Neutral Citation Number: [2019] EWHC 204 (Admin)

Case No: CO/3300/2017

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 11/02/2019

Before :

THE HONOURABLE MRS JUSTICE ANDREWS DBE

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Between :

(1) NAMIT JETLY	**Claimants**
(2) VINIT JETLY	
- and -	
THE SECRETARY OF STATE FOR THE HOME DEPARTMENT	**Defendant**

- -
- -

Mr Abdurahman Jafar (instructed by **Aaron & Ace Solicitors**) for the **Claimants**
Mr Zane Malik (instructed by **the Government Legal Department**) for the **Defendant**

Hearing date: 11 December 2018

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Approved Judgment

Mrs Justice Andrews:

INTRODUCTION

1. This is an application made by the Claimants, who are brothers and nationals of India, for judicial review of a decision by the Defendant ("the SSHD") made on 10 April 2017 refusing their applications for registration as British citizens under section 4C of the British Nationality Act 1981 ("the 1981 Act"); and a further decision of 26 June 2017 in response to a pre-action protocol ("PAP") letter, maintaining that refusal. Both Claimants are adults, in their forties; Mr Namit Jetly was born on 2 August 1974 and his brother Vinit was born on 17 June 1977.

2. The PAP letter was sent to the SSHD on 14 June 2017 on paper bearing the letterhead of a firm named Archbold Solicitors (SRA ID 636856) ("Archbold"). The letterhead gave an address for Archbold at 319-320 Victory Business Centre, Portsmouth, PO1 1PJ. The letter bore the reference PM/MA/Sudha. Sudha is the first name of the Claimants' mother.

3. The SSHD responded to that letter on 26 June 2017. That response stated that the case had generated approximately eight previous decision letters or decision related letters, all of which supported the SSHD's position that the solicitors' clients did not qualify for British Citizenship. The letter identified as a central issue the fact that the Claimants' mother, Mrs Sudha Bala Jetly, had no entitlement to a right of abode in the UK at the time of their birth. The writer said that she held a British Overseas Passport and was not registered as a British Citizen until 1 November 2004.

4. The Claim Form was issued on 14 July 2017 and served on 21 July that year. The box on the first page for "*Claimant's or claimant's legal representatives' address to which documents should be sent*" was filled in with the name of Archbold and the address at Victory Business Centre stated above; a telephone and fax number, and an email address: kumar@archboldsols.com. The person named as the intended signatory of the statement of truth was Maxy Augustine, who is a solicitor and one of the three partners in Archbold.

5. The statement of truth on the Claim Form was not signed, but this was not picked up in the Administrative Court office or by the Government Legal Department ("GLD") at the time. By virtue of CPR 22.2(1) failure to verify the Claim Form by a statement of truth renders it vulnerable to being struck out, and the party concerned may not rely on the statement of case as evidence of the matters set out in it. That includes, in a judicial review claim, the facts set out in the grounds for judicial review. The Court has the power to strike out such a statement of case of its own motion under CPR 22.2(2).

6. CPR Part 42.1 (1) provides that where the address for service of a party is the business address of that party's solicitor, the solicitor "*will be considered to be acting for the party until the provisions of Part 42 have been complied with"*. Part 42, and the Practice Direction which supplements it, address the situation where a client wishes to instruct a new solicitor, or where the solicitor who is on the record has ceased or wishes to cease acting for the client. In the former situation, the party or his solicitor (where one is acting) should file notice of change with the court. He must

serve that notice on every other party (including the former solicitor) and confirm to the court that such notice has been served.

7. In the latter situation, the solicitor must apply to the court for an order declaring that he has ceased to be the solicitor acting for a party under CPR 42.3. This is known as "coming off the record". Unless the court directs otherwise, the solicitor must give notice of that application to the client, but he is not obliged to notify the other party to the litigation prior to the order being made. The application must be made by application notice in accordance with CPR Part 23 (see 42PD 3.2) and supported by evidence. When such an order is made, it *must* be served on every party to the proceedings and, if service of the order is to be effected by the solicitor, a certificate of service must be filed with the court.

8. The rules do not expressly cater for the situation in which someone purports to issue proceedings on behalf of a claimant, giving a solicitor's address for service, without the knowledge and/or authority of the solicitor concerned. On the face of it, CPR Part 42.1 treats the unsuspecting solicitor as acting for the claimant until he is removed from the record, yet in such circumstances, the solicitor never consciously came *on* the record. I can understand why the solicitor concerned might take the view that it would be unfair to require him to issue (and pay for) a formal application to come off the record instead of simply alerting the court to the situation. However, the lay client is entitled to know if there is a problem which may adversely affect the conduct of his case, as he may be wholly innocent, and could be severely disadvantaged by the conduct of the person usurping the solicitor's function. CPR Part 42 ensures that he is put in the picture.

9. It is a moot point whether CPR 42 requires it, but the better course in such a situation would be for a formal application to be made by the solicitor to come off the record, under CPR 42.3, once he realises what has happened. Service of the evidence in support of the application would alert an innocent lay client to the fact there is a problem. On the other hand, if it transpires that the lay client was a party to the deception, this course will enable the court to get to the root of the matter and take appropriate action.

10. The SSHD filed an Acknowledgment of Service and Summary Grounds of Defence on 11 August 2017. The matter was placed before a judge to consider whether to grant permission to apply for judicial review on 12 October 2017, but he was unable to make a decision on the application because the Claim Form was not accompanied by key documents (including the two impugned decision letters), despite the relevant box in section 10 of the Claim Form being ticked to indicate that it was. He directed the Claimants to file those documents within 14 days. It is not clear when that order was complied with, but it must have been, because another judge considered the permission application on the papers on 13 November 2017 and refused permission.

11. The application for permission was renewed to an oral hearing. The notice of renewal is dated 21 November 2017, and it bears a similar reference, PM/17026/MA, to the one which appeared on the PAP letter. It appears to be signed, though the signatory is not identified.

12. On 8 January 2018 at 14.50 hours an email was sent to Ms Suki Deo, a lawyer at the GLD, attaching the renewal grounds. The email, which appears to have been

prompted by an email sent by Ms Deo on 4 January, stated that "*we take this opportunity to forward the bundle submitted in the matter of the application for permission to apply for JR as well. If you require any further documents, please let us know*." The email was sent from the email address tunde@archbolds.com. That was the email address of Tunde Salami, who was at that time a paralegal working in Archbold. He is not a qualified solicitor, barrister or legal executive.

13. Permission to bring judicial review was granted by Michael Kent QC, sitting as a deputy High Court Judge, at an oral renewal hearing on the following day, 9 January 2018. It was limited to a single ground: whether the Claimants met the third condition set out in section 4C(4) of the 1981 Act, namely, that they would have had a right of abode in the UK by virtue of section 2 of the Immigration Act 1971 had they become Citizens of the United Kingdom and Colonies ("CKUC") at some point before 1 January 1983. It appears from the Order made following the renewal hearing that both parties appeared by counsel. The fact that the statement of truth on the Claim Form had not been signed was still not noticed by anyone concerned, including the judges who had dealt with the matter up to and including that hearing.

14. The Court record shows that following the grant of permission to bring judicial review, the Claimants or someone acting on their behalf sought a fee remission for the continuation fee, which was rejected on two occasions. That correspondence from the Court fees office was sent to Archbold as the solicitors on record.

15. The Court of Appeal in *R (Harrison) v Secretary of State for the Home Department* [2003] EWCA Civ 432 gave guidance as to the role of this Court in judicial review claims involving disputes as to a person's nationality. Keene LJ (with whom May and Arden LJJ agreed) stated at [34] that where a person brings proceedings for a declaration that he is entitled as of right to British citizenship under the 1981 Act:

"*in determining that matter the court will itself resolve any issues of fact as well as any issues of law… It will find the facts for itself* <u>*according to the evidence before it*</u>" [emphasis added].

16. The burden of proof that they are entitled to British Citizenship lies on the Claimants as the party asserting such an entitlement (see section 3(8) of the Immigration Act 1971), and the standard of proof is the balance of probabilities. Therefore, this is the rare type of case in the Administrative Court where witnesses may be called and cross-examined.

17. A Claimant would normally be expected to file evidence in support of their claimed entitlement, including a witness statement or statements. Despite this, there is no evidence from either of the Claimants themselves, or from their mother (through whom they claim to derive their entitlement to British citizenship) and such evidence as has been served has been produced in highly unsatisfactory circumstances to which I will refer in due course.

18. On the face of it, this would appear to be a relatively straightforward case involving a single short issue. However, it has proved to be more problematic because of matters which came to light at the time when the substantive claim for judicial review was first scheduled to be heard on 19 September 2018.

EVENTS LEADING UP TO THE HEARING ON 19 SEPTEMBER

19. The Order granting permission gave case management directions, including that the Claimants must file and serve a trial bundle not less than 4 weeks before the date of hearing of the judicial review; and that they must file an agreed bundle of authorities not less than three days before the date of the hearing. In order to be able to comply with those directions, the Claimants' solicitors would need to liaise with the GLD to agree on the contents of the authorities bundle some time in advance of the deadline. The hearing date of 19 September 2018 was apparently fixed on or around 17 April 2018, giving plenty of time for this to be done.

20. On 14 September 2018, Mr Ellis Pinnell, the lawyer in the GLD who by then had taken over responsibility for this file, sent an email to Archbold inquiring when the GLD might expect to receive the Claimants' bundle of authorities. On 17 September 2018, Mr Augustine responded by email as follows (all spellings and typing as in the original):

> *"Thank you for your email. Archbold Solicitors have never represented this clients in this JR matters. My signature is hacked by the previous office staffs in our previous office premises. I had complained to the Field House regarding this matter, informed Ms C O'Neill Case Progression Officer, Administrative Court Office on the 23rd of March 2018. I had requested to take our alleged representation off from the record. The brand name of Archbold Solicitors, my name and signature were fraudulently used, kindly verify my signature. This matter is intimated to Mr Jatly and they had sent us an email dated 28 March 2018 stating a disinstruction and also that they already had their files taken with them. Please contact the client directly.*
>
> *From your email I understand that for some reasons the court records is still under the name of Archbold Solicitors. It is requested that any of the alleged representation of Archbold Solicitors may be withdrawn with immediate effect in this matter, please update your system."*

21. The address for Archbold that appeared below Mr Augustine's name was no longer in the Victory Business Centre. It was 209 Portsmouth Technopole Ltd, Kingston Crescent, Portsmouth PO2 8FA. Reference was also made to a Head Office for Archbold in Ilford Lane in Essex.

22. On receipt of Mr Augustine's email, Mr Pinnell reviewed the file. That is when he discovered that the statement of truth on the Claim Form had not been signed. He also noted that a skeleton argument on behalf of the Claimants that the GLD had received on 31 August 2018 was served under cover of a letter from "*Aaron & Ace Solicitors, Unit 11, Victory Business Centre, Portsmouth PO1 1PJ*" – Archbold's previous office address, which was still the address for service of correspondence on the claim form.

23. Mr Pinnell had concerns about that communication besides the fact that the GLD had received no notice of change of solicitor. There were curious features about the letter of 31 August (see paragraph 28 below) which raised doubts as to whether the correspondence came from a genuine firm of solicitors. I should perhaps mention at this juncture that the only piece of correspondence on the Court's paper file from Aaron & Ace is that letter of 31 August, and there is no correspondence from Aaron & Ace saved on the Court's electronic file.

Commented [AMJ1]:

24. Mr Pinnell, entirely properly, immediately brought these matters to the attention of Mr Malik, counsel for the SSHD, and wrote to the Administrative Court office on 18 September 2018 explaining the situation. Mr Malik contacted counsel for the claimant, Mr Jafar, to let him know about these developments. Mr Jafar had been instructed in the matter from the onset. He had settled the grounds for Judicial Review appended to the claim, had appeared at the hearing of the renewed application for permission, and was the author of the skeleton argument for the hearing of the substantive claim. Mr Pinnell's letter to the Court said that he understood that Mr Jafar would be attending the hearing on 19 September, and that he would hopefully be able to address the Court on these matters.

