IN THE UPPER TRIBUNAL

JR/3111/2019; JR/3119/2018
JR/2695/2018; JR/7440/2018
JR/6885/2019; JR/6886/2018
JR/3298/2018

Field House,
Breams Buildings
London
EC4A 1WR

20th January 2020

THE QUEEN
(ON THE APPLICATION OF)
MANPREET SINGH & OTHERS

Applicants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

BEFORE

UPPER TRIBUNAL JUDGE LINDSLEY
UPPER TRIBUNAL JUDGE JACKSON
UPPER TRIBUNAL JUDGE O'CALLAGHAN

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Mr A Metzer QC & Dr A Van Dellen of Counsel, instructed by Mr Sharaz Hussnain Ahmed, Director of 12 Bridge Solicitors

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FINDINGS OF THE UPPER TRIBUNAL EXERCISING ITS HAMID JURISDICTION

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Introduction

1. The Upper Tribunal has an inherent jurisdiction to govern its own procedure and part of that jurisdiction mandates that we ensure that the lawyers interacting with the Upper Tribunal conduct themselves according to proper professional standards. The Upper Tribunal cannot afford to have its limited resources absorbed by abusive applications by those who repeatedly bring meritless applications. Further, substantial time spent on meritless and abusive applications also risks a loss of public confidence in the processes of the Upper Tribunal. We are also aware that the immigration client group can be particularly vulnerable and open to exploitation by representatives.

2. We emphasise that the primary duty of solicitors and barristers is to the Court and Upper Tribunal, and to the cause of truth and justice. If a weak case is advanced on instructions from a client then it must be done in a way which is professionally proper: in particular there must a candid disclosure of material which is relevant to the matter to be decided but which might not assist the applicant and a case must not be advanced which is inconsistent with the evidence put before the Secretary of State. Part of the duty to the court which we explore in this decision is that placed on the qualified lawyer to take ownership and responsibility for the applications advanced: a firm of solicitors cannot meet its duty to the Court and Upper Tribunal by allowing unqualified caseworkers who are inadequately supervised or unsupervised to make unmeritorious applications.

3. We guide ourselves with reference to the decision in R (Hamid) v Secretary of State for the Home Department [2012] EWHC 3070 (Admin), and the subsequent decision of R (Sathivel) & Ors v Secretary of State for the Home Department [2018] EWHC 913 (Admin).

4. The purpose of the present hearing is to decide whether it would be appropriate to refer Mr Sharaz Ahmed, director of 12 Bridge Solicitors, to the

Solicitors Regulation Authority (SRA) for investigation. What is said in a Hamid decision is not binding on the SRA, but may assist their further exploration of this matter, should we conclude that it is appropriate to make a referral.

5. This is a decision which has been written by Upper Tribunal Judge Lindsley but to which the other members of the panel have contributed.

The Present Proceedings

6. On 20th September 2018 Upper Tribunal Judge Jackson issued a notice to show cause to 12 Bridge Solicitors, when refusing permission for judicial review and certifying the matter as totally without merit in the case of Babita Giri (JR/32998/2018). A response was received from 12 Bridge Solicitors dated 4th October 2018 but it is unclear who wrote the response. It was decided at that point that no referral to the SRA was appropriate. On 8th July 2019 Upper Tribunal Judge Lindsley issued a show cause notice in the case of Manpreet Singh (JR/3119/2019), when refusing permission and certifying the application as totally without merit. A statement of truth in response was received from Ms Taskeen Ahmed dated 8th August 2019. On 11th July 2019 Upper Tribunal Judge O'Callaghan issued a show cause direction in the case of Blerim Dema (JR/3110/2019), when refusing and certifying the application as totally without merit and a response was received to this notice from 12 Bridge Solicitors dated 8th August 2019 again from Ms Taskeen Ahmed.

