



**IN THE UPPER TRIBUNAL**

R (on the application of Hoxha and Others) v Secretary of State for the Home Department (representatives: professional duties) [2019] UKUT 124 (IAC)

Field House  
London  
30<sup>th</sup> January 2019

**THE QUEEN  
(ON THE APPLICATION OF)  
ROBERT HOXHA & OTHERS**

Applicants

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**BEFORE**

**MR JUSTICE LANE, PRESIDENT OF THE UPPER TRIBUNAL  
UPPER TRIBUNAL JUDGE LINDSLEY**

*Mr J Gajjar, instructed by Mr Salman Zafar of Zafar Law Chambers*

*(1) OISC organisations are only able to carry out judicial review case management with counsel authorised to conduct litigation if the organisations are both level 3 registered and have special authorisation to do this work.*

*(2) It is a commonplace of working in the difficult area of immigration and asylum judicial review, that practitioners are faced with clients who are distressed at the prospect of being removed from the United Kingdom. This does not absolve such a professional from the need to stand firm and act only as authorised by the statutory scheme.*

*(3) Where a medical expert report is relied upon by a legal representative, the representative has a duty to check the report for accuracy, including ensuring the report accurately reflects the way in which the information in it came to be obtained.*

*(4) Failure to carry out properly professional duties as set out above, inter alia, may result in the Upper Tribunal referring the legal representative / organisation to the relevant regulatory body.*

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**FINDINGS OF THE UPPER TRIBUNAL EXERCISING ITS HAMID  
JURISDICTION**

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***Introduction***

1. The Upper Tribunal has an inherent jurisdiction to govern its own procedure and part of that jurisdiction mandates that we ensure that the lawyers interacting with the Upper Tribunal conduct themselves according to proper professional standards. The Upper Tribunal cannot afford to have its limited resources absorbed by abusive applications by those who repeatedly bring meritless applications. Further, substantial time spent on meritless and abusive applications also risks a loss of public confidence in the processes of the Upper Tribunal, particularly if it involves the unjust enrichment of a small subsection of unscrupulous individuals preying on the vulnerability of applicants who find themselves in difficult immigration situations.
2. We guide ourselves with reference to the decision in R (Hamid) v Secretary of State for the Home Department [2012] EWHC 3070 (Admin), and the subsequent decisions of R (Sathivel) & Ors v Secretary of State for the Home Department [2018] EWHC 913 (Admin) and Vay Sui Ip v Solicitors Regulation Authority [2018] EWHC 957 (Admin). The purpose of the present hearing is to decide whether it would be appropriate to refer Mr Salman Shaheen Zafar, director and owner of Zafar Law Chambers, to the Office of the Immigration Services Commissioner (OISC). What we say about the cases with which Mr Zafar of Zafar Law

Chambers has involvement and our conclusions on his conduct is not binding on the OISC, but we hope may assist their further exploration of this matter, should we conclude that it is appropriate to make a referral.

### ***The Present Proceedings***

3. On 7<sup>th</sup> November 2018 the Upper Tribunal wrote to Mr Zafar of Zafar Law Chambers regarding the issue of his having seemingly acted beyond his OISC registration in 32 judicial reviews, the majority of which had a standard “42 page” set of irrelevant grounds and consequently were refused and certified to be totally without merit. An additional issue was also raised in the letter about the possible involvement of Zafar Law Chambers with a chartered psychologist, Dr Saima Latif, in producing arguably misleading psychological reports which were submitted to the Secretary of State and relied upon in judicial review proceedings.
4. Mr Zafar was required to produce a statement of truth addressing these issues within 14 days. He requested an extension of this time period, and on 13<sup>th</sup> December 2018 submitted lengthy representations with enclosures. On 20<sup>th</sup> December 2018 Mr Zafar was informed by letter that there would be a Hamid hearing on 30<sup>th</sup> January 2019 to examine the issues raised in our letter further, and asking that he obtain the supporting statements from his clients that he said he could produce in his representations of 13<sup>th</sup> December 2018. This was followed up by notice of hearing sent on 9<sup>th</sup> January 2019, and a direction sent on 11<sup>th</sup> January 2019 regarding filing of any further supporting statements or evidence by 23<sup>rd</sup> January 2019.
5. On 24<sup>th</sup> January 2019 Mr Zafar provided a substantial bundle of documents for the hearing which included documents pertaining to Mr Rikinkumar Ashokbhai Patel and Mr Muhammad Adnan Asghar who both appeared as witnesses at the hearing. In addition, prior to the hearing the Upper Tribunal made available two further bundles of communications received by us from Zafar Law Chambers in connection with judicial reviews, many of which were duplicates or related to the

cases to which Mr Zafar's attention had been drawn in the original Upper Tribunal correspondence.

