

AND IN THE MATTER OF SETU KAMAL, A BARRISTER

Between :

(1) R (ON THE APPLICATION OF QAZIM TOTA)	**Claimant**
- and –	
SECRETARY OF STATE FOR THE HOME DEPARTMENT	**Defendant**

(2) R (ON THE APPLICATION OF RASIM HALILAJ)		**Claimant**
- and -		
SECRETARY OF STATE FOR THE HOME DEPARTMENT		**Defendant**
(3) R (ON THE APPLICATION OF APRICOT UMBRELLA LIMITED)		**Claimant**
- and –		
HIS MAJESTY'S REVENUE AND CUSTOMS AND TWO OTHER RELATED CASES		**Defendant**

- - - - - - - - - - - - - - - - - - - -
- - - - - - - - - - - - - - - - - - - -

Mr Rasheed Sarpong of Sterling Winshaw Solicitors Ltd, Ms Shanaz Haider, Ms Tina Virdi of Larkhill Law and Ms Ljubica Dardha appeared in person

Hearing dates: 12 March 2024

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Approved Judgment

This judgment was handed down remotely at 10.30am on 22 March 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

.....

Dame Victoria Sharp, P

Introduction

1. There are before us three referrals under the *Hamid* jurisdiction, made by Order of Tipples J dated 25 August 2023. The first two arise out of proceedings in which applications for interim injunctive relief were made "Out of Hours" ("OOH"); the third arises out of three applications made pursuant to the immediates procedure. In each case the applications were made in the Administrative Court.

Relevant law and guidance: the Hamid jurisdiction

2. The *Hamid* jurisdiction is a facet of the court's power to regulate its own procedures and to enforce the overriding duties owed to it by legal professionals: see *R (Hamid) v Secretary of State for the Home Department* [2012] EWHC 3070 (Admin), [2013] CP Rep 6 and *R (DVP & Others) v Secretary of State for the Home Department* [2021] EWHC 606 (Admin), [2021] 4 WLR 75 at [2]. It extends to all cases, not just immigration or public law cases: see e.g. *Gubarev v Orbis Business Intelligence Ltd* [2020] EWHC 2167 (QB), [2020] 4 WLR 122 and *R (Wingfield) v Canterbury City Council* [2020] EWCA Civ 1588 at [11].

3. Under the *Hamid* jurisdiction, a legal representative may be asked to show cause why their conduct should not be considered for referral to the relevant regulatory body, or why the representative should not be admonished: see *R (Sathivel) v Secretary of State for the Home Department* [2018] EWHC 913 (Admin), [2018] 4 WLR 89. The court may also, or alternatively, consider making a wasted costs order against the legal representative(s).

4. In *DVP*, the Divisional Court said this at [6] and [7]:

> "6. The Administrative Court often deals with urgent applications. This is a very important part of its work in the public interest, and a High Court judge is always available to hear such applications. Thus, a High Court judge is always available in the Administrative Court during court hours in the week, to deal *only* with urgent applications. Cases which are so urgent that they need to be dealt with out of normal court hours, including weekends, public holidays and vacation, are dealt with by the High Court judge on "out of hours" duty.
>
> 7. It is of the utmost importance that this limited resource is not abused, and over the years, the courts have developed rules to ensure this does not occur. If cases that are not truly urgent displace those that are, this will have serious consequences for litigants who have a good reason for applying for urgent relief. Two things flow from this. First, those seeking to make use of the "urgents" procedures are under a duty to the court to satisfy themselves that the application they are considering really is urgent and to adhere, to the letter, to the rules of court which protect the procedure from abuse. This has always been the case.

> The fact that case papers can now be filed electronically, has not altered the position. Secondly, any abuse of the "urgents" procedures will not be tolerated by the court and will be met with appropriate sanction."

Further information about the *Hamid* jurisdiction is to be found in the Administrative Court Guide 2023 at chapter 18.