DIRECTIONS GIVEN ON 19 SEPTEMBER

25. The upshot was that when the matter came before HH Judge Wall QC (sitting as a deputy High Court Judge) on 19 September 2018, he was unable to proceed with the hearing of the claim for judicial review. In his short *ex tempore* judgment, the judge pointed out that the absence of the signed statement of truth on the claim form meant that the Claimants were unable to rely upon their statement of case as evidence of any of the matters set out in it. He said there were potential ways round this; an application for relief from sanctions could be made, or alternatively an application could be made for the claim form to be signed now by the Claimants in person. However, neither of those applications had been made. The obvious and necessary implication of the judge's observations was that one or other of these types of application would have to be made by the Claimants if the claim was to proceed.

26. The judge described the trial bundle lodged on behalf of the Claimants as "completely inadequate" – a fair description, since it did not even contain the claim form. Another document on which the Claimants sought to rely (a letter from HM Passport office to the Claimants' mother dated 8 March 2018) was handed to the judge shortly before he went into court. That was not in the trial bundle either. Moreover, the bundle of authorities, which should have been lodged by the Claimants in accordance with the order made when permission was granted in January 2018, had still not been lodged.

27. In the light of these matters, Mr Malik invited the judge to either strike out the claim or to dismiss it. In response, Mr Jafar sought an adjournment. He told the judge that he was instructed by Aaron & Ace, who had been instructed by the Claimants since March 2018. However, as the judge pointed out, Aaron & Ace were not on the record. They had not notified the SSHD that they were acting in this matter until they were chased for documents at the beginning of that week.

28. There were also what the judge described as "other curiosities" apparent from the face of the letter of 31 August, which he itemised as follows:

    i) The form of the letter did not comply with SRA requirements in that it gave no list of partners on the letterhead and no indication that it was regulated by the SRA;

    ii) The website address for Aaron & Ace set out on the letterhead did not work and appeared not to exist;

iii) The business premises were supposed to be in Portsmouth (interestingly, at the same place as Archbold were originally registered) but their telephone number was in London;

iv) Apparently when one traced Aaron & Ace through the SRA, the only registered office for them was in North London.

29. The judge said that none of these apparent discrepancies had been explained satisfactorily to him. However, bearing in mind the need for fairness and the importance of this issue for the Claimants, he decided to grant an adjournment "*to allow for any further applications that need to be made by the Claimants to be made and for further evidence in support of those applications, and to explain the deficiencies that I have been through just now in some detail, to be lodged"*. He said that there would be "*a short period for this to be done. If there are to be any further applications or any further evidence to be served, it is all to be served within 21 days from today. In addition to that, if the claimants intend to proceed with this action, they are within that same 21 day period to serve a full and updated trial bundle and a proper bundle of authorities*." Those directions were plain, unambiguous, and easy to understand.

30. So far as the terms of the adjournment were concerned, the judge stated in his judgment that the claimants must bear the costs of £8,039 and pay them within 28 days, failing which the action would be struck out. However, the judge modified that direction, and the Order that was drawn up on 19 September 2018 and sealed the following day provides instead at paragraph 6 that Mr Anis Ali or the supervising solicitor of Aaron & Ace Solicitors should show cause within 21 days of the Order as to why they should not personally pay wasted costs, in the sum of £1,000, concerning the adjourned Judicial Review hearing. Save for that provision, by paragraph 11, costs were reserved.

31. The Order set out directions reflecting the terms in which the judge had expressed himself in the judgment, including directions that within 21 days, the Claimants should file and serve any application that they wished to make, together with any evidence on which they wished to rely in response to the matters raised in the oral judgment. The same deadline was set for the filing and service of the trial bundle and a composite authorities bundle compliant with the requirements of Part 54 of the CPR "*should [the Claimants] wish to pursue this Judicial Review claim*". The 21 days expired without any of these things having been done.

32. On the most generous reading of the judge's Order, the 21-day time limit expired on 11 October 2018. No application for an extension of time was issued or served either before or after it expired.

33. In his Order following the 19 September hearing HH Judge Wall QC also directed that:

i) Mr Augustine or the supervising solicitor of Archbold should file and serve a witness statement within 21 days providing an explanation of the matters raised in the oral judgment and the contents of the email sent to the GLD on 17 September 2018; and

ii) Mr Anis Ali or the supervising solicitor of Aaron & Ace Solicitors of Unit 27a, Cygnus Business Centre, Dalmeyer Road, London NW10 2XA should file and serve a witness statement within 21 days of his order providing an explanation of the matters raised in the oral judgment and the contents of the GLD's letter of the 18 September 2018.

34. The judge indicated that at the re-listed hearing of the judicial review claim the Court should consider, in the light of any witness statements made by the aforementioned solicitors, whether to take any action in respect of any individual or firm such as referral to the appropriate regulatory body or using the *Hamid* jurisdiction (see *R(Hamid) v Secretary of State for the Home Department* [2012] EWHC 3070 (Admin)). The *Hamid* jurisdiction, which arises from the inherent jurisdiction of this court to regulate its own procedures in accordance with the overriding objective, is designed to ensure that lawyers conducting litigation abide by the rules of court and otherwise conduct themselves according to proper standards of behaviour, see *R(Sathivel) v Secretary of State for the Home Department* [2018] EWHC 913 (Admin), now the leading judgment on this topic. Although concerns about the behaviour of legal representatives instructed in immigration cases most often arise in the context of last-minute attempts to resist removal from the UK, the *Hamid* jurisdiction is not confined to that situation, nor is it confined to the situation in which the underlying claim is utterly without merit. As *Sathivel* and the earlier cases cited in it make plain, unprofessionally prepared cases are as much a waste of the Court's time and resources as cases which are abuses of the process.

SUBSEQUENT DEVELOPMENTS

Mr Augustine's evidence on behalf of Archbold

35. On 5 October 2018 Mr Augustine made a witness statement, which was served on the GLD on 8 October 2018 and filed with the Court on 10 October in compliance with the Order. It is consistent with what he said in response to Mr Pinnell's email in September. He said that Archbold moved its office on 19 March 2018 to new premises at 209 Technopole, Kingston Crescent, Portsmouth. Brij Bishan Jetly (the Claimants' father) used to work in Archbold's reception. He was working there when Mr Augustine joined the firm. Mr Jetly was friendly with a man named Khaled Umar who was then the firm's practice manager. Mr Umar is not a qualified legal practitioner. Archbold had submitted the PAP letter to the Home Office on a pro bono basis, but after the application was refused, the file was closed in the office. Thereafter, Archbold gave no advice to the Claimants and made no application for judicial review.

36. Mr Augustine stated that at the time when they moved office, it came to Archbold's knowledge that their brand name had been used and his signature had been "hacked" in some of the applications [made] by the previous staff (in context, this appears to be a reference to Mr Umar with assistance from Tunde Salami). He said that on 20 March 2018 Archbold contacted the SRA, and on 23 March 2018 they contacted Hampshire police regarding the involvement of Mr Umar by "*whistleblowing his unauthorised legal practice*".

37. Mr Augustine said he had contacted the manager of the Victory Business Centre in Portsmouth at the end of April/beginning of May 2018 to make sure that the brand

name of Archbold was not used, and the manager promised to verify the licence and authorisation certificate for a further tenancy. Mr Augustine subsequently exhibited to a further witness statement a letter from the manager, a Mr Alan Lowe, with the title "removal of name board". Mr Lowe says: "*I have discussed this with Mr Umar, we have ended the tenancy in the name of Archbold Solicitors and have informed them that they can not and will not be billed in future under the name Archbold Solicitors. Failure to supply us with new company details ... will result in them having to vacate our premises*."

38. Mr Augustine stated that "we" (i.e. he/Archbold) had updated Field House by email of the change of office premises on 23 March 2018 and told them that Archbold did not represent these claimants "*as our identity and signature were hacked."* He also said: *"we requested the court to come off our name from the court records*". He said that on 28 March 2018, Mr Jetly had confirmed to Archbold by email that he had collected the "*alleged files*" from Mr Salami and withdrawn his instructions on 26 March 2018.

39. Mr Augustine said: "*we have no knowledge about the applications made by Mr Jetly"*. He pointed out that the email address that appears on the front of the claim form is Mr Umar's address. He expressed suspicion that Mr Jetly was "*suppressing the facts by joining his friend Mr Umar*". He said that he, Mr Augustine, did not file the JR application in this case and that it was "*highly necessary*" for Archbold to come off the record.

40. Mr Augustine said that on receipt of the email from the GLD requesting the draft index for the authorities bundle on 14th September, Archbold immediately informed Field House on 17 September 2018 regarding any possible permission applications or JR applications made on Archbold's behalf, and they also asked the [Administrative] Court to remove their name from the record with immediate effect. He also said that they contacted the suspected clients "*advising that we do not represent them and asked them to instruct their own representative*".

41. The caseworkers in the Administrative Court office have confirmed that an email from Mr Augustine was received on 23 March 2018, but regrettably it was not responded to until 30 April 2018, when Archbold were advised that they would need to apply formally to come off the record. On 1 May 2018 Mr Augustine again emailed the Court requesting that Archbold be taken off the record; the Court office responded by informing them that they would remain on the record until such time as they applied to come off the record or another firm of solicitors applied to come on the record. Unfortunately, that information was not acted upon.

42. It would therefore appear that no formal application has ever been made by Archbold for an order under CPR Part 42.3, but if Mr Augustine is telling the truth about the limited scope of their retainer, Archbold should never have been on the record in the first place. It also appears that there may be other matters relating to other "clients" proceeding before the First-tier or Upper Tribunal (Immigration and Asylum Chamber) that may be affected by these issues, hence the contact made by Mr Augustine with Field House.

Mr Ali's initial evidence

43. By contrast with Archbold, Aaron & Ace made no attempt to comply with the judge's directions within the 21-day deadline. They did not serve the trial and authorities bundles on the GLD until 12 November 2018, 54 days after the Order of 19 September was made. The SSHD complains that, even then, the bundle of authorities was not agreed and omitted important authorities, and the trial bundle included fresh evidence on the substantive issues for which permission was neither sought from, nor granted by HH Judge Wall QC. There were two supplementary authorities bundles at the hearing before me.

44. The documents served on 12 November included a witness statement from Mr Anis Ali signed on 28 October 2018, though bearing the date of 8 October, and a witness statement from Mr Brij Jetly, bearing the date 5 October 2018. There was no application made to adduce Mr Jetly's witness statement in evidence, but Mr Jafar submitted that it fell within the ambit of paragraph 5 of HH Judge Wall QC's Order, because it provided an explanation of the matters of concern raised by the judge in his judgment.

45. Mr Ali referred expressly to the 21-day time limit set by the judge, but he offered no explanation at that time for exceeding it, even though he must have known by the time he signed the witness statement on 28 October that the 21 days had already elapsed. He set out a chronology of events, in which he stated that his firm were instructed by the Claimants' father on their behalf on 22 March 2018 and were provided with the file of papers which they (meaning the Claimants' representatives) had collected from the previous representatives, Archbold.

46. Mr Ali said that he had personally attended room number WG07 on the morning of 17 April 2018 to fix the hearing date for the substantive JR hearing in response to a letter of 9 April sent to Archbold, a copy of which was provided to his firm by a person described as "*the claimants' sponsor Mr Brijettly Bhooshan*" (this must be a reference to the Claimants' father). He did not explain how Mr Jetly came to be in possession of a document sent by the Court to *Archbold* more than 2 weeks after he had ceased to instruct them, collected the client file and handed it to new solicitors. The Court would have used the details on the Claim Form to communicate with Archbold, so it is likely any such communication went to the original office address in Portsmouth. (Mr Jetly has not explained this either).

47. Mr Ali claimed that on the same day (17 April 2018) he attended the Administrative Court office to submit an N434 form (notice of change of solicitor) duly signed by himself. Mr Ali did not explain why he waited until 17 April to file the notice of change (which bears the date of 16 April on its face) if he was instructed on 22 March and came into possession of the file on the same date.