6. Mr Zafar was ably represented by Mr Gajjar at the hearing. It was agreed that there were three issues which needed discussion: firstly, the psychological reports of Dr Latif and any role that Zafar Law Chambers played in placing apparently misleading evidence before the Secretary of State and the Upper Tribunal; secondly, whether Zafar Law Chambers were responsible for the production of the copious standard "42 page" grounds judicial reviews; and thirdly, whether Zafar Law Chambers had acted outside of the scope of their level 3 OISC registration by conducting judicial review work. We examined these issues in turn, with reference to the documentation placed before the Upper Tribunal by Mr Zafar, and with the assistance of evidence from Mr Zafar himself and from the two witnesses, Mr Patel and Mr Asghar, in relation to the second issue, and by way of questions from the bench and submissions from Mr Gajjar on all three matters.

## ***Discussion***

### ***Issue 1 - Psychological reports of Dr Saima Latif***

7. In judicial review JR/4231/18, an application relating to an applicant whom we have anonymised as PSP, there appeared in the bundle of documents a May 2018 psychological report produced by Dr Latif. The application was lodged on 18<sup>th</sup> June 2018. The grounds in this application for judicial review were generic, irrelevant and made no reference to anything personal to PSP, and the application was refused and certified as totally without merit. Zafar Law Chambers do not accept that they were involved with the making of this application, although they do accept that they represented PSP from May 2018, obtained the psychological report from Dr Latif and succeeded in getting PSP released on bail on 27<sup>th</sup> June 2018.
8. From the decision under challenge it was clear that the Secretary of State contended that the psychological report of May 2018 could not have any

weight attached to it as the detention centre records showed that Dr Latif had not gone to the detention centre to interview PSP for the purpose of preparing the report on the day the report contended she had attended, and that instead it appeared that a member of staff of Zafar Law Chambers had obtained the information on which the report was based. There was accordingly concern that Zafar Law Chambers were implicated in the obtaining of this highly problematic expert evidence to obtain the release of the applicant from detention, and in presenting that evidence in a judicial review without providing any further explanation to the Upper Tribunal in the context of the Secretary of State's concerns.

9. The response of Mr Zafar to these contentions can be summarised as follows. He accepts that Zafar Law Chambers instructed Dr Latif in up to 20 detained cases, including that of PSP, where the procedure to produce the reports was that there was an initial face to face client screening which was conducted by a personal visit in detention to the detainee by Mr Sammad S Zafar (who is the brother of Mr Zafar), who was acting as an assistant to Dr Latif at that time and who has no medical or legal training. Mr Sammad S Zafar was at the time not an employee of Zafar Law Chambers, although he later became so. Mr Zafar's understanding is that Mr Sammad S Zafar was never in fact paid by Dr Latif, as he had not billed her for any of his time, up to the point when the probative value of the reports was called into question. At that point Mr Zafar and Mr Sammad S Zafar decided that it would not now be appropriate for the latter to bill Dr Latif.
10. Mr Zafar says the initial face to face client screening in detention by Mr Sammad S Zafar was followed up with a telephone consultation with the detainee by Dr Latif, who then wrote the psychological report. These 20 or so reports had all been obtained prior to 7<sup>th</sup> June 2018, when the issue of their transparency and probative value was raised by the Secretary of State with Zafar Law Chambers. At this point the procedure was abandoned and only reports obtained by a face to face interview with a medical expert were used. Furthermore, Zafar Law Chambers ceased to use Dr Latif, despite having previously instructed her to

provide a total of about 70 reports for clients and having regarded her as a satisfactory expert.