The King's Bench Guide 2023

5. The procedural requirements for urgent applications to the duty judge of the King's Bench Division are set out at paragraphs 11.18 - 11.24 of the King's Bench Guide. These state, so far as is material, as follows:

> "Urgent applications to Duty Judge
>
> 11.18 Applications should not be made out of hours unless it is essential. Legal representatives must consider carefully whether an out of hours application is required. The out of hours service is not available to litigants in person.
>
> 11.19 Applications of extreme urgency may be made out of hours and will be dealt with by the duty Judge. An explanation will be required as to why it was not made or could not be made during normal court hours. This will require an explanation both of why the application was not made any earlier and why it cannot wait until the next sitting day so as to be dealt with by the duty Judge but within normal hours.
>
> 11.20....
>
> 11.21 The out of hours duty clerk will require the practitioner to complete the Out of Hours form…
>
> Practitioners should be aware that:
>
> 1) the out of hours form must be completed by the practitioner instructed to make the application;
>
> 2) all questions on the out of hours form must be answered on the form, not by cross-reference to the application materials…...;
>
> 3) the duty of full and frank disclosure assumes added significance when a judge is asked to make an order in a short time and without any (or any substantial) opportunity for the defendant to make representations;
>
> 4) when making an application out of hours, practitioners must bear in mind *R (Hamid) v Secretary of State for the Home Department* [2012] EWHC 3070 (Admin)…",

6. There are passages to similar effect in Chapter 17 of the Administrative Court Guide 2023, which is also concerned with urgent applications. As was stated in *DVP*, these materials are essential reading for practitioners.

7. The first part of the OOH Form says:

> "Out of Hours Application
>
> Where counsel or solicitors are requested to complete an Out of Hours application form by the Out of Hours Duty Clerk this form should be emailed to *DutyClerkKB@justice.gov.uk* Please do not send emails to this address unless the Out of Hours Duty Clerk has invited you to do so.
>
> Counsel and solicitors must comply with the requirements at paragraphs 11.18 to 11.24 of the King's Bench Guide https://www.judiciary.uk/guidance-and-resources/kings-bench-division-guide-2022-2/. Any application that does not comply with these requirements may be found to be an abuse of the Court's process under the Hamid jurisdiction.
>
> If the judge makes a determination, whether or not your Out of Hours application is successful, in accordance with CPR 25APD4.5 you must file your Out of Hours application with the court the next working day, together with the application fee of £108. You should send the form and fee to the Royal Courts of Justice Fees Office. You must pay this fee in addition to any fee required for any other application/claim the judge directs you to issue."

8. The OOH Form then contains a series of straightforward and specific questions which the practitioner is required to answer. Similarly, the N463 form, which is used for applications under the immediates procedure, is very clear as to what information is required and the form in which it is to be provided.

False claims in relation to authorisation to conduct legal work

9. The Solicitors Regulation Authority (SRA) guidance on "non-authorised persons" provides as follows:

> "In general, if you are not a lawyer you can only do certain work under the direct supervision of a regulated lawyer in the firm. Some types of work are simply not allowed. For example, as non-authorised person you can only prepare legal documents under the supervision of a regulated lawyer, but you cannot stand up in court and represent clients. In no circumstances, can you pretend or even suggest you are a lawyer. It is a criminal offence for you to:
>
> > wilfully pretend to be or take or use any name, title, addition or description implying you are qualified or

> recognised by law as qualified to act as a solicitor (section 21 Solicitors Act 1974) when you are not;
>
> wilfully pretend to be entitled to carry on reserved legal activities within the meaning of section 12(1) of the Legal Services Act 2007 when not so entitled or to take on or use any name, title or description with the intention of falsely implying such entitlement (section 17(1) Legal Services Act 2007)."

(1) R (on the application of Qazim Tota) v Secretary of State for the Home Department

The facts giving rise to the Hamid referral

10. On the evening of 16 May 2023 an OOH application for an urgent interim order staying removal directions was made in respect of Qazim Tota, who was due to be deported to Albania on a flight early the following morning. That application was dismissed by the duty judge, Collins Rice J.