7. On 30th August 2019 Mr Sharaz Hussnain Ahmed was written to as the director of 12 Bridge Solicitors by The Hon. Mr Justice Lane, the President of the Upper Tribunal (IAC), with respect to these three cases and four further matters of concern, and required to provide a further statement of truth. On 13th September 2019 Mr Ahmed responded with a statement of truth on behalf of 12 Bridge Solicitors. 12 Bridge Solicitors were notified at the beginning of November 2019 that it had been decided that the issues raised in the letter of 30th August 2019 would be

further considered at a hearing. This was eventually listed for 20th January 2020 due to issues that prevented Mr Ahmed attending the Upper Tribunal at earlier proposed dates. Mr Ahmed produced a further statement of truth dated 6th January 2020 for the hearing, and reliance was also placed on the earlier statements of truth issued on behalf of the firm in that statement.

8. Mr Ahmed was very ably represented by Mr Metzer QC and Dr Van Dellen at the hearing. Firstly, we dealt with the preliminary issue raised by Mr Metzer QC which was whether we had to recuse ourselves due to an issue of apparent bias. It was then agreed that the hearing would involve a series of questions with respect to the structure of the firm, followed by questions regarding issues of professional conduct arising out of the cases. Mr Metzer QC said he had various concessions and clarifications relating to the cases but we asked that he contribute these as we went through them. At the end of the hearing Mr Metzer QC, Dr Van Dellen and Mr Ahmed were given the opportunity to make any final submissions that they wished us to hear.

Preliminary Issue

9. Mr Metzer QC made an application that the panel should recuse itself on the basis that all panel members had issued notices to show cause against 12 Bridge Solicitors and there was therefore apparent bias on the basis we had predetermined the issues before us. He relied upon Porter v Magill [2002] 2 AC 357 as cited in the case of Sarabjeet Singh v SSHD [2016] EWCA Civ 492 which held that the question when determining apparent bias is whether the fair minded and informed observer, having considered the facts would conclude that there was a real possibility that the tribunal was biased. Mr Metzer QC said that the issuing of the show cause notices would create an objective impression of bias against 12 Bridge Solicitors by the panel members. The panel found that there was no possibility that a fair minded and informed observer would conclude there was a real possibility the tribunal was biased. Judge Jackson had actually decided not to make a referral to the SRA at that

stage as a result of reading what had been said by 12 Bridge Solicitor in response to her show cause notice; Judges Lindsley and O'Callaghan had not come to any conclusion on the responses raised in reply to our show causes notices. The fact of prior involvement in litigation is not a matter which requires recusal per se and often judicial continuity will be of advantage to the parties and administration of justice, see Stubbs v The Queen; Davies v The Queen; Evans v The Queen [2018] UKPC 30. It is notable that Hamid issues are regularly dealt with by the judge who decides the substantive application and before whom the questionable professional behaviour has arisen, with the practical advantage that they are well-versed in the factual and procedural background to the case. Further, in some Hamid hearings so many applications are involved that it might be hard to find a judge who had not previously refused and certified as meritless an application related to those Hamid proceedings, see R (on the application of Hoxha) v SSHD (representatives: professional duties) [2019] UKUT 124. We made clear to Mr Ahmed and his representatives at the start of the hearing that we had not in any way prejudged him, and indeed that the purpose of the hearing was to more fully understand his position on the issues raised in the show causes notices and letter from the President, and only then to decide if further investigation by the SRA was necessary. It was therefore correct that we refuse the application to recuse ourselves.

The Structure of 12 Bridge Solicitors & Role of Staff Members

10. 12 Bridge Solicitors is a branch of the solicitors' firm Landmark Legal LLP: Landmark Legal LLP has its offices in Harrow Road and 12 Bridge Solicitors in Hounslow. Mr Ahmed, the director of 12 Bridge Solicitors, is a barrister who currently divides his time between these two solicitors offices, and he has also been in practice as a self-employed barrister at New Temple Chambers for the past 8 years. From 2015 to mid-2018 he was also head of Law Lane Chambers (now called 3 Bolt Court Chambers it would appear) as a self-employed barrister.