11. The Secretary of State was sufficiently concerned to refer Dr Latif to the Health and Care Professions Council, and in August 2018 Zafar Law Chambers provided information to this regulatory body, who had commenced an inquiry into the issue.
12. Mr Zafar points to his openness about the problem with these reports, and to his cooperation with the Upper Tribunal, the Secretary of State and the Health and Care Professions Council as evidence that Zafar Law Chambers were not attempting to mislead anyone. He contends that it was simply an error by Dr Latif to have produced the reports in this way, and that he and Zafar Law Chambers had been entitled to rely upon her professional judgement as a chartered psychologist that this was a legitimate way of producing reports.
13. He further contends that his brother did nothing more than go to the detention centre to take instructions to provide useful information as a starting point for Dr Latif. He did not accept that Zafar Law Chambers should have checked the reports and made sure that they were clear about the way in which all the information used in the report had been gathered and the date on which the information had been obtained by Dr Latif as he regarded it as Dr Latif's job to ensure this was all correct and an acceptable procedure followed. He points to the fact that in the case of PSP Dr Latif produced a second report, in June 2018, which did follow a face to face interview. This was done for no extra fee due to the difficulties that had arisen, and to the fact that PSP was released from detention seven days later seeming as a result of information contained in this report.
14. Mr Zafar accepts that there have been further enquiries of him from the Health and Care Professions Council, which came by email on 20<sup>th</sup> November 2018, but says he has not had time to deal with these due to issues raised in the Upper Tribunal letter of 7<sup>th</sup> November 2018 with

respect to the “42 page” judicial reviews which he has had to spent considerable time investigating.

15. Mr Gajjar submitted that it can be seen that only very little information was obtained by Mr Sammad S Zafar, as his form for PSP is in the papers, and that most of the information had been obtained by Dr Latif via her telephone interview, thus making clear that the reports were the work of a genuine expert and not the unqualified assistant, Mr Zafar’s brother. Whilst it may have been an error of judgement to have failed to ensure that the full details of how and when the reports of Dr Latif were compiled were accurate, this should be seen as a mistake and not an example of dishonesty on the part of Zafar Law Chambers. Mr Gajjar also submitted that there was no attempt to mislead the Secretary of State about the connection of Mr Sammad S Zafar with Zafar Law Chambers, when it was said by Zafar Law Chambers in an email of June 2018 to the Secretary of State that he was not an employee of the firm, since at that time this was the case. Things then changed and Sammad S Zafar was accurately said to be employed by Zafar Law Chambers in August 2018, when the firm responded to the Health and Care Professions Council’s enquiries. Mr Gajjar said the fact that Mr Sammad S Zafar was a family member made the overlapping roles not unusual.

16. Our conclusions on this issue are as follows. We make no judgement as to whether a credible psychological report can be obtained by an initial screening by an untrained assistant, followed up by a telephone interview with a detainee by a chartered psychologist. That will be an issue for the Health and Care Professions Council to decide. We accept that the screening form evidence for PSP before us strongly suggests that the majority of the information was not obtained by Mr Sammad S Zafar, and was therefore probably obtained by Dr Latif on the telephone.

17. We are clear, however, that it is the role of a legal representative to ensure that any expert report accurately reflects the way in which the information in it came to be obtained. This is not something which can be

simply left to the expert. Reports must be read and checked for accuracy on this point by the representative, and indeed for anything else within the knowledge of that representative. Representatives have professional duties in this respect and are not simply a postal service via which this evidence reaches the Secretary of State. The duties of experts to be clear about their methodology are set out in PP (female headed household; expert duties) Sri Lanka [2017] UKUT 00117 (IAC). We find that the duty on representatives to ensure that this was done was not carried out in the case of PSP by Zafar Law Chambers. The report misleadingly states that the assessment took place on a date and at a place/way which was not accurate.

18. We are also concerned that the second Dr Latif report of June 2018 failed to reflect the totality of her interactions with PSP by this stage as there had apparently been a telephone interview, as well as a face to face one, and this should have been clear from that report.
19. Zafar Law Chambers have, we find, failed in this aspect of their professional duty.
20. We accept that Mr Zafar has been open about the number and details of other cases when psychological evidence has been produced in this questionable way; with the Secretary of State, the Upper Tribunal and the Health and Care Professions Council, and that he would appear generally to have been helpful in the investigation in this issue by all of these bodies, although we do have concerns that he has not replied to correspondence from the Health and Care Professions Council since November 2018. We note that Mr Zafar also acted promptly to stop using the procedure to obtain psychological evidence when the Secretary of State judged it to be of questionable probative value. It is, however, apparent that, but for the matter being raised by the Secretary of State, Mr Zafar would in all likelihood have carried on using Dr Latif.
21. We are concerned that Mr Zafar has not been entirely open about the role of his brother, Mr Sammad S Zafar, and his connection with Zafar Law Chambers. We accept Mr Gajjar's submission that as he is a family