11. The application was made by Ms Shanaz Haider who completed and signed the OOH Form. She put her name in the box headed "Solicitor's name", thus representing that she was a solicitor. She gave the name of the firm as "Sterling Winshaw Solicitors", and she ticked the box confirming that the application was being made in accordance with her professional obligations. Earlier in the same day she had made an application to the Upper Tribunal for urgent consideration of interim relief for Qazim Tota using form UTIAC1. On that form she had named herself as the respondent, and had signed on behalf of Sterling Winshaw, as a legal representative authorised to conduct litigation in the High Court under the Legal Services Act 2007.

12. Sterling Winshaw has a head office in London and offices in Birmingham and Hounslow. It is regulated by the SRA. According to the SRA website, seven SRA-regulated solicitors work for the firm.

13. Collins Rice J noted that the information on the OOH form was directly contradicted by the information provided by the Operational Support and Certification Unit (OSCU), i.e. the Home Office Unit responsible for immigration removals, and she made a *Hamid* referral. Her particular concerns were that contrary to the duty of full and frank disclosure:

    i) The underlying documentation relevant to the application was not provided.

    ii) The court was not informed that the applicant had, without explanation, failed to attend his asylum interview on 4 April 2023 and had been told that, unless an acceptable explanation was provided, removal directions would be issued.

    iii) There was no mention that Sterling Winshaw had taken the case over from another firm of solicitors, nor any explanation of what steps (if any) were taken to contact that firm for information.

iv) The delay in making the application was unexplained. The applicant was informed of the removal directions on 3 May 2023, and yet he waited 13 days to make the application for a stay.

The Hamid investigation

14. A show cause letter was sent to Ms Haider on 12 June 2023. This letter drew attention to the relevant case law, and to the provisions of the King's Bench Guide. It said that the Hamid Judge (then Tipples J) had been unable to find Ms Haider's SRA number or any details of her registration as a solicitor. Mr Sarpong, whose name appeared on the SRA website, was therefore copied in. The letter pointed out that no claim for judicial review had been made, that the OOH Application had not been filed, and that the £108 court fee had not been paid. It also set out Collins Rice J's concerns about the application which had been made. An explanation was required, including by answering a series of specific questions which were set out in the letter.

15. Ms Haider provided a two-page witness statement dated 28 June 2023. This did not answer all of the questions which were put to her. She said that there were "errors" in the forms which she had submitted, highlighting the fact that she had put her name down as the respondent on the UTIAC1 form. However, later she said that she did not have rights of audience to appear before the duty judge "I am only able to do this at the desecration (sic) of said judge". She also listed her qualifications, from which it was apparent that she is not in fact a solicitor. She had attended a legal secretary course in 1989, and started, but did not finish, a law degree in 1992. She said that she had been "working with legal firms for 10 years gaining experience within the legal area of work". Mr Sarpong, who appeared before us at the hearing, confirmed to us that she works from the Birmingham office.

16. Ms Haider went on to say that no underlying documentation had been provided to her by the client. She had had a telephone conversation with him and had relied on what he told her. She said she was unwell after 16 May 2023 and had considered the application to be void as the client had been deported, but the fee would be paid as soon as possible. No claim for judicial review had been made as she had not received all of the documentation.

17. No response was received from Mr Sarpong at this stage, although he had been copied into the show cause letter.

18. A further letter to Ms Haider, on 17 July 2023, sought clarification and answers to the questions which she had not addressed. Again, it was copied to Mr Sarpong.

19. Ms Haider then provided a further witness statement dated 24 July 2023. Again, there was no response from Mr Sarpong.

20. Ms Haider said that on 16 May 2023, she had a medical procedure and returned to her office. She then took a call from the applicant who was in a Detention Centre and who was "stressed and panicked" as his previous solicitors would not answer his calls. She accepted the instructions, dealt with the matter in a rush, and filed the papers with the Court. She said that she completed the form in her capacity as a paralegal on behalf of a solicitor's firm which was authorised to conduct litigation. She said that when she was called by the OOH Duty Clerk, she told them that she was a paralegal and that she

would have to find Counsel to present the application. In her statement she said that she is supervised by Mr Sarpong "but unfortunately he was not in the office on 16 May 2023". However, she had advised him of this matter the following morning.