11. Mr Ahmed explained that he currently divides his time roughly as follows: 40% at 12 Bridge Solicitors; 40% at New Temple Chambers; and 20% at Landmark Legal LLP. He said that although his entry with New Temple Chambers webpage does not say he is an immigration specialist this is because it is a chancery set and in fact some of the cases in which he is said to have appeared are immigration cases. Mr Ahmed explained that he has worked in the field of immigration as a qualified solicitor and then as a barrister for the past 20 years He said his pattern of attendance at 12 Bridge Solicitors was generally to go there after court, and when he has his own appointments.

12. Mr Ahmed explained that at 12 Bridge Solicitors there are four immigration specialists. He is there on average about 40% of the time. Ms Taskeen Ahmed/Hussain is a solicitor who is a full-time employee of Landmark LLP, and at 12 Bridge Solicitors 40% of her time, but is primarily a family lawyer with Landmark LLP at the Harrow Road office. Ms Taskeen Ahmed/Hussain has about 17 years' experience of immigration work having qualified as a solicitor in about 2002/3. Mr Ahmed could not explain why Ms Ahmed/Hussain does not feature on the website for 12 Bridge Solicitors. In addition there are two caseworkers, Fatima Shakeel (full time) and Alida Lusha (a part time worker). Both caseworkers have undertaken immigration work for about 7 years.

13. Ms Lubna Sabri, a solicitor who is listed as a consultant immigration solicitor at 12 Bridge Solicitors on the Law Society website is not in fact presently undertaking this area of work, and instead works as a conveyancer. Mr Ahmed could not explain why Mr Arman Alam is still on the 12 Bridge Solicitors website as a barrister employed by them as this is not the case, as he left a year ago to be self-employed counsel. Mr Ahmed confirmed that Mr Irshad Ahmad, a solicitor who does appear on that website but not on the Law Society listings for 12 Bridge Solicitors, is employed by them but does not undertake any immigration work. Mr

Irshad Ahmad attended the hearing before us with Mr Sharaz Ahmed but did not give any evidence or make any other contribution to the hearing.

14. Mr Ahmed explained that Ms Taskeen Ahmed, who signed two of the statements of truth for 12 Bridge Solicitors, is listed with the Law Society under her married name as Taskeen Hussain. Mr Ahmed could not explain why she used both her maiden and married names in her professional life, but did say that the firm works primarily using first names both with each other and clients. We were a little concerned by Mr Ahmed's lack of clarity about what name or names are used and that the use of two professional surnames might be confusing to clients, particularly if they had cause to complain.

15. Mr Ahmed explained that at the time when all the applications which have raised issues of concern were dealt with, the supervisory system that operated at 12 Bridge Solicitors was that the caseworker would see the client and then discuss with him or Taskeen Ahmed/Hussain any proposed judicial review challenge. He or Taskeen Ahmed/Hussain would then form a view as to whether this was an appropriate course of action. The client was charged a fixed fee of £1200 plus disbursements. If an applicant could not afford the extra disbursement fee for counsel to draft the grounds, then either he or the caseworker would draft them. The bundle including claim form, grounds and documents would then be prepared by a caseworker for either Mr Ahmed or Taskeen Ahmed/Hussain to look through. This checking procedure would take the supervising lawyer about 40 minutes even for bundles that ran to several hundred pages. The claim form would then be signed on behalf of the firm by the caseworker.

16. Mr Ahmed explained that he altered this supervisory system since the Upper Tribunal alerted 12 Bridge Solicitors to the ongoing problems in August 2019. He confirmed that Taskeen Ahmed/Hussain is no longer involved in the process of supervision for Judicial Review applications (although she continues to supervise applications for leave to remain prepared to submit to the Home Office), and is

more focused on family work. Mr Ahmed looks at all decisions of the Home Office which might be subject to judicial review; and grounds for judicial review will be drafted by him or external counsel and no longer by caseworkers. He said that they were now undertaking fewer judicial reviews, partly as a result of the letter from the President he was turning away borderline work and partly because of a general downturn in work. The reduced number of applications meant that it was easier for him to find time to draft the grounds himself. He accepted with the new system he might have to turn away clients with no funds to instruct external counsel if he had no time to draft the grounds himself, although his former colleague and barrister, Mr Alam, would sometimes take on pro bono work. Mr Ahmed's task was also easier because since mid 2018 he had given up his work with Law Lane Chambers so he had more time to devote to 12 Bridge Solicitors.