member his actual employment status may not have been clarified in June 2018. However, in those circumstances it was not appropriate on 17<sup>th</sup> June 2018 in correspondence to have written the following so abruptly to the Secretary of State: “the “Initial Client Screening” was undertaken by Mr Sammad S Zafar an assistant to Dr Saima Latif and not an employee of Zafar Law Chambers. This assumption of Mr Sammad S Zafar being an employee of Zafar Law Chambers is unjust, unfair, unreasonable, without evidence and therefore, possibly unlawful.” We accept that by 26<sup>th</sup> August 2018 Mr Sammad S Zafar’s status may have changed and he may have become more clearly an employee of Zafar Law Chambers and no longer an agent of Dr Latif. But this does not explain why Mr Zafar states in an email to the Health and Care Professions Council that: “Mr Sammad Zafar is employed by us to assist and provide support to the registrant [Dr Latif] as and when is required for whatever reason the registrant thinks fit.” (our emphasis) We are aware that Mr Zafar now claims that he misstated the correct position and Mr Sammad S Zafar was not employed by him to assist Dr Latif. However, on consideration of all of the evidence before us we conclude it is likely that Mr Sammad S Zafar was working informally throughout this period for Zafar Law Chambers with one of his duties being to go to detention centres to obtain the initial screening information for Dr Latif in the period whilst the questionable Dr Latif reports were obtained via the initial interview by Mr Sammad S Zafar/ telephone interview by Dr Latif procedure; and that this explains why she was not billed for his time and the response to the Health and Care Professions Council.

22. We conclude that it is appropriate to refer Zafar Law Chambers to the OISC in respect of what we consider to be the firm’s lack of understanding of their proper professional role with respect to the checking of the accuracy of expert evidence with respect to matters in the reports within their knowledge, and what appears to be an attempt to minimise their involvement with the production of expert evidence by a methodology which was not made clear on the face of the reports.

***Issue 2 - The “42 page” generic meritless judicial review grounds***

23. In 2018 we believe in the region of a hundred judicial reviews were lodged with the Upper Tribunal with the same “42 pages” of generic typed grounds. It is hard to be precise about the number as they were all lodged ostensibly in person and so their collation has necessarily been by way of observation by court staff and judges. The grounds consist of a series of submissions on public law topics such as standing, legitimate expectation, unfairness, unreasonableness, and also include general statements of law regarding paragraph 353 of the Immigration Rules and Article 8 ECHR relying only on case law prior to 2014, much of which was then obsolete. The grounds make no reference at any point to the individual claimant or the decision under challenge, and are therefore entirely meritless. The judicial review form, T480, is always filled in in neat black pen with the same handwriting on each application, with N/A written in each box for solicitor’s and counsel’s details. The T485 form is also filled in in the same handwriting and pen, as are fee remission forms (which were completed in most of the sample of 24 such applications put to Mr Zafar for comment). All the forms, including the fee remission forms, appear to have been signed by the same person who completed the form, rather than by the applicants, due to the uniformity of the signatures. The applications for judicial review are all lodged by post by recorded delivery, as are a number of T485 forms.

24. In the randomly selected sample of 24 put to Mr Zafar there were a variety of pointers that led to suspicion that Zafar Law Chambers may have been behind this torrent of time-wasting nonsense. In many of the cases (13) the decision reviewed was sent to Zafar Law Chambers JR/5244/18, JR/5349/18, JR/5387/18, JR/5375/18, JR/5378/18, JR/5350/18, JR/5482/18, JR/5339/18, JR/5460/18, JR/4322/18, JR/5965/18, JR/5846/18, JR/4340/18 ); in three cases the T485 was sent to the Upper Tribunal by email by Zafar Law Chambers JR/5345/18, JR/5339/18, JR/4231/18; in two cases the action was issued with a cheque for the fee to lodge the application from Mr SS Zafar and Mrs H Salman (she appears from Mr Zafar’s company structure diagram to be his PA) JR/5349/18 and JR/5525/18; and in two cases Zafar Law Chambers had commissioned a

psychological report which appeared in the bundle JR/6114/18 and JR/5846/18.