21. The show cause letter of 17 July 2023 had specifically made the point that Ms Haider was not authorised to conduct litigation under the Legal Services Act 2007. It had also asked her to identify what changes would be made to the system of management and what steps would be taken to address her training needs. Her response to this included "looking into training on Out of Hours injunction applications", apparently on the basis that she intended to continue to make such applications on behalf of the firm.

22. In the light of Ms Haider's evidence, a show cause letter was sent to Mr Sarpong on 28 July 2023. He responded in a witness statement dated 11 August 2023. He accepted that he was the solicitor responsible for supervising Ms Haider's work. He qualified in 2007 and is an SRA Approved Manager. In relation to the OOH application made on 16 May 2023, Mr Sarpong said this:

> "[8.] … in terms of an explanation as to how Ms Haider undertook the actions which are now under scrutiny, in short, I would like to categorically point out that she has done so in direct opposition to the ethos, processes and standards of the firm. There is no authority that the firm would offer to justify any of the actions taken by Ms Haider, which are now the subject of this compliant".

23. He then said:

> "[9.] Ms Haider appears to have made a number of errors not only in the QBA OHA form but the UTIAC4 where she puts herself as the respondent, which is clearly incorrect! "
>
> [10.] Looking at it objectively, it appears that Ms Haider was acting under far too much pressure and time constraints and out to have considered whether she had the time to be able to **correctly** complete said forms. There is no reason it was completed the way it was had been done (sic) and it ought to have been done under a set of more rational and calmer circumstances."

24. Mr Sarpong did not appear to recognise that Ms Haider should not have been completing and signing any such forms in the first place. He also failed to address the fact that Ms Haider made false representations to the Court that she was a solicitor, and there was no mention of any internal disciplinary proceedings by the firm against Ms Haider. Rather, he characterised the case as one of "overzealousness", and then said this:

> "[14.] As to identifying any relevant training needs, a full review of Ms Haider's training needs and indeed past training retention, is taking place to ensure that such an incident does not occur in the future.

> [15.] However, this is currently at some level of abeyance because Ms Haider's ability to continue to work with Sterling Winshaw Solicitors is seriously under scrutiny and question and will very much be reliant upon the outcome of this current investigation over her conduct."

25. The "current investigation" appears to be a reference to the investigation by the Court, rather than any internal steps taken by Mr Sarpong or others in the firm.

26. The court fee of £108 was not paid until 30 August 2023, and the OOH application has never been filed with the Court. Nor was any claim for judicial review made.

27. For the purposes of the hearing before us, Ms Haider submitted a further witness statement dated 22 February 2024. This is in virtually identical terms to her second witness statement, including that she is looking into training courses on OOH applications. There was nothing additional from Mr Sarpong.

28. Both Ms Haider and Mr Sarpong have apologised to the Court, and they reiterated their apologies in the course of the hearing. Mr Sarpong also said he was not trying to provide an excuse, but the firm had tempered their approach to Ms Haider who had gone through a lot of medical issues in the past which had taken their toll, and she had the firm's sympathy.

29. Having considered the material before us, and the representations made at the hearing, our conclusions are as follows. The concerns expressed by Collins Rice J about the application made on 16 May 2023 appear to be well founded. In addition, the fact that Ms Haider falsely represented that she is a solicitor authorised to conduct litigation on two different court forms is a serious matter. Even now, it is not clear that the firm has appropriate systems in place to supervise paralegals, or that Mr Sarpong has taken sufficient steps to prevent any repetition of what occurred in this case, with Ms Haider or more generally. Though Mr Sarpong has apologised to the court, he was Ms Haider's supervisor at the time; and it is a matter of concern that he did not appear to appreciate the seriousness of what had happened until sent a show cause letter himself.

30. In the circumstances, we consider this matter should be referred to the SRA.

(2) R (on the application of Rasim Halilaj) v Secretary of State for the Home Department)

The facts giving rise to the Hamid referral

31. Larkhill Law Solicitors is a firm based in Hounslow, and is regulated by the SRA. It has, according to the SRA website, two SRA regulated solicitors connected with it.