17. In addition, after receiving the letter from the President in August 2019, Mr Ahmed had led a workshop on judicial review for his staff in which he identified for them what a good, bad and very bad decision from the Secretary of State might look like. 12 Bridge Solicitors has not however involved any external trainers in their training.

18. At the end of hearing, in response to questions from the Panel, Mr Ahmed said that when he was not available as a supervisor for his caseworkers (for instance when he was on holiday and it was not possible to be in touch via mobile phone or when he was in court or unwell so likewise could not be contacted) it was possible for those caseworkers at 12 Bridge Solicitors to be in touch with Mr Arman Alam of counsel to assist. We were assured that Mr Alam would be happy to assist the caseworkers if they contacted them directly, which we accept may well be the case, but it was clear that there was no formal arrangement for him to act as a supervisor and no prior planning to ensure his availability on known dates when Mr Ahmed may be unavailable. This would be important particularly for urgent applications to ensure that there was someone available to supervise.

19. The panel had concerns that Mr Ahmed has spread himself too thinly as a supervisor for the caseworkers as 12 Bridge Solicitors in the past, particularly at the point when he had four places of work, and although this has now reduced, he is still working from three different places, not including regularly appearing in court. We remain concerned that the supervisory cover that is in place is still insufficient to make certain that caseworkers have adequate support in an area of law which often involves emergency work. There would still appear to be significant periods of time in a normal week where there is no supervisor available on site to the caseworkers at 12 Bridge Street. We were particularly concerned that given Mr Ahmed's commitment to work as a self-employed barrister, there would often be times when he would not be contactable for many hours whilst in court. It is our view that the alternative suggestion of support and supervision with Mr Alam needs to be formalised urgently. We were pleased to hear that training had taken place for the caseworkers but hope that in the future that they will be given a more formal and extensive programme of updating training preferably delivered by a reputable external agency, particularly as this area of law is one which is very fast-moving.

Issues Arising from the Cases

20. In relation to the issues which arose from the cases the panel had a common concern that the statement of truth from Mr Ahmed dated 6th January 2020 attempted to justify the errors made in a way we did not find consistent with the law or professional practice rather than apologise for those errors and explain why they would not happen in the future. In the process of justification of the errors we found that this often put the behaviour of 12 Bridge Solicitors in a worse light, see particularly the discussion of JR/3119/2019 below. However in the course of our hearing, Mr Ahmed stated that the contents of his statement of 6th January 2020 only set out the thinking of the misguided caseworkers who had drafted all bar one of the applications for judicial review considered in this decision, rather than

objectively assessing the facts of each case and personally responding to them. Mr Ahmed stated that in doing so he had not intended to endorse or justify what the caseworkers had done as the correct or a legitimate approach. This was not at all clear from the statement itself which, as above, gave the impression of seeking to justify the errors identified. We were concerned that Mr Ahmed might not understand how to produce a professional statement for a court in which he ought to have distinguished matters which came from his own knowledge and understanding; matters which were evidence from his colleagues; and what he had gleaned from the files held by 12 Bridge Solicitors. However, by the end of the hearing we were reassured that Mr Ahmed did not maintain that the original thinking of the caseworkers was correct, and that he did in fact accept that the Upper Tribunal had legitimate concerns as articulated in our letters and questions. He unconditionally apologised for the lack of appropriate quality in the grounds and other errors.

21. In short summary, the concerns that arose out of JR/3119/2019 (Manpreet Singh) were that the grounds related to a challenge to a certification of a human rights claim under s.94 of the 2002 Act when the decision under challenge was one refusing a fresh claim under paragraph 353 of the Immigration Rules. The response in the hearing statement of Mr Ahmed was that as the fresh claim refusal upheld that previous certification there was a legitimate reason for challenging the certification. However this explanation ignored the fact that the certification decision had been challenged unsuccessfully in a previous judicial review and so to launch a new challenge to it without reference to this fact would have been an abuse of process and a failure to comply with the duty of candour.