48. The Administrative Court office has no record of the N434. In the light of the information provided by Mr Ali, Mr Pinnell decided to make inquiries as to whether a notice of change of solicitors had indeed been filed as Mr Ali claimed that it had. He sent an email on 30 November 2018 asking the Administrative Court office whether the Court had any record of receiving an N434 from Aaron & Ace on or around 17 April 2018, or indeed at any time since. He asked to be provided with a copy if there was one. The response from the Administrative Court office was that "*no N434 has*

been noted as received." That remained the position up to and including the date of the hearing before me on 11 December, when a further check of the records was carried out at my direction.

49. If the N434 had been handed over at the counter, it would normally be recorded on the Court's electronic file, and then scanned onto the Court's electronic record. There is nothing on the record. It is not in a paper file either. Moreover, despite Mr Ali indicating that he attended at the List Office on 17 April in person to fix the substantive hearing date of 19 September, the letter notifying the parties of that hearing date was sent by the Court office to Archbold (not Aaron & Ace) on 19 April 2018. That suggests that the office staff were unaware of any change of solicitor. Mr Augustine was still corresponding with the Administrative Court office about coming off the record at the end of April/beginning of May and, as stated in paragraph 41 above, on 1 May the Court office told Mr Augustine that his firm would stay on the record until either he applied to come off *or until another firm came on the record*. The terms of that communication are difficult to reconcile with Mr Ali having already filed a notice of change with the Administrative Court office.

50. Mr Ali does not say in his witness statement that he served the notice of change on the GLD or on Archbold, though the copy of the notice annexed to his statement, (signed presumably by him), contains a box which is ticked to indicate that the notice has been served "*on every party to the claim and on the former legal representative*." I find as a fact that it was not served on the GLD or on Archbold. The evidence in this regard is all one way. Mr Pinnell would not have been corresponding with Archbold in September if he had been formally notified that there was a change of solicitor, and Mr Augustine would not have reacted in the way he did on 17 September 2018 had he already received a notification that his firm had been taken off the record and replaced by another firm. The fact that Aaron & Ace were operating from Archbold's former business premises in Portsmouth by the time of the 31 August 2018 communication with the GLD (though allegedly not at the time when Mr Ali says he sought to come on the record) only served to heighten any confusion.

51. Mr Ali said in his initial witness statement that all further correspondence on the matter came from his firm. He said that the trial bundle supplied to the defendant included a copy of the client's letter of authority which was "signed by the client" on 22 March 2018 and that he believed that the statement by the GLD in their letter of the 18 September 2018 that they had not received a letter of authority was due to an "oversight". However, the only "letter of authority" which was annexed to Mr Ali's witness statement identified "the client" as Sudha Bala Jetly. It mentions neither of the Claimants, and there is no reference anywhere in that letter to these judicial review proceedings. In any event, a letter of authority from a client is not the same thing as a notice of change of solicitor.

52. Nowhere in Mr Ali's evidence was there any reference to either of the parents of these Claimants being authorised to instruct solicitors to act on the Claimants' behalf either generally or specifically in relation to the claim for judicial review. Mr Ali did not state that he had satisfied himself of their authority or that he had seen any power of attorney or other form of authorisation. Given that by the time he made his witness statement he was aware that nobody had signed the statement of truth on the judicial review Claim Form on behalf of the Claimants, and that that situation needed to be

rectified as a matter of urgency, I would have expected *something* to have been said about this.

53. The first mention of the Claimants' parents each having powers of attorney to act on behalf of the Claimants came in the course of the hearing before me, in the context of a very belated proposed application for permission to sign the statement of truth. It arose because I had expressed some concern about whether there was any evidence that anyone other than the Claimants themselves would have the power to sign the statement of truth, given that it had not been established that either firm of solicitors had ever been authorised *by the Claimants* to act on their behalf.

54. The Court would not normally be concerned to inquire of a firm of solicitors who are on the record as acting for a client, whether that firm had carried out its obligations to satisfy itself of the client's identity and that it is duly authorised to act, but this situation is truly exceptional. Not only is there no verification of the statement of case, but the solicitors who are purporting to act on behalf of the clients were still not formally on the court record 6 months after being instructed (almost 9 months by the time the matter came before me), and they did not comply with the requirements of CPR 42 despite telling the Court they had, whereas the solicitors who are on the court record say that they were never retained in this matter and should not be on the record, but have made no formal application to come off the record despite being advised more than once that they should. To make matters even more confusing, the "new" solicitors have since gone into occupation of the business premises vacated by the "old" solicitors.

55. The other documents annexed to the first witness statement of Mr Ali consisted of (i) a form filled in in handwriting which confirms that a hearing date of 19 September 2018 was fixed in this case, although that document gives no indication of when the fixture appointment occurred, and (ii) the aforementioned N434 notice of change of legal representative in this action from Archbold to Aaron & Ace bearing the date 16 April 2018, apparently signed by Mr Ali. The address to which documents about the claim should be sent, including any reference, is given as Aaron & Ace Limited, 27 Cygnus Business Centre Delmeyer Road London NW10, and the email address is kumar@aasols.com which indicates that Mr Umar is working for, or with, Aaron & Ace and is still the named point of contact in this litigation. Mr Ali has not explained why *his* email address was not supplied, given that I understand, from what Mr Jafar told me on instructions in the course of the hearing, that Mr Ali is the only solicitor in, and sole proprietor of Aaron & Ace. Mr Umar has chosen to remain silent throughout.

56. Of course, there is nothing to stop a firm of solicitors from employing as a paralegal a person who is not a qualified lawyer, but there are limitations on the work that an unqualified person may carry out. It is odd (to say the least) that such a person should be used as the sole email contact given to the court for correspondence relating to ongoing litigation both at a time when the former solicitors were on the record and after new solicitors had been instructed.

57. So far as the issues of concern about Aaron & Ace raised in the GLD's letter and HH Judge Wall QC's judgment were concerned, Mr Ali explained that the letterhead of his firm was designed for printing on A4 paper and that due to a new printer being installed with a default setting of letter size, the last line of his firm's letterhead had become truncated. This meant that the words "recognised body law practice (SRA

regulated); SRA ID: 645690" were cut off by a printing error which had since been rectified. He said that the error was sincerely regretted.

58. Mr Ali said the firm had decided to move its head office to Portsmouth and had informed the SRA of that move on 13 August 2018. I observe that if that is so, the change had not been officially recorded by 19 September, although it has been now. Mr Ali did not explain the circumstances leading to his decision, as proprietor of the firm, to move from North London to occupy the very same premises that were previously occupied by Archbold. He explained that the reason for the telephone number having an 0203 prefix was that the firm used VOIP (Voice Over Internet Protocol) technology, using broadband rather than a conventional phone network, which helps them to stay connected all the time regardless of their geographic location. The website was down "*due to some operational reasons and development*". He did not elaborate on what those were. I have checked the website and it is now operational, albeit extremely basic.

59. Those are all innocent explanations for the matters of concern identified by the judge, and Mr Malik did not contend otherwise. However, Mr Ali provided no explanation for the trial bundle being filed in an inadequate state, or for the absence of an authorities bundle for the hearing on 19 September in contravention of the Court's previous directions. He therefore did not directly respond to HH Judge Wall QC's invitation to show cause why Aaron & Ace should not pay the costs thrown away by the adjournment on 19 September. Nor was there any explanation given by Mr Ali at that stage for why his witness statement, the trial bundle and authorities bundle were not filed and served until 12 November, and why the Claimants had issued no applications before the 21-day deadline expired, the consequence being that the statement of truth remained unsigned, and no attempt had been made to cure that deficiency.

60. Mr Ali ended his witness statement (which, unlike Mr Augustine's evidence, bears no statement of truth) by stating that he believes "*that myself and the caseworkers acting under my supervision* [presumably that includes Mr Umar] *at Aaron & Ace solicitors have acted in a professionally appropriate manner towards our clients with due regard for the substantive and procedural rules governing claims for judicial review"*. This betrays a breathtaking lack of insight into what is meant by having due regard to the substantive and procedural rules – an impression which has been amply reinforced by subsequent events.

61. It is, of course, possible for documents to go astray, or for some reason not to be logged on the court system, and someone acting or purporting to act on behalf of these Claimants must have attended court to fix the hearing date of the judicial review. However, any solicitor coming onto the record would know that he had to serve the notice of change on the former solicitors and the opposing party. Even if he did not bother to read CPR Part 42 or the practice direction to it, the requirement to serve the notice of change would have been obvious from the face of the N434 itself. If the N434 annexed to Mr Ali's witness statement is a genuine document, someone ticked the box to say that it <u>had</u> been served on the former solicitors and the opposing party, though in fact it had not. On the face of it, that person was prepared to mislead the court.

62. Given that the notice of change was never served on the GLD or on Archbold, nor logged on the court system, the notice of fixture was sent to the solicitors originally on the record instead of the firm of solicitors who had allegedly filed the notice of change, and the court office continued to operate on the basis that Archbold were still on the record, there are only two possible explanations. I need not spell out the first. The more benign, albeit more improbable, explanation is that Mr Ali did attend court and file the notice of change as he says he did, but for some inexplicable reason it was not logged on the court system and the paper version went missing. Even on that scenario:

    i) He failed to take any formal steps to come onto the record until almost a month after he took over conduct of the case;

    ii) Although he eventually got around to filing a notice of change as required, he signed a notice of change which inaccurately stated that it had been served on the GLD and on Archbold. If he ticked the box, he must have known that statement was untrue. If he did not tick the box, he must have signed the statement in reliance on what someone else stated, without checking, and was therefore reckless as to its truth or falsity;

    iii) Even if he thought that did not matter because he was going to serve the notice (though that is not his evidence), he failed to take any steps thereafter to serve the notice on the GLD and Archbold as expressly required by CPR 42.

    iv) That failure led to Archbold continuing to be treated by the GLD and by the Court as the solicitors on record and potentially responsible for the conduct of the litigation at a time when there was already a Court order for directions setting deadlines for actions to be taken with regard to the forthcoming hearing of the claim.

    v) He then failed to lodge a proper hearing bundle and failed to abide by the previous directions given for service of the bundle of authorities, which led to the hearing having to be adjourned.

63. I do not regard Mr Ali's alleged physical presence at a fixture appointment on 17 April (if that is when the 19 September date was fixed) as anything other than neutral. I am not in a position to form a final view as to which scenario is the correct one, and I do not propose to do so, because that is likely to be a matter for others to explore on another occasion. Suffice it to say that the more charitable interpretation of these events, which for present purposes I shall assume to be the correct one, suggests that Mr Ali paid little or no attention to the requirements of the CPR or to what he was representing to the Court. Even on that most benign view of matters, that is conduct falling well below the professional standards to be expected of a competent solicitor. Unfortunately, the hearing on 19 September did not prove to be the wake up call that one might have expected, and Mr Ali continued to behave with the same cavalier disregard of the rules.

Mr Jetly's evidence

64. The statement from the Claimants' father, who says he will be 75 years old in April 2019, begins by explaining that he made an application to the Home Office for his

sons in India to be registered as British citizens after taking advice from Archbold, but those applications were refused. He refers to the fact that the refusal letter dated 12 April 2017 (the substantive decision under challenge) was addressed to Archbold. That is true, though I note that, unlike the response to the PAP letter, the SSHD's letter quotes no particular Archbold reference. Mr Jetly then says that after the refusal, Mr Augustine advised him on the merits of pursuing this matter further with an application for permission to apply for judicial review. He advised Mr Jetly that the first step would be a PAP letter.