32. On the evening of 7 June 2023, Larkhill Law made an OOH application for an urgent stay of removal directions in respect of Rasim Halilaj, who was due to be deported to Albania on a flight early the next day. That application was dismissed by Linden J, who was the duty judge.

33. The OOH Form and other documents were sent to the court by Ljubica Dardha from her email address with the firm. According to the OOH Form, the application was made by Tina Virdi, a solicitor at Larkhill Law. On page 2 of the OOH Form, it was confirmed

that the application was being made in compliance with her (that is Ms Virdi's) professional obligations. The information given on the Form failed to identify the nature of the application, or the reasons for requiring OOH consideration. Rather, both those boxes simply said, "See Attached". It also failed to explain why the application was made so late and did not disclose that the application had been considered and refused earlier the same day by Upper Tribunal Judge Pitt. The reasons for that refusal were that the applicant made an asylum claim which was certified as unfounded under section 94 of the Nationality, Immigration and Asylum Act 2002, and that the Grounds of Appeal did not challenge any aspect of the decision of 30th May 2023. That information was drawn to Linden J's attention by OSCU. The papers were in a confused state and difficult to navigate electronically.

34. There was also no serious attempt to put forward a case based on public law principles. It appeared that the firm had been recently instructed and were merely seeking further time to ascertain what their case might be. Ms Dardha had also appeared to be deliberately unclear as to whether a hearing was sought in email exchanges that she had with the clerk to Linden J. It did not appear that Counsel had been instructed.

35. Linden J refused the application and, by an Order dated 9 June 2023 (sealed on 5 July 2023), made a *Hamid* referral.

The Hamid investigation

36. On 9 July 2023, a show cause letter was sent to Ms Virdi and Ms Dardha. It pointed out the concerns which Linden J had and put a series of questions to them, seeking an explanation. In response, Ms Virdi provided a witness statement dated 24 July 2023 and a witness statement from Lubica (sic) Dardha, a paralegal, dated 21 July 2023. There were further letters from the court to Ms Virdi and Ms Dardha dated 27 July 2023 which sought clarification of what they had said. In response, they provided further signed witness statements dated 31 July and 5 August 2023 respectively.

37. According to Ms Virdi, she has been qualified as a solicitor for 17 years. She describes herself as a "child protection specialist". She set up Larkhill Law with another solicitor in 2022, but the other solicitor (who she described as having a "better understanding of immigration matters") has since left. She is the sole director of Larkhill Law Ltd. She has no rights of audience to appear before the duty judge.

38. On 15 February 2023, Larkhill Law Ltd entered into a part time Consultancy Agreement with Ms Dardha to provide services as an "visa and immigration case work consultant". Ms Virdi's evidence is that this was because the firm started receiving inquiries from the local community in relation to immigration matters, and Ms Dardha was hired to deal with these. Ms Virdi describes Ms Dardha as an "Albanian born British citizen who hoped to take advantage of her language and legal skills to cultivate new business within the Albanian community".

Ms Virdi

39. In her first witness statement Ms Virdi says that Ms Dardha accepted instructions on behalf of Rasim Halilaj and acted on his behalf, without her knowledge or authority. She says that Ms Dardha paid the court fees using her own credit card, and Larkhill Law have not received any fees in respect of the applicant's case. This, she says, is the

position in respect of two applications made to the Upper Tribunal on behalf of Mr Halilaj and the OOH application before Linden J (made over a period of 5 days from 2 to 7 June 2023). In this witness statement, Ms Virdi says that she is "in the process of dealing with Lubica (sic) in line with her consultancy contract and as per the firm's disciplinary policy; and that she is currently suspended pending investigation which remains ongoing".

40. Ms Virdi concludes her first witness statement by saying that there has been:

> "a regrettable and serious breach of trust to which I myself have fallen victim. Nevertheless, the matter is as sensitive as it is serious and one for which we have remedies and solutions but I concede it should never have happened in the first place. As a consequence, I sincerely apologise once more... I will implement robust procedures to avoid incidents of this nature in the future."