22. The grounds in JR/3119/2019 also demonstrated a fundamental lack of understanding of the decisions of the Supreme Court in R on the application of Agyarko & Ors v SSHD [2017] UKSC 11 and House of Lords in Chikwamba v SSHD [2008] UKHL 40. There were inaccurate statements of fact in the grounds and

a lack of understanding of the requirements of the Article 8 ECHR Immigration Rules for those without valid leave to remain, with an insistence, not supported by decisions of the higher courts or coherent argument, that meeting the financial requirements in the Immigration Rules for those lawfully present and being in a genuine relationship when not fulfilling the requirements of the Rules to qualify as a partner could somehow lead to a situation where an applicant unlawfully present in the UK had realistic prospects of success in an Article 8 ECHR appeal. The same lack of understanding on these issues arose in other cases certified as totally without merit in this sample, see particularly JR/6885/2019 below.

23. A concern that arose from the JR/3100/2019 (Blerim Dema) was that a refusal of a judicial review of a previous fresh claim was not adequately addressed in the grounds when it was clear that the circumstances of the applicant and his partner had not substantially changed. It was unclear what evidence had been included with that previous fresh claim either from the grounds or from the evidence itself, as it was undated. It was accepted by Mr Ahmed that the caseworker's thinking, that this was justified because the pre-action protocol response mentioned a previous judicial review, was not a proper excuse and that in the future previous judicial reviews should be clearly highlighted and be easy for a judge considering the application to understand what was the "fresh" evidence, and what evidence had been previous considered by a tribunal.

24. The application in JR/2695/2019 (Ahmed Shariff Peerally) led to concerns that 12 Bridge Solicitors were trying to convince the Panel in their statement of truth for the hearing that medical evidence had been submitted with the application for judicial review, when the judicial review bundle contained no such evidence. The panel were very concerned that the application was a human rights one based on medical grounds, which appeared to have absolutely no current medical evidence. Further, that it was unclear from the application, grounds and indeed hearing statement whether 12 Bridge Solicitors founded their challenge primarily on Article

3 or Article 8 ECHR; and in any case how an appeal could have any prospects of success on the facts of the case. Mr Ahmed explained that he would not personally have advanced a judicial review challenge on the facts of this case or advanced such a claim with no medical evidence. He also accepted that he had not supervised the drafting of the grounds of appeal to the Court of Appeal which were the same as those in the original grounds, and informed the Panel that he would always draft grounds of appeal to the Court of Appeal himself in the future rather than delegating this to his caseworkers. The position previously appeared to be that applications were made to the Court of Appeal based solely on instructions from the client rather than any objective assessment of the merits of such an application.

25. The application JR/7440/2018 (Amoon Amjad) raised issues of 12 Bridge Solicitors challenging a decision of the Secretary of State refusing to accept a fresh claim under paragraph 353 of the Immigration Rules dated 30th October 2018 but failing to include a challenge to a further decision refusing a fresh claim under paragraph 353 dated 5th November 2018 even though the proceedings were lodged on 12th November 2018, and thus after both decisions. Clearly even if the judicial review led to the quashing of the decision of 30th October 2018 the situation of the applicant would be in no better a situation as the claim was already re-refused in the decision of 5th November 2018. This error was compounded by including post-decision evidence in the bundle, which was in fact attached to the submissions refused in the decision of 5th November 2018. Mr Ahmed confirmed that he understood that the second decision was the one which ought to have been considered when assessing whether there was merit in a judicial review challenge, and that it was not generally correct to append post-decision evidence to a judicial review.

26. JR/6885/2019 (Majinder Singh) led the panel to explore with Mr Ahmed further issues regarding the cases of Agyarko and Chikwamba, and the faulty understanding of the requirements of the principles in these cases. It was clear that

it had not been understood that financial independence or being well-off could only be a neutral matter in a human rights appeal where the applicant was not lawfully in the UK and was relying upon a consideration outside of the Immigration Rules, applying Rhuppiah v SSHD [2018] UKSC 58. It was also clear that it was not understood by Mr Ahmed or his caseworkers that Chikwamba is a case about it not always being proportionate under Article 8 ECHR to require an applicant to return to obtain entry clearance when they clearly qualify to remain in the UK, and thus that it could not have application where it was accepted that a key requirement of the Immigration Rules as a spouse (the English language test) was not met. Mr Ahmed confirmed to the panel that he understood these misapplications of case law had taken place.