65. Mr Jetly refers to a client care letter from Archbold dated 14 June 2017 (more than 2 months after the impugned decision) which he exhibits, and which Mr Jetly signed to acknowledge receipt. There is no corresponding countersignature on behalf of the firm, other than an office stamp. The letter bears the names of the two claimants in "New Delhi, India" and the reference PM/IMM/MA/17026/BJ. It is marked "FAO" their father, and it says that he has instructed Archbold on behalf of his two sons who are in India. It suggests that the work will be carried out "mostly" by Mr Augustine, assisted by Mr Salami, who is described as "*a paralegal with considerable experience in immigration matters*". The letter says that "*Mr Salami will explain all issues that may arise in your matter and keep you informed in relation to the progress of the matter regularly*". It also states that Mr AUH Dar was the managing partner in the firm and would be supervising the work.

66. As to the scope of the work to be done, the letter says: "*you have instructed us on behalf of your two sons … in their applications for pre-action protocol letter (PAP) to the Home Office for permission to apply for judicial review against the refusal of British nationality in accordance with the UK(M) guide.*" Later, the letter says "*We will advise you, we will prepare and submit your application and documents to the relevant department. We will also prepare necessary letters in support of your application."* There is no mention of preparing or issuing any court proceedings or instructing counsel to draft the statement of facts and grounds to support a claim for judicial review.

67. The letter goes on to state that because "Mr Brij" was "*volunteering at the front desk in our office free of cost for the last 2 years or more we have agreed to provide our services pro bono. We have agreed that you will only bear third party expenses"*. Examples of such expenses are given – these all fall within the usual categories of disbursements. However, there is no mention of who would bear the liability for costs incurred by the opposing party in litigation. If permission to proceed with a claim for judicial review is refused, it is normally the case that the costs of acknowledging service and serving summary grounds of defence will be borne by the unsuccessful claimant. I would have expected something specific to have been said about that in the client care letter, if the solicitors had agreed to undertake the conduct of litigation without payment for their own services.

68. Quite apart from the inherent improbability that any firm of solicitors would agree to conduct litigation pro bono without clarification of who would bear the other side's costs if permission was refused, or who would run the risk of such costs going forward if permission were granted, the terms of the client care letter are more consistent with Mr Augustine's evidence that all Archbold agreed to do was sent a PAP letter, than with Mr Jetly's evidence that Archbold had agreed to act in a consequential claim for judicial review if the response to the PAP letter was negative.

69. Mr Jetly states that he was in "*continuous communication*" with Mr Augustine as his solicitor "*through email and in person*" and that it was Archbold who made the application to apply for judicial review. However, he exhibits no emails to or from Mr Augustine in the period up to the issue of the Claim Form which might provide support for that assertion and no attendance notes of any personal conversations with Mr Augustine (these would be available, as Aaron & Ace are supposed to have the client file). He relies solely on the email from Mr Salami to the GLD on 8 January 2018 to which I have already referred.

70. The only communication with Mr Augustine exhibited by Mr Jetly is a curious one. Mr Jetly says that after the court granted permission to apply for judicial review following the oral renewal hearing, he emailed a copy of the decision to Mr Augustine on 23 January 2018. The email, which appears to be forwarding an email sent by Mr Jetly to his wife and sons on 12 January, indicates that a document described as '*JR permission letter*" was annexed, but a copy of the annexure has not been printed out. I presume that document to be the Order made on 9 January 2018. Mr Jetly does not explain why he, the lay clients' representative, would be sending a copy of the court order by email to the solicitor with conduct of his sons' case, over two weeks after it was made, "*for your reference and record please*" if he believed that Mr Augustine was representing him and had instructed counsel on his behalf to appear at the permission hearing. Mr Jetly should have expected Mr Augustine to have known the result of the application and to have had a copy of the court order. He can only have been sending Mr Augustine the document because he knew or believed that Mr Augustine did not have it. I infer that any interaction between Mr Jetly and people at Archbold relating to the renewal application must have been with Mr Salami.

71. Mr Jetly says that he withdrew instructions from Archbold on 16 March and instructed Aaron & Ace on 22 March 2018. He annexes a document bearing the date of 16 March 2018 entitled "withdrawal of instructions" which names the client (in typewriting) as Brij Bhushan Jetly, though the words "and Sudha Bala Jetly" have been added in handwriting, as have Mr Jetly's date of birth and their address in Portsmouth. There is no mention of either of the Claimants. The letter states that he has collected the full file of papers from Archbold "today". A file number, 17026, consistent with the number in the client care letter, is typed on the letter.

72. Mr Jetly says that he understood that Mr Ali submitted a change of solicitors form to the court on 17th April. He said it was only after he (Mr Jetly) had withdrawn the instructions from Archbold that Mr Augustine wrote an email to the Administrative Court office on 23 March 2018 with a copy to counsel (Mr Jafar). Mr Jetly annexes a copy of that email, which was not sent to him or, indeed, to Mr Ali, without explaining how he came to be in possession of it. I note, however, that it was copied to Mr *Umar*. Its contents are consistent with Mr Augustine's account in his witness statement of 5 October 2018, which at the time of Mr Jetly's witness statement had not yet been served on Aaron & Ace by the GLD.

73. The email stated that Archbold had moved its branch office on 19th March and it gave the new address. It said that the former practice manager Mr Umar Khaled "*was ceased with Archbold on 1 November 2017*" and that "*the fee earner Mr Salami Tunde is not working with us since 19 March 2018".* It continues as follows:

"*at the time when we moved to the new business premises from few of emails of Mr Umar Khaled and Mr Salami, I suspect that my signature was hacked and few applications were made using my identity including a judicial review application filed in my name as the instructing solicitor. We have knowledge of the background of the case until a pre-action protocol letter on a pro bono basis to the Home Office with Mr Brij Bushan Jetly. I have never taken instruction from the client or given advice for a permission application or judicial review application. In the event if my name and signature appears in any of the applications, it is highly necessary to remove my name and signature as the instructing solicitor. I have no knowledge of any applications and I have not submitted any of the applications to the courts. I deny my signature and involvements in this matter. Please investigate.*" [emphasis added].

74. Thus, Mr Augustine was telling the truth when he said to Mr Pinnell, and confirmed in his first witness statement, that he had informed the Administrative Court office in March 2018 that these proceedings were not issued by Archbold. That also accords with the Court's own records of correspondence with Archbold regarding their failure to make a formal application to come off the record, to which I have already referred.

75. The final document annexed by Mr Jetly to his witness statement is an email from Mr Jetly addressed to Mr Augustine and Mr Dar (and copied to Mr Umar) dated 28 March 2018 complaining of misconduct by Mr Augustine. Again, the date is consistent with the date on which Mr Augustine said he received an email from Mr Jetly. In that email Mr Jetly says that Mr Salami told him (Mr Jetly) that Archbold were moving out of the Victory Business Centre to a new location and that he (Mr Jetly) decided to withdraw his instructions in "*his matter which is being dealt with by Archbold*". He does not explain (and has not explained in his witness statement) why a change of location by his solicitors to a different address in the same city caused him to make that decision, particularly if the solicitor that he believed had personal responsibility for conduct of the litigation, Mr Augustine, was going to the new address. Mr Jetly says in his email that he signed the withdrawal letter on 16 March and received his file of papers from Mr Salami on the same day. The file contained a client care letter dated 14 June 2017, a copy of which was provided to him at the time.

76. Mr Jetly then quoted from the part of the client care letter which stated that Mr Augustine would be assisted by Mr Salami and that Mr Salami would explain all issues that may arise in his matter and would keep him informed in relation to the progress of the matter regularly. The email continued by stating that Mr Augustine asked Mr Jetly from time to time to send him all the relevant documents and information by email, which he "always did". Whilst it is understandable that a solicitor would ask the client to send him any underlying documentation relied upon by the client, such as documentation that might be used in evidence to demonstrate to the Home Office the relationship between the client and a parent or grandparent, it would make no sense for the solicitor in charge of the litigation to ask the lay client (or client's representative) to send him documents pertaining to the litigation itself. If the solicitor had another caseworker assisting him and liaising on a more regular basis with the client, one might expect that caseworker to keep the solicitor informed and used as the conduit for the passing of information.

77. Mr Jetly's email of 28 March 2018 goes on to say that on 27 March, when Mr Dar, the managing partner of the firm visited Portsmouth, Mr Umar informed Mr Jetly that you (i.e. Mr Augustine) "*had sent an email to Field House, to the High Court, and to*

Mr Jafar, the counsel in my case [stating] that you have no idea of this issue and your name on the judicial review form is without your knowledge. Nothing can be far [further] from the truth". Mr Jetly alleged that what Mr Augustine said was a lie; that Mr Dar as a supervisor has seen his file "many many times"; that there are invoices and ledgers in the file (even though the client care letter stated that the work was being done pro bono) and he demands that Mr Dar investigate the matter within 10 days. He also threatens to report Mr Augustine to his regulators. There is no evidence that he ever took any action on that threat.

Mr Augustine's response to the evidence of Mr Ali and Mr Jetly

78. Mr Pinnell ensured that Mr Augustine's witness statement was sent to Aaron & Ace and that the evidence from Mr Ali and Mr Jetly was provided to Archbold, so that each could see what the others had said. On 6 December 2018 an email was sent to the Administrative Court office by Mr Augustine, seeking permission to put in a witness statement in response to Mr Jetly's witness statement, on the basis that it was not truthful. I decided to look at Mr Augustine's evidence and its annexures *de bene esse.* Mr Augustine also contacted the Administrative Court office to ask if he could attend the hearing on 11 December; I indicated that he would be welcome to do so if he wished, though I had made no formal direction for the attendance of any of the solicitors involved. In the event, on the morning of the hearing Mr Augustine sent a message to the Court indicating that he was unwell and unable to travel.

79. Much of what Mr Augustine says is repetitive, though he adds more detail to his account of events. He claims that, following Mr Umar's removal from Archbold in November 2017, Mr Umar, with the connivance of Tunde Salami, was given continued access to client files and clients of Archbold, and was giving legal advice to, and representing clients, using his email address Misworx@gmail.com to communicate with them. Events came to a head in March 2018 when the firm decided to move business premises. At that point Mr Umar essentially hijacked various clients, who he persuaded to disinstruct Archbold. Mr Augustine says that Tunde Salami handed all the client files over to Mr Umar.

80. Mr Augustine is adamant that he never accepted any instructions to act on behalf of these particular Claimants in a claim for judicial review or gave any advice to Mr Brij Jetly other than suggesting that he contact HM Passport Office to obtain a duplicate registration certificate and other documents that might help his case. The PAP letter was Mr Umar's idea, not his. He says that he, Mr Augustine, had nothing at all to do with the issue of the Claim Form or the application for permission to bring judicial review. He makes the point that Archbold would never have agreed to conduct litigation on a pro bono basis, which would expose them to the risk of paying costs to the opposing party.

81. One of the new documents that Mr Augustine exhibits is an email sent by Mr Augustine to Mr Jetly on 28 June 2017 at 10.51 bearing the subject "Refusal Letter from Pre-action Protocol". The email appears to be a response to an email sent to Mr Augustine by Mr Jetly the previous evening, which said: "*Please find herewith my refusal letter from Pre-Action Protocol. I will be highly obliged for your call me please."* Mr Augustine's response reads as follows:

"*Dear Mr Bridge,*

I have suggested you to send a letter to reconsider the decision with your points very briefly which they have failed to look in to. And if you have done so please do wait. PPA [sic] was the suggestion of Mr Umar with a view to file I Judicial Review. Please contact him for his comments. I have no comments about it. I think I had asked to you collect the list of documents in your endeavour to get a duplicate Registration certificate or information about a document which is not in hand, like emails, enquiries, decisions of the HO, passport office etc as you[r] attempts, I don't know how far you are with it.

Your submission must be really brief, nobody is interested to find out from a bundle of documents and copies of series of expired passport pages."