25. Mr Zafar contends, however, that he had nothing to do with lodging these judicial review claims and grounds. Mr Zafar said, in his letter of 13<sup>th</sup> December 2018, the following about these “42 page” judicial review cases:

“I confirm these are our clients. All these clients are detention cases. Mostly from IRC Heathrow or IRC Yarl’s Wood. These clients have contacted us in respect of their immigration matter by way of a referral from family and friends. We stop acting for clients at the Judicial Review stage. Our investigation has revealed, that a person by the name of “Aida” is preparing these clients’ Judicial Review claims. She is NOT from Zafar Law Chambers. She is not known to us. We have never seen her, never met her, never spoken to her. We do not have her details except her mobile number, which we will be able to get should you require it. Please be informed that we are able to get a statement from each of these clients to confirm that Zafar Law Chambers did not lodge their Judicial Review claims, and it has been lodged by a person named “Aida”. Please advise if you require a statement from these clients.”

26. The Upper Tribunal did indeed request that statements be obtained from Zafar Law Chambers’ clients but the situation had moved on by the time of the Hamid hearing, and no statements from clients were proffered by Mr Zafar.

27. In his appeal statement dated 20<sup>th</sup> January 2019, Mr Zafar made no mention of Aida. Both in that statement and at the Hamid hearing, Mr Zafar contended that the “42 page” judicial reviews were instead lodged by two former detainees and clients of his, Mr Muhammad Adnan Asghar and Mr Rikinkumar Ashokbhai Patel. When he was asked at the hearing why he had first suggested that Aida was responsible for these judicial reviews, he said that he had suspected that it was her as he had heard from clients that there was such a person who went into detention centres and claimed to be from Zafar Law Chambers but when he investigated the matter further this was not the case. He had then been

told by clients that it was these two men, one of whom had the nickname "IT", as he was adept with computers. He had worked out that it was them about two weeks prior to the Hamid hearing and it had then taken time to convince them to attend this hearing. Mr Zafar's evidence was that he had never employed Mr Patel or Mr Asghar in any capacity.

28. Mr Muhammad Adnan Asghar and Mr Rikinkumar Ashokbhai Patel attended the Upper Tribunal. There were no witness statements from either of them but they gave oral evidence supporting the contention that they alone were responsible for the "42 page" judicial reviews. In summary their evidence was as follows.

29. They said that they had both been detained for immigration reasons, and Mr Asghar had been a "welfare buddy" in detention, giving him access to others as a helper and Mr Patel had a friend who had that role. They maintained that Mr Patel had started the process and then passed on the knowledge to Mr Asghar, as Mr Patel had done Mr Asghar's judicial review. (Mr Asghar's judicial review was one of the sample of "42 page" judicial reviews put to Zafar Law Chambers for comment and Mr Patel's application was placed there by Mr Zafar in his bundle.) They said that they had obtained the grounds from the internet or by email and photocopied them for the cases. Mr Patel said that the files were sometimes lodged in person by him.

30. Both witnesses said they were not employed by Zafar Law Chambers but that the firm had represented them. Mr Patel and Mr Asghar did suggest that the applicants could go to Zafar Law Chambers for help, and also to other firms, but they did not help out at Zafar Law Chambers in any way. Mr Asghar said that Zafar Law Chambers had a good name in the detention centres as people are satisfied with them.

31. They said that they did not charge the applicants anything themselves, and simply did it to help others, who were often suicidal in immigration detention. Mr Patel estimated that he had assisted about 50 to 55 applicants both in and out of detention. Mr Asghar said that he had possibly helped hundreds of people in detention lodge judicial reviews.

Mr Asghar said that he had obtained guidance in making his own judicial review from Mr Patel. He said that he had spoken to Mr Patel only once or twice however, and had only met him for the first time at the Upper Tribunal hearing.

32. We find that the identity or identities of the person or persons who lodged these “42 page” judicial reviews is not a matter on which we can come to a conclusion as we do not have the investigative powers or skills to research the issues necessary to inform such a decision. We are in no doubt, however, that the issue merits investigation by the OISC. The relevant files will be available for forensic investigation.