41. In her second witness statement, Ms Virdi says that Ms Dardha was interviewed in relation to this matter on 13 July 2023, and directed to abstain from all Larkhill Law work until further notice. It is said that she was interviewed again on 21 July 2023 "at which point she provided her signed witness statement. She has not entered the office thereafter". She says that Ms Dardha has no access to her email account, and the locks to the office have been changed. Ms Virdi says that Ms Dardha has been informed that "her services were no longer required on account of her misconduct" and that "she accepts that on this occasion she fell short of acceptable professional standards".

42. Ms Virdi has produced a further witness statement dated 21 September 2023 which repeats the substance of her first witness statement, and has made oral submissions to us, to the same effect.

Ms Dardha

43. Ms Dardha studied law in Albania and was awarded the Graduate Diploma in Law from the University of Law on 1 December 2022. She is a member of Institute of Paralegals until 18 April 2024. Her registered Professional Paralegal Tier 2 Certificate appears to have expired on 18 April 2023. She says that she held a senior paralegal role at Duncan Ellis solicitors.

44. Ms Dardha was unfortunately delayed and therefore arrived late for the hearing before us. We sat again, to hear from her. She told us that the firm had asked for her account of what had happened in order to prepare her witness statement. As she was about to go back to Albania for a short period she was then asked to sign an incomplete draft (on the signature page). She agreed to do so on the express basis that she would be provided with a final version of the witness statement for her approval. In the event, the final version was never sent to her, and the witness statement that had been sent to the court in her name did not provide a full or accurate explanation of what had happened.

45. She said that although Ms Virdi was unaware of her dealings with Mr Halilaj, another partner (she provided his name) did have some awareness. He had been aware that she intended to make a bail application on behalf of Mr Halilaj and to make a claim for judicial review. She had also told him that she wished to make a payment for an OOH

application, although he had not responded to her message about this at by the time she made it.

46. The explanation of the OOH application given in Ms Dardha's first witness statement corresponds with that provided by Ms Virdi viz. Larkhill Law was completely unaware of Ms Dardha's dealings with Rasim Halilaj and Ms Dardha was pressurised to act for Rasim Halilaj, as his family were desperate. It says that she did not receive any fees to act for him, and she paid the court fees using her personal credit card. It says that she made all the applications on behalf of the applicant, without the knowledge of Ms Virdi, for which she apologises. She offers her apologies to the court, apologies she repeated to us in person.

47. It is troubling that in a very small firm such as this one, a part-time paralegal was able to make applications to the High Court (and to the Upper Tribunal) without the right to conduct such litigation and to give the false impression that she had such rights. Nonetheless, we are satisfied that Ms Virdi had no part in what occurred; and that the matter has been sufficiently addressed by this *Hamid* referral and the handing down of this judgment.

(3) R (on the application of Apricot Umbrella Limited) v HM Revenue & Customs
R (on the application of ABC Umbrella Limited) v HM Revenue & Customs
R (on the application of Dales pay Limited) v HM Revenue & Customs

The facts giving rise to the Hamid referral

48. At the time we are concerned with, Setu Kamal was counsel with the conduct of each of the above claims. The claims are in materially similar terms. Mr Kamal is in chambers at Old Square Tax Chambers, Lincoln's Inn, London and was called to the Bar in 2004.

49. The claims each challenge a decision of HM Revenue & Customs to publish the claimant company's name and address, and the name of a director of the claimant, as persons suspected of promoting or being a person connected with a tax avoidance scheme. The power to publish such information derives from section 86 of the Finance Act 2022.

50. On 25 July 2023, Mr Kamal made an application for urgent consideration to the Administrative Court on behalf of Apricot Umbrella Ltd. This required the application (form N463) to be considered in 24 hours; it also required the application for interim relief to be considered within 7 days. On 26 July 2023, Mr Kamal made two further applications for urgent consideration in similar terms on behalf of Dalespay Ltd and ABC Umbrella Ltd respectively.