82. The documents annexed to Mr Augustine's second witness statement also include a report that he made to the SRA on 20 March 2018 at 6.22pm (three days before the email he sent to the Administrative Court, to Field House and to Mr Jafar). In that report, he said that Mr Umar was removed from the firm since 1 November 2017 *by the intervention of the SRA*, but they [Archbold] suspected that Salami Tunde (described as "the case worker of the branch") had been deliberately allowing Mr Umar access to the office and access to client files and the clients. It was this that precipitated the decision to move offices. When Mr Augustine came to move, however, Mr Salami and Mr Umar had physically prevented Mr Augustine from moving the client files. He had telephoned the SRA for advice and was advised to report the matter to them. After he left the office, Mr Augustine received two emails from Mr Umar in which he admitted that he had been acting as a legal practitioner dealing with the clients in immigration and criminal cases (unfortunately, those two emails are not among the documents exhibited by Mr Augustine).

83. Mr Augustine contends that Mr Jetly did not withdraw his instructions from Archbold on 16 March and that the documents bearing that date were created after Mr Augustine emailed the Court and Mr Jafar on 23 March. He says the truth is that Mr Jetly came to Archbold's former offices on 26 March when Mr Augustine and Mr Dar were both present, and spoke to them there. Mr Augustine annexes to his second witness statement an email sent from Mr Umar to Mr Dar on 11 April 2018, simultaneously copied to Mr Ali and Mr Salami, and forwarded by Mr Dar to Mr Augustine on 12 April 2018. That email makes interesting reading. It raises three matters; first, a complaint that "we" have not received the confirmed list of clients that "Mr Maxy" wrote to on behalf of [Archbold] informing them of the change of office premises. It goes on to enumerate 8 clients of Archbold who have "*visited this office, they have collected their files from us and withdrawn instructions from [Archbold]*." Mr Umar says: "*the one at No 7 directly spoke to you while you were in Portsmouth on 26.03.18*". There follows a list – No 7 is "Namit Jetly via Brij Jetly". Mr Umar then refers to other clients on a list supplied by Mr Dar who "*have been requested to collect their file of papers to instruct some other firm or to contact Mr Maxy or Mrs Helen Chen in the Archbold office at Technopole if they want [them] to continue to represent their matte*r."

84. The second matter raised by Mr Umar in his email of 11 April relates to a particular client who is described as "disgruntled," but who has no apparent connection with the present case. The third matter is a plea to Mr Dar to clarify to Mr Jafar "*the letter which Mr Maxy wrote to the court and to counsel*" - i.e. the letter sent by email on 23 March. Mr Umar says that the matter of JR "*is now to be listed for hearing and our*

client wish[es] to continue to rely on Mr Jafar's services". It will be recalled that Mr Ali says he obtained the notice to fix, dated 9 April, from Mr Jetly, that notice having been sent to Archbold at Archbold's former offices, at which Mr Umar appears to have been present. It is unsurprising that Mr Jafar was not prepared to accept further instructions without receiving clarification that he was properly instructed. Mr Umar said in his email that he had sent Mr Dar a "proposed draft" of 2 sentences to send to counsel. He pressed for a response by the following day. It is not known what response, if any, was made by Mr Dar.

85. It is impossible for the Court to resolve the disputes of fact between Mr Augustine and Mr Jetly in these proceedings and it is unnecessary to do so. Suffice it to say that the preponderance of the contemporaneous documentary evidence, including the documents produced by Mr Jetly, tends to support Mr Augustine's version of events. That means that I am not prepared to accept Mr Jetly's evidence as the unvarnished truth. On the other hand, I cannot rule out the possibility that Mr Jetly was led to believe that Archbold were acting on his behalf in this litigation.

THE HEARING ON 11 DECEMBER

86. On the afternoon of 4 December 2018 Aaron & Ace sent the GLD by email a draft of an application that they were proposing to make to sign the statement of truth on the Claim Form. On the same day, Mr Jetly posted an application notice to the Court. I was told at the hearing on 11 December that the application was for his wife to sign the claim form on the Claimants' behalf. In fact, it emerged after the hearing that the application notice, exhibited to an Affidavit subsequently sworn by Mr Ali, actually asks for an order that "*the Claimants may be allowed to sign the statement of truth*". There is no mention of any power of attorney in the application.

87. The application notice is signed by Mr Umar, who styles himself a "caseworker" and the statement of truth on it is signed by Mrs Jetly as "the applicant". This application notice was accompanied by an application for fee remission made by Mrs Jetly (who has ticked the box on the application notice stating that she is a claimant, which of course she is not) supported by evidence that she and her husband are entitled to Pension Credit. The fees department of the Court office, seeing that there were two named claimants, sent a written response pointing out that everyone involved in a multiple claim or application is responsible for the fees so each such person (i.e. each claimant) would have to make a separate "help with fees" application. In consequence of this, the application notice was not issued, and the papers were sent back to Aaron & Ace on 7 December. They had not arrived back in the solicitors' office by the time of the hearing on 11 December.

88. At 06.21 on the morning of 5 December 2018 an email was sent to the GLD from Aaron & Ace enclosing a proposed application under paragraph 22.4 (2) of the CPR that *Mr Ali* be allowed to verify the statement of case in accordance with paragraph 22.1 of the CPR. It annexed a further witness statement from Mr Ali in support of an application for relief from sanctions (despite the fact that no notice of an application for relief from sanctions had been issued). Those documents had not been filed with the Court by the time of the hearing on 11 December, and so I had to be supplied with counsel's copy. Two explanations were given by Mr Ali for missing the 21 day deadline; first, it was said to be necessary to wait for the transcript of the judge's judgment before filing the evidence, and that transcript did not arrive until after the

deadline had expired; secondly, Mr Ali's father sadly passed away and this necessitated his travelling to Pakistan at short notice. It was only when Mr Ali's subsequent Affidavit was filed that it became apparent that Mr Ali's father passed away after the 21 day deadline imposed by the Court had already expired.

89. Also on 5 December, Mr Pinnell wrote a letter to the Administrative Court office enclosing a replacement skeleton argument for the SSHD and setting out a history of matters since HH Judge Wall QC's Order. He requested that his letter and the attachments should be referred as a matter of urgency to me as the judge with primary responsibility for the *Hamid* jurisdiction. I was sufficiently concerned by what I read to take immediate steps to ensure that this matter was listed before myself.

90. As at 11 December 2018 when the substantive application for judicial review came before me the position was as follows:

i) The claim form was still not verified with a statement of truth;

ii) No application to verify the claim form, or for relief from sanctions, had been issued on the Claimants' behalf within the 21-day time limit set by HH Judge Wall QC;

iii) The trial bundle and bundle of authorities were lodged long after the additional 21 days given for doing so had expired and there was a complaint by the GLD that they were still deficient;

iv) There was no extant application for relief from sanctions for the failure to lodge the trial bundle and bundle of authorities within 21 days from the previous Court order and/or the failure to comply with the other directions within those 21 days; however, there was a second witness statement from Mr Ali in support of such an application;

v) No formal application had ever been made for an extension of the time limits set out in the Order of HH Judge Wall QC either before or after they expired;

vi) There had been a very belated attempt to issue an application to sign the statement of truth without paying the requisite fee; a fee waiver was refused, just as fee waivers had been sought and refused in the past.

vii) There was no evidence before the Court from any source that either of the Claimants had ever authorised either of their parents to instruct solicitors on their behalf to issue judicial review proceedings, or had given direct authorisation to either firm to act on their behalf.

viii) The solicitors whose name appears on the record, Archbold, said that they were never instructed to bring these proceedings. They have been saying so consistently since at least mid-March 2018 when they moved offices, and the only client care letter that was produced appeared to support their position;

ix) The solicitors who were instructed to take over the case, Aaron & Ace, had not come on the record, and had failed miserably to comply with CPR 42.

x) However, those solicitors did, albeit belatedly, produce an innocent explanation for the three matters appearing on the face of their letter to the GLD of 31 August that gave rise to understandable concerns;

xi) Mr Ali had produced a witness statement seeking to explain why the order of HH Judge Wall QC was not complied with, but it had not yet been filed, and left many loose ends.

91. At the hearing before me, Mr Jafar told the Court on instructions that the Claimants' parents each had a Power of Attorney from each of the Claimants dated 20 January 2017 (4 documents in total) and that a hard copy had been given to Archbold. Mr Ali had an electronic copy of these documents on his computer, which Mr Jafar had seen.

92. Mr Jafar submitted that a genuine attempt had been made to comply with the previous court Order, but Mr Ali had to wait for the transcript of the judge's judgment before he could do so, and that had arrived two weeks after the deadline expired. I pointed out that whilst that might go some way towards explaining the failure to provide the explanation required by HH Judge Wall QC for "the matters referred to in his oral judgment", i.e. the oddities in the fax of 31 August from Aaron & Ace, within 21 days, it did not explain:

i) the failure to make an application within the 21 days to sign the statement of truth or relief from sanctions and file evidence in support in accordance with paragraph 2 of the Order, or

ii) the failure to lodge a proper trial bundle and the bundle of authorities either prior to the hearing on 19 September or within the 21 further days allowed for doing so in paragraph 3 of the Order, or

iii) the failure to formally seek an extension of time for compliance with the Order of HH Judge Wall QC when it was apparent that the transcript would not arrive within the 21 days,

I also pointed out that on Mr Ali's own account of matters (set out in his latest witness statement) he made no attempt to request the transcript until 10 October. Mr Jafar attributed this to confusion engendered by the terms of the Order directing that such a transcript be made available to Aaron & Ace.

93. At that stage, I was shown some correspondence between Mr Pinnell and Aaron & Ace in October 2018 concerning the transcript, which Mr Pinnell sent to the Court under cover of a letter dated 18 October. Mr Umar sent an email to the Administrative Court office on 10 October (either the last day for compliance or the penultimate day), though the letter sent in the body of the email is supposedly from Mr Ali. The letter seeks a copy of the transcript. The email states that the Claimants' solicitors cannot provide an explanation of the matters raised in the oral judgment and the GLD's letter of 18 September 2018 without sight of the transcript. It requests an extension of time to comply with the order to five working days after receipt of the transcript. A further email in very similar terms was sent by Mr Ali himself on 16 October from his own email address, repeating the request for an extension of time. No formal application notice seeking an extension of time was issued and the court did not respond to either request.

94. I decided that the pragmatic approach would be to proceed with the hearing as if an application for relief from sanctions and for permission to sign the statement of truth had been made (and any requisite fees had been paid). I directed that within 7 days of the hearing Aaron & Ace should take the requisite steps to formally come on the record as acting for the Claimants; that an affidavit should be produced by Mr Ali formally attesting to everything that Counsel had told the Court on instructions at the hearing, and that the application for relief from sanctions and for permission to sign the statement of truth should be issued. I indicated that both those applications could be subsumed within one application notice.

95. These directions were not complied with either. On the morning of 21 December, the last day of term, the case progression officer confirmed to me and to the GLD that nothing had been received in the Administrative Court office from the Claimants since the hearing. However, an Affidavit from Mr Ali bearing the date of 17 December 2018 was received in the Administrative Court office thereafter, and forwarded to me by email on 31 December.

96. Mr Ali set out the chronology of events since HH Judge Wall QC's Order to which I have already referred. He said he had understood that a transcript of the hearing would be made available by the court without the need to order one. Paragraph 9 of the Judge's Order had said that the transcript of the oral judgment should be made available to Aaron & Ace and Archbold as well as to the parties. An un-named member of the office staff called the Administrative Court office on 4 October and read out paragraphs 1,5,6 and 9 of the Order and "*we were told to wait as it was understood that the orders of the court would automatically trigger the production of the transcript. However, it was advised to send an email if we don't receive it in due course*".

97. Mr Ali said that his witness statement was ready on 8 October, to the extent that it addressed the matters raised in the GLD's letter of 18 September, but he considered it more prudent to wait for the transcript as he understood that he would not have complied with the parts of the Order requiring him to provide an explanation of the matters raised in the oral judgment if he did not read the transcript first. He said that he was "*not aware of the matters specifically raised in the Oral judgment*" although at the hearing on 11 December, Mr Jafar confirmed my understanding that Mr Ali had been present in court at the hearing before HH Judge Wall QC. If Mr Ali had not been present, I would have expected counsel to have informed him of what happened, why the hearing was adjourned and why the judge was concerned. In any event Mr Ali was already aware of the matters of concern raised by the GLD regarding his letter of 31 August, because he had been copied into Mr Pinnell's correspondence with the Court.