***Issue 3 -Acting beyond the remit of level 3 OISC registration***

33. There are seven judicial reviews identified in our letter of 7<sup>th</sup> November 2018 which do not feature the “42 page” grounds, but with respect to which we were concerned that Zafar Law Chambers acted beyond their OISC registration in having conduct of a judicial review. In JR/4231/18, Zafar Law Chambers lodged the T485; in JR/1027/17 Zafar Law Chambers asked for an update on progress; in JR/7672/17 Zafar Law Chambers went on the record; in JR/9154/17 and JR/818/18 Zafar Law Chambers withdrew a judicial review; in JR/834/18 Zafar Law Chambers requested a copy of refusal on the papers; and in JR/10422/17 Zafar Law Chambers applied for an injunction and request an oral reconsideration of an application.

34. OISC organisations may only do judicial review case management with counsel who is authorised to conduct litigation if the organisations are both level 3 registered and have special authorisation to do this work. Zafar law Chambers are a level 3 registered organisation but do not have authorisation to do judicial review case management. We understand that Mr Zafar applied in September 2018 to be granted such authorisation but he has not, as yet, been granted it.

35. Mr Zafar’s evidence at the hearing was that he did not see the work outlined above as judicial review case management as he had not

drafted the grounds for judicial review in any of the cases. He said that there were exceptional reasons why he had done what he did in all of the cases. For instance, he had asked for the update in JR/1027/17 because the applicant had been with MBM Solicitors previously where Mr Zafar used to work and the applicant had wanted any update and that firm had failed to provide this. In JR/10422/17 the applicant had been panicking as she thought that she might be removed, given that a removal window had been served. In JR/993/18 the applicant had previously been represented by Malik Law Chambers and was without a representative as Malik Law Chambers had been closed down by the Law Society. This applicant therefore wanted Mr Zafar's help. Mr Zafar indicated that sometimes he acted rather impulsively, and this is how he had been drawn in to helping clients in their time of need.

36. It was pointed out that the authority which was signed by a number of these clients, for instance in JR/834/18, was very wide and said that the firm was authorised to act in "matter: immigration", which was very broad and so his clients might well have believed that he acted for them in respect of their judicial reviews. However, Mr Zafar remained adamant that they knew he did not act for them in their judicial reviews, and said that this was reflected in the fact that he did not charge them for this work.
37. Mr Zafar gave an assurance that in the future he would not do anything with respect to judicial review, beyond referring clients to other solicitors if he believed that they might properly make an application, until he was granted judicial review case management powers by the OISC.
38. Mr Gajjar submitted that Mr Zafar was a young man of 30 years of age who had over-enthusiastically got over involved with these few judicial review cases. He had realised that this was not allowed and was not intending to do this again until he was properly authorised by the OISC. He had given evidence that showed he had good judgement in this context, however; for instance, he withdrew JR/834/18 and made another

application which was successful. Mr Zafar had also shown candour in disclosing a previous regulatory matter, even though this was in a totally different context from the one under current investigation.

39. We take due account of the points made by Mr Gajjar, including Mr Zafar's young age and his limited experience. We are, however, concerned that he did not appear to have a proper understanding of the limits of his authorisation and that he appears to have considered he had been acting appropriately in the cases mentioned under this heading. In particular, he cannot reasonably have thought that seeking the consent of the Upper Tribunal to withdraw a judicial review on behalf of a client is not acting in those proceedings, in a most direct and material way.

40. Also, having had due regard to Mr Zafar's age and experience, we are concerned that he appears to have been persuaded to act outside his remit by the entreaties of clients. It is a commonplace of working in this difficult area that practitioners are faced with clients who are distressed at the prospect of being removed from the United Kingdom. This does not absolve such a professional from the need to stand firm and act only as authorised by the statutory scheme.

41. We therefore consider it necessary to refer Mr Zafar to the OISC on the issue of acting outside the limits of his authorisation.

### ***Conclusion***

42. We refer Mr Zafar of Zafar Law Chambers to the OISC in respect of issues 1 and 3 above.

Signed: Fiona Lindsley

Upper Tribunal Judge Lindsley

Dated: 4<sup>th</sup> March 2019