27. JR/6886/2018 (Arshad Mahmood &5) contained arguments in the grounds seeking permission to appeal to the Court of Appeal that ten years' unlawful or precarious presence in the UK was a significant period of time; and arguments in the grounds for judicial review that the decision failed to deal with s.55 of the Borders, Citizenship and Immigration Act 2009 lawfully and specifically, without any supporting evidence or even explanatory argument, that to return children to Pakistan who had been present in the UK for four years would be harmful to their education. It was accepted by Mr Ahmed that there had been a failure to understand the law relating to the best interests of the child as protected by s.55 of the Borders, Citizenship and Immigration Act 2009, and that the argument relating to the ten year period of presence had been inappropriately applied.

28. In relation to JR/3298/2018 (Babita Giri) Mr Ahmed accepted that he had been personally responsible for this judicial review, unlike the other cases above where the failings arose due to a lack of supervision. He accepted that he had improperly issued what he described as a 'protective' judicial review claim without any detailed grounds to preserve the applicant's position pending a further decision from the Home Office in response to further submissions. Although in a different

context, this claim raises similar concerns to those in JR/7440/2018 (Amoon Amjad) demonstrating a lack of understanding of which decision it is appropriate to challenge. Mr Ahmed gave his apologies and an assurance that this would not happen again in the future.

Submissions

29. Mr Metzer QC placed reliance on the skeleton argument drafted by himself and Dr Van Dellen and submitted that Mr Ahmed had conceded that errors had been made by 12 Bridge Solicitors; he had been candid about the failings and that proper professional standards had not been maintained; and he had taken the fact of the hearing to heart and shown he took the criticisms extremely seriously. Mr Metzer QC argued however that there were now proper and sufficient supervisory procedures in place. Further, there was no evidence that there was persistence in flouting proper professional behaviour after a warning; no one at or connected with 12 Bridge Solicitors had previously been referred to the Bar Standards Board or the SRA; and thus that in accordance with the guidance in Hamid at paragraph 10, 12 Bridge Solicitors should not be reported to the SRA.

Conclusions

30. We do not accept that it is not open to us to make a referral of 12 Bridge Solicitors to the SRA simply because this was the first time that Mr Ahmed had been required to attend a Hamid hearing and in the context that this was the first time issues of a failure to comply with professional standards had been raised with the firm. We do not even find that this is factually accurate, given that three show cause notices were issued by separate Upper Tribunal Judges prior to Mr Ahmed receiving a letter from the President of the Upper Tribunal (IAC) about these and other matters, which in turn led to this hearing. We find that there was a persistent pattern of professionally substandard work revealing a number of failings in relation to the duty to the Upper Tribunal: a failure to include relevant documents

including a previous judicial decision; the inclusion of irrelevant and misleading post-decision material; legal argument which was totally without merit; and a failure by the qualified staff to properly supervise those without legal training who were operating well beyond their knowledge and understanding drafting grounds for judicial review and grounds of appeal to the Court of Appeal.

31. However, we conclude, albeit with some hesitation, that we will not refer Mr Ahmed to the SRA on this occasion. This is primarily due to Mr Ahmed's oral evidence, which exhibited contrition and acceptance of the errors that 12 Bridge Solicitors had made; and because this oral evidence set out details of staff training and a more robust structure for supervision. However, should further errors relating to the professional duties of 12 Bridge Solicitors come to light then Mr Ahmed should expect that it is very likely that we would decide to make a referral given the history, set out above, of falling below acceptable standards of supervision which has resulted in cases with multiple legal and professional errors. We draw Mr Ahmed's attention to our on-going concerns regarding supervision when he is not available and urge him to adopt a programme of on-going training from a suitable external and reputable source for all of his staff.

Signed: *Fiona Lindsley*

Upper Tribunal Judge Lindsley

Dated: 26th February 2020