98. Mr Ali referred to the emails sent to the Administrative Court office on 10 and 16 October asking for an extension of time for compliance with the Order to five working days after the receipt of the transcript. He said he now understood that he should have issued an application notice, "sincerely apologised" for the "oversight" and sought relief from sanctions. Any competent litigation solicitor ought to be aware of *Denton v T H White Ltd* [2014] EWCA Civ 906, [2014] 1WLR 3296 and that there has been a sea change in attitudes towards the old cavalier ways of non-compliance with the rules of practice and procedure. I cannot understand how any such solicitor, even without the transcript of the oral judgment, could fail to appreciate the need to ask the court *formally* to grant more time in circumstances such as these.

99. Mr Ali said that on 13 October (and therefore after the 21 days had already expired) his father died suddenly of a heart attack and he had to travel to Lahore, but the office was not left unattended and office paralegal staff attended to all the work, with Mr Ali being available on the phone, by email and over the internet. He got a response from the Admin Court office on 18 October to say that "*our email has been forwarded to the Transcript department*" and the Transcript was provided on 25 October (in fact it was sent to Aaron & Ace by email from the GLD). He said that although he was still overseas at that time, he amended his witness statement and the trial bundle and bundle of authorities were prepared and ready for submission. He changed his return itinerary to 8 November 2018 "*to ensure that the Papers could be submitted in time within the 21 working days of time limit*."

100. That last statement makes no sense at all. Even the requests for an extension of time for compliance made by his firm had sought 5 working days from receipt of the transcript in which to comply, and although the requested extension had not been granted, even if it had, that time had already expired by 12 November which is when the documents were eventually filed. Mr Ali overlooked, or misinterpreted paragraph 3 of the Judge's Order, or simply ignored it. He says that the hearing date of 11 December was listed on 19 October *and that the trial bundle and authorities bundle had to be served not less than 21 working days before the re-fixed hearing.* That is simply wrong. The judge specifically directed that the Claimants, "*should they wish to pursue this Judicial Review claim"* should file and serve the bundles "*within 21 days of this order".* There is no ambiguity about that direction.

101. Mr Ali then said that it was counsel who realised *on 2 December* that a formal application to sign the statement of truth needed to be made as well as an application for relief from sanctions. I do not doubt that Mr Jafar was the person who raised concerns in that regard, but any solicitor who had (a) been present in court at the hearing on 19 September (b) had a copy of the transcript of the judgment and (c) had a copy of the judge's Order should have appreciated that he and his clients were only being given another 21 days to make such an application and that this was their last chance to put their tackle in order. Mr Ali should not have needed counsel to point this out.

102. Mr Ali then describes the last-ditch efforts that were then made to issue the N244 application notice, and the return of the documents by the Court office. Mr Ali said that he did not appreciate that a formal application for relief from sanctions needed to be made on a separate application form and that he is very sorry for the mistake. He did not act out of a disregard to the Order but tried "very hard" to comply with it and *he had believed that the efforts he made met the requirements.*

103. Whilst I am prepared to accept that Mr Ali did not really understand what it was that he was supposed to do, a solicitor who is unable to understand the basic requirements of the CPR and read and understand the terms of a clearly expressed court order should not be conducting litigation. This is a case in which, ever since he took over the conduct of this case, Mr Ali has only made desultory efforts to comply with the obligations on his firm and his clients, and he has displayed an appalling lack of insight into his own behaviour. A further factor which may have some bearing on how this case has been conducted is that each application notice attracts a fee, and there is a pattern of attempting to obtain fee waivers without providing evidence that the Claimants themselves qualify. There is no evidence that these Claimants are

impecunious. A lack of funds is no excuse for not abiding by the rules of court. A competent solicitor would also appreciate that more than one application can be subsumed within a single application notice.

104. Mr Ali's repeated apologies in his Affidavit would have carried far greater weight had they been volunteered before, or even at the hearing before me. When I indicated to Mr Jafar, more than half a day into the hearing, that the Court might have expected some degree of contrition to be shown by a firm of solicitors who had failed to comply with so many requirements of the CPR and with an Order of the Court which itself gave relief from sanctions, his response was to the effect that he would have tendered an apology at the outset of the hearing if he thought it would have had an impact on the way in which the Court would view the matter. An apology was eventually offered, but in the circumstances, it rang rather hollow. It appears that Mr Ali, who witnessed that exchange, has had second thoughts about maintaining that attitude, which did not help either his or his clients' cause; but this was an apology that was effectively forced out of him by the Court, and consequently I am more sceptical about its sincerity than I would have been had it been expressed voluntarily.

105. One further matter of interest emerges from the Affidavit filed by Mr Ali. He exhibits what he describes as an email screenshot of "*the record from my email inbox of the witness statement being ready on 8 October 2018*". The email screenshot attached is in fact a screenshot of a message sent by Mr Umar by email to Mr Ali (at two separate email addresses) and copied to Mr Umar's email address misworx@gmail.com. The subject matter is "*Witness statement Anis Ali and Brij with supporting documents"*. It is timed at 1.30pm on Wednesday 10 October 2018, and the attachments are a witness statement of Anis Ali and supporting documents, and a statement of Brij Jetly. There is also a copy of an earlier email sent by Mr Umar to the same recipients timed at 3.22 pm on Tuesday 9 October under the subject "witness statement Anis Ali" with the message "attached please". This was all before Mr Ali had to travel to Pakistan.

106. It appears that Mr Umar is intimately involved in the conduct of this litigation, and those emails indicate that he may well have been responsible for drafting the witness statements. The true extent of his involvement may be something that the SRA will wish to investigate in due course. I strongly suspect that, knowing little or nothing about how to conduct litigation, Mr Ali, who was supposed to be the solicitor with conduct of this case, left far too much of the conduct of this matter in the hands of Mr Umar, who has no right to conduct litigation. In fact, there appears to be at least a *prima facie* case that Mr Ali is simply lending his name to this litigation as a front for Mr Umar.

RELIEF FROM SANCTIONS

107. The applicable principles are well known (see CPR 3.9(1)) and the Court will adopt the three-stage approach set out in *Denton v T H White Ltd* (above). The first stage is to assess whether the breaches are serious or significant (or both). In that regard it is important to bear in mind the observations of Singh LJ in the recent case of *R (Talpada) v Secretary of State for the Home Department* [2018] EWCA Civ 841 at [67], emphasising the need for public law litigation to be conducted with an appropriate degree of formality and predictability as in other forms of civil litigation.

Are the breaches serious or significant?

108. In my judgment, the breaches were both serious and significant, arising as they did against a background where the previous judge had effectively granted relief from sanctions on terms, but those terms, which were the practical equivalent of an "unless" order, were then not complied with. At least as regards two of the three steps the judge required to be taken within 21 days no attempt was made to comply with his order or to seek an extension of time. As regards the third step, the only request for an extension of time was made informally, and an assumption appears to have been made that it was or would be granted, but then the requested deadline was not adhered to either.

109. It was suggested by Mr Jafar that the failure to comply with the 21 day time limit made no appreciable difference to the progress of the case, but the fact remains that even on the date of the hearing before me, the statement of truth remained unsigned, and the Claimants and their solicitors were no further advanced in curing that deficiency than they were on 19 September. The remaining aspects of HH Judge Wall QC's order had been complied with, but very late.

110. The further delay arose against a background of significant delay. The claim for judicial review, when originally issued, was a few days outside the three-month time limit for seeking judicial review, at least so far as the original decision under challenge (the decision of 10 April 2017) was concerned. Whilst a PAP letter is normally required before a claimant commences proceedings for judicial review, a claimant cannot artificially extend time by issuing the letter towards the end of the three-month period and then waiting for a response.

111. The claim form was issued promptly after the response to the PAP letter, but it failed to annexe the crucial documents. That led to delay in consideration of the application for permission on the papers. After permission was granted in January 2018, there was a further hiatus in fixing the date of the substantive hearing. This was at least partly due to an alleged decision by Mr Jetly senior to change solicitors to Aaron & Ace, a one-man firm that was then registered in North London, for no apparent reason other than that Archbold were moving offices to a different address in Portsmouth (where he lives).

112. By the time the matter came before him in September, with the hearing bundle in a shambolic state and no bundle of authorities filed, in direct contravention of a court order, HH Judge Wall QC said that there was no doubt in his mind that "*at no stage has this claim been pursued expeditiously. It has been pursued in a wholly inadequate fashion.*" I respectfully agree. That hearing then had to be adjourned, leading to another three months' delay. The failure to comply with any aspect of the judge's directions until 54 days after his Order, more than twice the period he allowed the Claimants to put their tackle in order, must be evaluated against that background.

113. The judge made it clear on the face of his Order that the latter step was required from the Claimants "*should they wish to pursue this Judicial Review claim*". He said at the hearing, at which Counsel was present and able to give an explanation to the solicitor, even if the solicitor failed to understand what was going on, that he was giving the Claimants a "*short period of time*" and emphasised the 21-day deadline for compliance. In other words, he was granting the Claimants what in the circumstances

might be regarded as a fairly generous 3-week extension of time for compliance with directions given as long ago as 9 January 2018 for serving and filing a proper hearing bundle and bundle of authorities.

114. Aaron & Ace did not need to wait for the transcript of the judgment in order to appreciate that if their clients wished to pursue this claim it was incumbent upon them to file and serve, by no later than 11 October 2018, any applications that they wished to make, together with any evidence on which they wished to rely in support of those applications, and a trial bundle and composite authorities bundle compliant with the requirements of CPR Part 54. That much was clear from paragraphs 2 and 3 of the Judge's Order.

115. Mr Ali's latest Affidavit affords no explanation for these failures. He seems to have assumed that he could file the trial bundle and authorities bundle 21 working days before the date re-fixed for the hearing. At the very least this suggests a failure to read and/or digest the terms of the Order that was made, which varied the original directions made when permission was granted.

116. Apart from the "completely inadequate" bundle filed prior to the September hearing, which even omitted the claim form, what really concerned the judge was the fact that the claim form was not verified by a statement of truth, which is a mandatory requirement of the rules. As he pointed out, "*if the claim form remains unsigned, as it currently is, there would be no basis upon which a successful claim for judicial review could be brought*". Mr Jafar submitted that this did not matter because the documents annexed to the claim form such as photocopies of passports were formal documents which spoke for themselves. That submission was misconceived. Without a statement of truth, there is no evidence that the Claimants, their father, mother or grandparents are (or were) who they say they are, or that they are related to each other in the manner alleged, let alone that any of the documents on which they seek to place reliance relate to them.

117. The judge gave the Claimants the same time, 21 days, to take the necessary steps to cure the fundamental problem caused by the fact that the claim form had no signed statement of truth on it, and was therefore susceptible to being struck out. That was not a difficult matter to address, as all it would have taken was an application notice supported by evidence, although if Aaron &Ace were going to sign the claim form on behalf of the Claimants, they would also need to take proper steps to ensure that they were formally on the record.

118. I am prepared to accept that the fact that Archbold were still on the record as acting for the claimants and that the change to Aaron & Ace had not been implemented did not clearly surface until after the hearing before HH Judge Wall QC, when the evidence from the two firms of solicitors and Mr Brij Jetly was served. However what Mr Ali should have done as soon as it became apparent that his firm was not on the record, was either re-lodge that application notice and serve the application on Archbold and the GLD, or else made an application to the Court to dispense with some or all of those requirements and to make an order removing Archbold from the record and substituting Aaron & Ace. Neither of these steps was taken. I suspect that a lack of funds may have had something to do with the reluctance of those representing the Claimants to issue application notices, but a complete lack of

awareness of what was required, and an unwillingness to educate themselves is also apparent.