51. The applications were, in substance, identical. The underlying claims challenged a decision of HM Revenue & Customs (the defendant to each claim) communicated by letter of 13 July 2023 and said to have been received on 17 July 2023. That letter gave reasons for the decision in each case, to publish the claimant company's name and address and the name of its former director as persons suspected of promoting or being a person connected with a tax avoidance scheme. The letter said that the information would be published "no earlier than 14 days from the date of this letter", i.e. no earlier

than 28 July 2023. HM Revenue & Customs decision to publish the information had been indicated in a letter dated 15 February 2023, to which the claimant responded on 30 March 2023 and again on 7 July 2023.

52. The claim forms were supported by Grounds settled by Mr Kamal. The Grounds advanced challenges to section 86 of the 2022 Act. These challenges were based on the free movement of capital, which was said to apply as a directly effective EU Treaty right (Ground 1); the EU and United Kingdom General Data Protection Regulation (Ground 2); and article 1 of Protocol 1 and article 6 of the European Convention on Human Rights. The Grounds also contended that the defendant had no power to publish the name of the claimant because it was acting as agent for a Cypriot company, ADYE Ltd (Ground 4).

53. In each application, the claimant sought:

> "an urgent interim injunction which forbids the defendant from publishing the name of the claimant until such time as the compatibility of [section 86] (and, in particular, as it applies in the case of the Defendant) with the laws of the EU and, in particular, Article 63 TFEU and GDPR and the ECHR has been determined.."

54. In each case the claimant maintained that if its name was published, then its business was "likely to be lost".

55. All three applications for interim relief were refused by Chamberlain J. He considered that each disclosed possible abuses of the court's procedures. In particular, he said:

i) The claimant in each case failed to explain the delay in making the application, and then sought urgent consideration within 24 hours.

ii) Although Mr Kamal made reference to a legal challenge to the publication of information pursuant to section 86 in a case referred to as Veqta Limited he did not give the full name or reference for the case – *R (on the application of Veqta Limited) v HMRC* – or mention that permission for judicial review was refused on paper, and then refused by Ritchie J after an oral hearing on 28 June 2023: see [2023] EWHC 1659 (Admin). The Grounds in that case overlapped substantially (if not entirely) with the Grounds in each of these cases, and they were either withdrawn or held to be unarguable. Mr Kamal was counsel in the *Veqta Ltd* case, and therefore well aware of Ritchie J's decision. The failure to draw this recent decision to the court's attention anywhere in the papers appeared to be: (a) a breach of counsel's duty to the Court; and (b) a breach of the claimant's duty to make full and frank disclosure of relevant matters.

iii) The submissions made in support of interim relief did not refer to the relevant test for injunctive relief to prevent a public authority from publishing information which it is obliged or empowered to publish. Injunctive relief is only granted in such cases "for the most compelling reasons" or in "exceptional circumstances": see e.g. *R (Governing Body of X School) v Office for Standards in Education* [2020] EWCA Civ 594. The relevant test was not set out, and no explanation was provided as to why it was met.

iv) Each application failed to explain the assertion that "the Claimant's business is likely to be lost".

56. On 11 August 2023 a show cause letter was sent to Mr Kamal asking him to explain the matters referred to by Chamberlain J. Mr Kamal responded in a signed witness statement dated 22 August 2023. The explanation he has provided, as far as we can understand it, is as follows.

i) On delay, Mr Kamal says that the reason was that he was on holiday in Turkey. Although the applications were prepared and filed by 20 July 2023 the correct documents were not submitted to the court and were not hyperlinked. They were therefore rejected by the court. He says that "the hyperlinking needed time and the application was resubmitted on 25 July 2023".