119. If the Claimants were going to cure the deficiency in the claim form themselves it would either have to be sent to them in India, or the Court would have to be formally requested to allow their solicitor (or possibly their attorney) to sign on their behalf. In the latter case, it would be essential to provide the Court with proper evidence that the proposed signatory (their mother and/or father) had power of attorney to act on their behalf. Given the background of Archbold's denial that they ever received instructions, it would also be prudent to provide evidence that Aaron & Ace were properly retained.

120. The half-hearted attempt made on 4 December 2018 to obtain an order for "the Claimants" to sign the statement of truth was in fact intended to be an application for an order that their mother should sign it on their behalf, but the Court office could not possibly have discerned that from the documents that were sent to it. The application for fee remission was equally misguided; there is no evidence that the Claimants cannot afford to pay court fees. The fact that they are abroad is irrelevant. The Claimants' parents may be their attorneys (though I have not seen any evidence that they are) and they may have little money, but that does not mean they are substitutes for the Claimants themselves. Moreover, this was not the first time that an application for fee remission had been refused, so Mr Jetly and the solicitors should have been on notice that this further application would or might not be accepted.

121. I accept that when Mr Ali finally did provide evidence addressing the matters of concern arising from the oddities in the letter of 31 August, he produced an innocent explanation for each of them, though that explanation still betrayed a somewhat cavalier attitude towards ensuring that communications from his firm were in the form required by the SRA and did not have the potential to cause confusion. I also accept that some effort was made to seek an extension of time for compliance with HH Judge Wall QC's order when it became apparent that the transcript would not be available until after the deadline expired, though the extension was first sought on the penultimate afternoon for compliance and there was no proper application but simply an email request. However, the substantive requirements of the Judge's order were still not fully complied with at the time of the hearing before me. The breaches were substantial, and they were serious.

What is the explanation for the breaches?

122. The second stage of the *Denton v White* test is to consider why the failure occurred, and whether there is a good reason for it. There was no good reason for the failure to issue the application for permission to sign the statement of truth or the failure to lodge the hearing bundle and bundle of authorities within the time limit set by the judge.

123. The Claimants have failed to satisfy me, on the balance of probabilities, that these proceedings for judicial review were issued by Archbold on their behalf, or that Archbold ever knowingly came on the record. The client care letter, on its proper construction, supports Mr Augustine's contention that his instructions were limited to corresponding with the Home Office up to and including the pre-action protocol letter. His email exchange with Mr Jetly after the SSHD's response was sent to him in

late June 2017 made his position abundantly clear. Mr Augustine's suggestions about how to respond were confined to the possibility of gathering more evidence in support of the application to the Home Office.

124. If Mr Augustine had been instructed to issue the claim form, he would have had no reason not to sign the statement of truth on it. There is no suggestion that in June or July 2017 there had been any falling out between Mr Augustine and Mr Jetly. Since Mr Umar was still working for Archbold until November 2017, and his email address appears on the face of the claim form, it is more likely than not that he was responsible for the issue of the claim form. Moreover, if Mr Augustine had not signed the claim form, he would have been aware it was not signed – yet in March 2018 he was very concerned that someone may have forged his signature on the claim form.

125. On the evidence before me, the reason why the statement of truth was not signed was not a simple oversight. It was not signed because Archbold were never retained to act in this litigation. Their written retainer only covered the writing of the PAP letter to the Home Office They should never have been named as the solicitors on the record. On the face of it, these proceedings were issued and pursued by someone with no status to conduct litigation. That is an extremely serious matter. In the light of Mr Augustine's exchanges with Mr Jetly in the wake of the response to the PAP letter, I cannot accept that Mr Jetly had any good reason to believe that Mr Augustine was responsible for the conduct of this litigation. However, I do not know what Mr Umar led him to believe.

126. Mr Jafar contended that the catalogue of defaults came about through ignorance rather than wilfulness. I am not persuaded that is so. On his own case, Mr Ali was quite prepared to put a document before the court which indicated on its face that notice of change of solicitor had been served, when it had not, and he either knew it had not, or took no steps to ensure that it had. Then he did nothing to cure that omission. Mr Ali is either very trusting of others, very careless, or both.

127. Widescale ignorance of the rules of procedure (which are easy enough to look up) coupled with an apparent failure to understand the terms of a very clear court order is of a similar degree of seriousness to paying no regard to what the rules or court orders say. I do not believe Mr Ali had any proper grip on this litigation from the moment he took over conduct of the case in March. He appears to have left far too much in the hands of Mr Umar.

128. Mr Jetly senior was perhaps too trusting of Mr Umar, but I do not consider him to be a completely innocent dupe. Much of what he said in his original witness statement, which is appears was drafted by Mr Umar, does not accord with the contemporaneous documents.

129. It did not help the Claimants' cause that they sought to blame the SSHD for the position in which they found themselves. Mr Jafar suggested that the SSHD was seeking to suppress the truth because "*the information actually held by the Defendant showed that the Claimant is correct and the Defendant's position false and in an attempt to maintain the false impression the Defendant seeks to deny the Court from accessing what he knows to be true and what he is still attempting to cover. These actions are the opposite of honest and appear to be an open and brazen attempt to mislead the court on the central issue in this case…*"

130. There was no justification for those accusations, and they should never have been made. The SSHD maintained throughout that the Claimants bore the burden of proof (which is correct) and that it was incumbent on them to adduce evidence to establish that they are entitled to British Citizenship (also correct). The SSHD, like any respondent, was entitled to make the point to the Court that a claimant in a public law case is obliged to abide by the rules of procedure like any other claimant, and that failure to do so will attract sanctions. This is not a case of an opposing party taking unfair advantage of a trivial mistake; the deficiencies were by no means trivial, and Mr Malik made it clear in his oral submissions that the SSHD left it to the Court to decide how to respond to the defaults of the Claimants and their solicitors.

131. Mr Jafar also unwisely sought to criticise the SSHD for raising with the Court the concerns that arose out of Mr Augustine's email of 18 September, claiming that Mr Pinnell should have filed evidence on this topic and that if the GLD had raised concerns about the communication from Aaron & Ace of 31 August some weeks sooner, the explanation given by Mr Ali would have been forthcoming without the need to adjourn the hearing.

132. The first point to make about that is there was nothing for Mr Pinnell to give evidence about. Mr Pinnell's concerns only arose once he appreciated that he had been communicating with Archbold, the firm still on the record, when someone else, who had never served a notice of change of solicitor on the GLD, was purporting to act for the Claimants; and that did not happen until 18 September, after he chased up the authorities bundle. There was no time for Mr Pinnell to file evidence in advance of the hearing the next day. In any event, the correspondence spoke for itself, as did the lack of signature on the claim form and the absence of Aaron &Ace from the court record. Mr Pinnell acted as any responsible lawyer would have done in drawing that information to the attention of the Court. There was no relevant factual evidence that he could have given, other than to attest to receipt of the two relevant communications from Aaron & Ace and Mr Augustine, and possibly to the fact that he never received any notice of change of solicitor. I also have considerable doubts as to whether Mr Ali would have voluntarily responded to a request for an explanation of the three matters arising from his letter of 31 August that caused Mr Pinnell concern before the date of the hearing, even if Mr Pinnell had noticed them immediately on receipt, given how slow he was to respond to a court order directing such an explanation to be given within 3 weeks.

133. The substantive hearing of the claim could not have gone ahead on 19 September 2018 in any event, because the directions given in January 2018 had not been complied with. There was no proper hearing bundle and no authorities bundle. The adjournment was not brought about by an allegation that there was something suspicious about the Claimants' supposed legal representatives, it was necessitated by the failure by Mr Ali to abide by the rules of the CPR and the previous directions of the Court made in January 2018. If he had a copy of the file, he would have known about those directions. At the very least the failure to comply with the directions was negligent. That negligence caused the adjournment and costs were thrown away. That is why Aaron & Ace have failed to show cause why they should not pay the wasted costs thrown away by that adjournment.

134. The GLD were not responsible for the matters of concern arising from the curiosities on the face of the 31 August letter from Aaron & Ace. If Mr Ali had served notice of

change, as he was obliged to do, then the GLD would not have been corresponding with Archbold, and Mr Augustine would not have written the email of 18 September 2018 which triggered Mr Pinnell looking more closely at Aaron & Ace. The oddities of the 31 August communication are matters for which only Aaron & Ace are to blame. If Mr Ali had bothered to check the settings on his printer before he sent out correspondence, he would have appreciated that any letters printed off on A4 sized paper would cut off vital information, and that this would be capable of creating an impression that Aaron & Ace were not a firm of solicitors regulated by the SRA. That impression would be reinforced by the fact that if one went on the Law Society website, a firm of that name was still registered in London, not Portsmouth, and the website address on the notepaper could not be accessed. It would only have taken a matter of minutes on a computer to check if the new address had been registered.

What is the just outcome bearing in mind all the relevant circumstances?

135. The court must specifically bear in mind the need for litigation to be conducted efficiently and at proportionate cost, and the need to enforce compliance with rules, practice directions and court orders. There is a general expectation that claims for judicial review will be disposed of expeditiously. The catalogue of repeated non-compliance with the rules, and with the first order for directions, and the abortive hearing in September 2019, led to a further 3 months' delay in the hearing of the substantive claim, and was followed by very serious and inexcusable non-compliance with an order which itself granted relief from sanctions. All these factors point against the grant of relief.

136. Even at the hearing in December 2018, the Court did not have all the information that it should have done to enable it to deal with the necessary further application for relief from sanctions or an extension of time for compliance, which had not even been issued (though a very late attempt had been made to issue an application notice for permission to sign the statement of truth, albeit without paying a fee) and the firm of solicitors who were acting for the Claimants were still not formally on the record. The delay in applying for relief from sanctions or for permission to cure the deficiency in the claim form until the very last moment also weighs heavily against the granting of such relief.

137. As against that, the failure to meet the 21-day deadline imposed by HH Judge Wall QC caused no *additional* prejudice to the Defendant in terms of preparation for that hearing. Mr Malik very fairly conceded that the SSHD would not have opposed a properly formulated application to sign the statement of truth on the Claim Form, as he had no wish for the case to be dismissed on a technicality. Mr Jafar submitted that if the Court was minded to grant relief, the Court should direct that Aaron & Ace re-file and serve the notice of change of solicitors, and allow Mr Ali to sign the Statement of Truth. This would enable the Court to deal with the claim on its merits, which he contended were strong.

The merits of the claim for judicial review

138. The fact that refusal of relief from sanctions may deprive a litigant of a case with a reasonable (or even good) prospect of success may not be enough to outweigh the effect of serious and repeated breaches of rules and court orders. Mr Malik submitted that the potentially serious consequences for the Claimants, in terms of their status,

had led HH Judge Wall QC to give them a final chance to put their case in order, but cannot be used to justify persistent non-compliance.

139. In *R(Hysaj) v Secretary of State for the Home Department* [2014] EWCA Civ 1633 the Court of Appeal said at [46] that only in those cases where the Court can see without much investigation that the grounds are very strong or very weak will the merits have a significant part to play when it comes to balancing the various factors that have to be considered at stage 3 of the test in *Denton v White*.

140. However, *Hysaj* was dealing with the normal situation in which the striking-out application or the application for relief from sanctions occurs well in advance of the substantive hearing. The hearing in December 2018 had been listed for determination of the substantive claim for judicial review, and the application for relief from sanctions arose in the most unusual context where the statement of truth on the claim form remained unsigned and the acting solicitors were still not technically on the record as at that date. Hearing argument on the merits of the underlying claim was never going to significantly extend the time spent in court on 11 December. I therefore decided to hear those arguments *de bene esse*.

141. Section 4C of the 1981 Act is designed to confer an entitlement to registration as a British citizen on persons born between 7 February 1961 and 1 January 1983 who, but for the inability (at that time) of women to pass on their citizenship, would have acquired British citizenship automatically when the 1981 Act came into force on 1 January 1983. It provides that a person is entitled to registration as a British citizen if he or she meets all four of the requirements in that section. The third of those conditions, the only one that is contentious in this case, is that:

"*immediately before 1 January 1983 the applicant would have had the right of abode in the UK by virtue of section 2 of the Immigration Act 1971 had he become a Citizen of the United Kingdom and Colonies ("CUKC") as described in subsection (3) above".*

Subsection (3) is complex, but it operates on the hypothesis that the applicant's mother would have been able to pass on the status of CUKC to her child during the relevant period, had she been a man.