ii) On counsel's duty to the court to make full and frank disclosure of all relevant matters, Mr Kamal says that the primary position of the applicant was that the publication should not occur at all for the reasons given in the Grounds. The reference to Veqta Limited was only made as an alternative position. As the same points were to be considered by another court at around the same time, then it would be prudent for the superior court to go first. He says that his understanding was that the decision of Ritchie J did not have precedential value; that if the applicants applied to the European Court of Human Rights they would need to show that they had exhausted all alternative remedies; that whilst there was a considerable overlap between the cases, there was a Ground alleging breach of United Kingdom and EU GDPR which had been abandoned before Ritchie J for reasons which were particular to that case but that Ground was now pursued; and that in Veqta Limited "the publication referred to the readers onto Spotlight 60" whereas it was Spotlight 35 in the 3 applications before Chamberlain J. The former appears to make a value judgment and the latter to a statement of fact, so that the applicants' cases were stronger than in Veqta.

iii) On the failure to draw the court's attention to the correct test for injunctive relief, Mr Kamal referred to the authorities which he had cited in his Grounds; he said the right to free movement of capital was being invoked; and the authorities to which he referred were more pertinent than the established caselaw cited at paragraph 16.6.3 of the Administrative Court Guide, to which Chamberlain J had referred as stating the correct test.

57. Mr Kamal's witness statement contains no apology for his omissions, nor acknowledgment that he failed to comply with his obligations to the court in making an urgent application to the Administrative Court. Rather, he says:

> "More generally, I would add that with an injunction, one can get flustered. There are often weeks on end during which one has to be on standby – as one never knows when exactly a hearing might occur. On top of that, as will be seen from the context I am representing five different injunctions on the matter of publication alone. I am also travelling and outside the country as the time is set by HMRC and not me. In light of these circumstances, I would submit that a sympathetic treatment

> ought to be meted outby the court to those who fight to reach them".

58. Mr Kamal failed to attend the hearing. After he was notified (on 14 February 2024) of the date it was due to take place, he asked to attend by CVP. He was directed to make an application by 4pm on 23 February 2024 which provided a clear and detailed explanation of why he was not able to attend in person, given that his chambers are in Lincoln's Inn. On 29 February 2024 he made the application, supported by a witness statement which argued that he had a right to remain silent and not to incriminate himself, but that he was waiving that right to the extent that he was prepared to attend remotely. The first paragraph of this witness statement said that he had been based in Cyprus since 2017 but had spent most of 2023 in the UAE. However, he did not explain why he could not attend a hearing in the UK other than to say that it would be expensive to fly here and a strain on his time and resources as a practitioner. He also maintained that he had made an application to attend remotely in September 2022, but has since accepted that he did not do so. Though Mr Kamal further indicated he could produce further evidence if desired, he has not provided it, though told that his application would not be granted in the absence of such evidence. He has referred to issues with his health in an email dated 4 March 2024. However, he has provided no detail and no medical evidence.

59. In these circumstances, we have considered this *Hamid* referral in the absence of any further representations from Mr Kamal, apart from those made already in his witness statements and emails to the court. We do not consider those representations provide an answer to the points made by Chamberlain J, and this matter should now be referred to the Bar Standards Board.

60. Mr Kamal gave reasons for the delay but not for the failure to explain those reasons to the court when making the applications for urgent consideration. The applications were in each case made without notice in the urgents procedure, and on the papers, and there was therefore a heightened duty of disclosure. As Chamberlain J pointed out, Mr Kamal was counsel in *Veqta*. Though he referred to that case in his Grounds (but without giving the reference) he did not indicate that it had been decided or mention that permission for judicial review was refused on paper, and then refused by Ritchie J after an oral hearing on 28 June 2023. Nor did he disclose that the Grounds in that case overlapped substantially (if not entirely) with the Grounds in the three cases we are considering, and that the Grounds in *Veqta* had either been withdrawn or held to be unarguable.

61. The decision of Ritchie J and its implications for the cases being presented to Chamberlain J, should plainly have been drawn to the Court's attention. The failure to do this was breach of counsel's duty to the court and to make full and frank disclosure of all relevant matters. In short, regardless of any arguments now raised as to its materiality, the court should have been told about the case, and what it decided. Similarly, the court should have been told of the test applicable to applications for urgent injunctive relief to restrain publication by a public body pursuant to statutory powers and duties; and this was the position even if, which we do not accept, there were reasons to doubt its applicability.