142. It is common ground between the parties that the right of abode under s.2 of the Immigration Act 1971 was only held by those who were

a) CUKC by birth, adoption, naturalisation or registration in the UK,

b) CUKC whose parent or grandparent was born, adopted, naturalised or registered in the UK,

c) CUKC who had been ordinarily resident in the UK for a period of 5 years before 1 January 1983 and become settled at the end of that period,

d) Commonwealth Citizens who had a parent born in the UK, or

e) Female Commonwwealth Citizens who had been married to a man with the right of abode.

The Claimants claim that they fall under category (b).

143. Mr Jafar submitted that the Claimants' Grandfather, Mr Bhagwan Dass Ram, who was born in 1914, was a driver with the East African Railways Corporation in Tanganyika, then a British Protectorate, from 13 July 1942 until he retired on 8 February 1964. He was deemed to be in Crown Service because his employment was pre-independence. There is a letter from DFID attesting to his employment in the Crown Service.

144. Section 6 (1)(b) of the British Nationality Act 1948 provides that a citizen of any country mentioned in section 1(3) of that Act (which includes India) "*shall be entitled on making application to the Secretary of State in the prescribed manner, to be registered as a CUKC if he satisfies the Secretary of State… that he is in Crown service under His Majesty's Government in the United Kingdom*." The words "*Crown service …in the United Kingdom*" in this context are given an expanded definition in the interpretation section of the Act:

"*Crown service under his Majesty's Government in the United Kingdom means the service of the Crown under His Majesty's Government… under the government of any … protectorate … whether such service is in any part of His Majesty's dominions or elsewhere."*

145. Mr Jafar referred to section 8(1) and (2) of the 1948 Act which enabled the functions of the Secretary of State under s.6 to be exercised by the Governor of any colony or protectorate, or by the High Commissioner in those countries named in section 1(3).

146. Mr Jafar contended that Mr Ram must have been registered as a CUKC under s.6(1)(b) of the British Nationality Act 1948. In support of this he referred to Mr Ram's passport, issued in Dar-es-Salaam, which has a stamp on it which states he is a "*British subject: citizen of the United Kingdom and Colonies"*. The certificate of registration of Mr Ram as a CUKC has not been produced because it is said to have been destroyed by the National Archive. One of the consequences of this, is that the date of any such registration is unknown. The earliest copy of Mr Ram's passport shows that it expired on 17 December 1957, but there is no legible date of issue (the statement of facts and grounds served in support of the claim for judicial review suggests it was 18 December 1952). The passport appears to have been renewed on 18 December 1957 and was valid until 17 December 1962. It was renewed again in January 1962 and September 1967. There is therefore no clear evidence that Mr Ram was registered as a CUKC at the time of his daughter Sudha's birth in 1953. Mrs Jetly is named as one of the children of the marriage on her mother's passport, but that takes matters no further.

147. Mr Jafar submitted that because the passport was issued whilst Mr Ram was in Crown Service he must have been registered under s.6(1)(b) of the 1948 Act, otherwise he would have become a citizen of India. Therefore, he contended, Mr Ram acquired the right of abode under s.2(1)(a) of the 1971 Act. Although that section refers to someone being a CUKC by "*registration <u>in the United Kingdom</u>*", section 2(4) provides that "*in subsection (1) above any reference to registration in the United*

Kingdom shall extend also to registration under arrangements made by virtue of s.8(2) of the British Nationality Act 1948 (registration in an independent Commonwealth country by United Kingdom High Commissioner)."

148. There is no evidence as to where Mr Ram's registration as a CUKC was effected, but it is most likely that it happened in Tanganyika, where his passport was issued, and where he was working since 1942, than in India. Section 2(4) of the 1971 Act does not refer to registration in a Crown protectorate pursuant to s.8(1) of the 1948 Act. Mr Jafar submitted that there was no need for Parliament to create an express extension for someone registered in a protectorate, because registration by the Governor was deemed to be an act of the Secretary of State and therefore treated as taking place within the UK. Otherwise, he contended, there would be an unjustifiable discrepancy between those registered as CUKC in an independent Commonwealth country, and those registered in a Crown dependency.

149. Whilst I see the attractiveness of that argument, it involves reading words into the 1971 Act that are not there, and may have been deliberately omitted. Moreover, it appears to conflict with the restrictive interpretation placed on section 2(1)(b) by the Court of Appeal in *Secretary of State for the Home Department v Ize-Iyamu* [2016] EWCA Civ 118, discussed below. The argument is not incontravertible. Fortunately, I do not need to decide that point for the purposes of this case.

150. Mr Malik pointed out that there was no copy of Mr Ram's registration certificate and no evidence of how he acquired his passport, and therefore the evidence relied on by the Claimants was weak. However, he was content to proceed on the assumption that Mr Ram *may* have acquired a right of abode under s.2(1)(a) of the 1971 Act. Even if that were correct, Mr Malik submitted it would not avail the Claimants. He submitted that not every CUKC with a right of abode could confer similar status on a grandchild born to a son or daughter who was born outside the UK. Indeed if s.2(1)(b) of the 1971 Act were so interpreted it would have the very opposite of the limiting effect that Parliament intended and "half the Commonwealth would qualify".

151. Mrs Jetly was born in Dar Es Salaam and therefore did not acquire CUKC status by virtue of her birth. She was not registered as a British Citizen (under s.4B of the 1981 Act) until 1 November 2004. It is suggested that the endorsement on her first passport issued in New Delhi on 10 September 1974 which indicated that she was subject to immigration control was a mistake, and that she was a CUKC at all material times. Assuming that Mr Ram was registered as a CUKC by the time of her birth in 1953, she would have become a CUKC by descent under section 5(1) of the 1948 Act. Indeed, that much appears to be common ground.

152. Mr Malik contended that the short answer to the Claimants' claim was that because Mrs Jetly was born outside the UK, if she acquired British citizenship by descent from her father, she could not pass it on to them. Matters would have been different if she had been born within the UK. A person born outside the UK who is a CUKC *by descent* has no right of abode under s.2(1)(a) of the Immigration Act 1971 because they do not have citizenship by "*birth adoption naturalisation or registration in the UK or any of the Islands.*"

153. Nor was Mrs Jetly born to a parent who at the time of that birth "*so had it*". Mr Jafar submitted that "so had it" simply meant citizenship of the UK and Colonies. Mr Malik

contended that the words "*so had it*" meant that the grandparent must have acquired citizenship in the UK and not elsewhere. In support of that proposition he relied on *Secretary of State for the Home Department* v *Ize-Iyamu* [2016] EWCA Civ 118. That is a binding decision of the Court of Appeal in which the argument adopted by Mr Jafar (which happened to be advanced by Mr Malik in that case) was rejected. At [6], Moore-Bick LJ (who gave the leading judgment with which Underhill LJ and Beatson LJ agreed) referred to the "broad scheme" of the 1971 Act as being that the right of abode was restricted to those citizens of the UK and Colonies who had acquired that status in the UK or one of whose parents or grandparents had himself acquired that status in the UK.

154. The claimant in *Ize-Iyamu* was seeking to argue that he could acquire British citizenship through his mother (who was born in St Kitts and Nevis) by registration in the UK under section 4C of the British Nationality Act 1981. Having set out the provisions of s.2(1)(b) (i) and (ii) of the Immigration Act 19871, Lord Justice Moore-Bick said this at [17] and [18]:

In order for the respondent to have acquired the right of abode under that section, therefore, it would be necessary for his mother at the date of his birth to have acquired the status of a citizen of the United Kingdom and Colonies in the United Kingdom by birth, adoption, naturalisation or registration (none of which was the case) or to have been born to or legally adopted by a parent who at the time of her birth or adoption "so had it"….

The whole thrust of section 2 as originally enacted was to limit the right of abode to those who had a direct or indirect link to this country through the acquisition here of the status of a citizen of the United Kingdom and Colonies. It would be very strange if a child could inherit the right of abode from a grandparent who had acquired citizenship of the United Kingdom and Colonies abroad, but from a parent only if he or she had acquired it in this country. In my view the context in which the expression is found makes it quite clear that it is meant to refer to a grandparent who had acquired citizenship "in the same way", i.e. in this country and not elsewhere. The case of R(Bhawan) v Secretary of State for the Home Department [2009] EWHC 469 (Admin) to which our attention was drawn and in which the expression was interpreted as having that meaning was in my view, correctly decided."

[emphasis added]

155. In the present case, whatever the effect of registration by the Governor of Tanganyka may have had on Mr Ram's personal position under the 1971 Act, he did not acquire his citizenship in the United Kingdom. The Scottish case of *Romein v AG for Scotland* [2016] CSIH 24 on which Mr Jafar sought to rely is distinguishable, because in that case the applicant's grandfather was born in the UK.

156. To the extent the merits are relevant, therefore, it seems that there is no answer, or certainly no obvious answer, to the *Ize-Iyamu* point.

CONCLUSION

157. If ever there were a case in which the Court should refuse to exercise its discretion in favour of giving the Claimants any further indulgence, this is it. I understand why

HH Judge Wall QC granted them a further 21 days to cure the deficiencies in the statement of case and the failure to prepare proper hearing bundles. That was a fair and proportionate response, bearing in mind the potential seriousness of the consequences for the Claimants if their claim was struck out or if the deficiency was not cured, and the possibility (at that stage) that the first set of solicitors may have been to blame. However, he made it clear that he was only going to give them a short time to put their affairs in order. Their current legal representatives can have been under no illusions that this was a last chance if they wanted to be able to pursue the claim.

158. Nothing was done to attempt to cure those deficiencies within the 21 days allowed or to seek more time. Nor was there compliance with the directions about filing a proper hearing bundle and authorities bundle. The solicitors' response to the judge's concerns about the 31 August letter was also produced well out of time and without seeking a formal extension of time, but that is of less importance; its real relevance is the light that it sheds on the solicitors' general attitude and behaviour. By the time of the hearing before me, there was still no issued application to sign the statement of truth and no application for relief from sanctions. No attempt had been made to cure the defaults until a week before the hearing. The belated application that Mr Jetly had tried to issue involved asking for fee remission (without any proper basis) and was still confusing as to who would actually sign the statement of truth. It was a case of doing too little, too late. There has been no valid excuse for this catalogue of errors.

159. I shall direct that Archbold should come off the record with effect from 16 March 2018, that being the date on which Mr Jetly has told the Court he withdrew his instructions from them. Aaron & Ace are still not formally on the record, but I shall direct that they be treated as coming onto the record on 17 April 2018 and dispense with the requirement to service notice of change of solicitors on Archbold and the GLD, since they both know that Aaron & Ace are now acting. Having failed to show cause why they should not pay the wasted costs of the abortive hearing on 19 September assessed by HH Judge Wall QC at £1,000, I shall direct that Aaron & Ace shall pay those costs.

160. Despite the fact that Mr Malik was able to argue the merits of the claim at the hearing, taking into account all the relevant facts and circumstances I am not prepared to grant relief from sanctions in respect of such serious and persistent breaches of the rules and court orders. The balancing exercise comes down firmly in favour of refusal of relief. I am not prepared to give permission for Mr Ali or for either of the Claimants' parents to sign the statement of truth on the claim form. These proceedings will be struck out. The Claimants will suffer no undue prejudice from this, since their claim is likely to have failed even if the factual foundations for it had been in evidence before the Court.

161. Finally, in the light of the grave concerns I have about Mr Ali's and Mr Umar's conduct with regard to this litigation, I propose to send a copy of this judgment and the papers to the SRA. I find no basis for making any criticism of Mr Augustine or of Archbold.

162. I also propose to send a copy of the judgment to the DPP to consider whether this is a case which calls for further investigation into the possible conduct of reserved legal activities by a person or persons without the requisite authority.