



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

Case Number: AC-2022-LON-002505
AC-2024-LON-002581

Neutral Citation Number: [2024] EWHC 3294 (Admin)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 18 December 2024

Before :

PRESIDENT OF THE KING'S BENCH DIVISION
MR JUSTICE LINDEN

**IN THE MATTER OF REFERRALS UNDER THE *HAMID* JURISDICTION MADE BY
ORDERS OF HOLGATE J (as he then was) ON 22 JULY 2024 AND SWIFT J ON 1
AUGUST 2024**

BETWEEN:

MICHAEL TURNER

Appellant

V

HIGH COURT OF DUBLIN, IRELAND

Respondent

AND BETWEEN:-

RP

Claimant

v

NATIONAL CRIME AGENCY

Defendant

Anthony Metzger KC (instructed by Clyde & Co) for Ms Priory
Tom Doble (instructed by Mr Arora) for Mr Arora
Mr Lixandru appeared in person
Hearing date: 6 December 2024

JUDGMENT

Dame Victoria Sharp P:

Introduction

1. This is the judgment of the Court.
2. There are before us two referrals under the *Hamid* jurisdiction, which were made by Orders of Linden J dated 31 October and 1 November 2024.
 - i) The first arises out of an extradition appeal from the Westminster Magistrates' Court which included an application to admit, as fresh evidence, a psychiatric report by a consultant psychiatrist, Dr Arvind Gupta. Holgate J (as he then was) refused the application, dismissed the appeal (see [2024] EWHC 1526 (Admin)) and referred the matter to the *Hamid* judge on 22 July 2024. He considered that the court (and particularly Thornton J in granting permission to appeal) had been misled, in the EX 244 application to admit fresh evidence and in counsel's skeleton argument for the appeal, by the explanation given for why the psychiatric report was not available at first instance. Moreover, he considered that it was not properly arguable, in the light of the full facts, that the report could not with reasonable diligence have been put before the Magistrates' Court as counsel and her instructing solicitor had maintained for the purposes of the application.
 - ii) The second referral concerns a claim for judicial review in an extradition case after permission to appeal had been refused by the High Court. The claim for judicial review, which was drafted by the barrister who acted in the appeal, relied on the same grounds as had previously been rejected as not being reasonably arguable. The referring judge (Swift J) considered that this was an abuse of process which was designed to delay the claimant's extradition, that the fact of the appeal had not been sufficiently disclosed and that the claim for judicial review was totally without merit. A further issue was that it appeared that the barrister was conducting litigation on a direct access basis without authorisation to do so.

Relevant law and guidance: the Hamid jurisdiction

3. The *Hamid* jurisdiction is a facet of the court's power to regulate its own procedures and to enforce the overriding duties owed to it by legal professionals: see *R (Hamid) v Secretary of State for the Home Department* [2012] EWHC 3070 (Admin), [2013] CP Rep 6 and *R (DVP & Others) v Secretary of State for the Home Department* [2021] EWHC 606 (Admin), [2021] 4 WLR 75 at [2]. It extends to all cases, not just immigration or public law cases: see e.g. *Gubarev v Orbis Business Intelligence Ltd* [2020] EWHC 2167 (QB), [2020] 4 WLR 122 and *R (Wingfield) v Canterbury City Council* [2020] EWCA Civ 1588, [2021] 1 WLR 2863 at [11].
4. Under the *Hamid* jurisdiction, a legal representative may be asked to show cause why their conduct should not be considered for referral to the relevant regulatory body, or why the representative should not be admonished: see *R (Sathivel) v Secretary of State for the Home Department* [2018] EWHC 913 (Admin), [2018] 4 WLR 89. The court may also, or alternatively, consider making a wasted costs order against the legal representative(s).

Applications to adduce fresh evidence in extradition appeals

5. Section 27 of the Extradition Act 2003 provides that on an appeal against an extradition order pursuant to section 26, the appeal may be allowed if the conditions in sections 27(3) or (4) are satisfied. Under section 27(4) the conditions, so far as relevant, are that evidence is “*available that was not available at the extradition hearing*” (27(4)(a)); that the evidence would have resulted in the district judge deciding a question before them at the extradition hearing differently (27(4)(b)); and that if the district judge had decided the question in that way, they would have been required to order the discharge of the appellant (27(4)(c)).
6. Appeals which include an application to rely on fresh evidence are common. *Szombathely City Court, Hungary v Fenyvesi* [2009] EWHC 231 (Admin); [2009] 4 All ER 324, in which the Divisional Court confirmed the principles which are applicable to such applications, is also well known. But, like many well-known authorities, it may be that practitioners do not go back to the text of the judgment, and the detail of what was said by Sir Anthony May P is sometimes overlooked. So are the requirements of Rule 50.20 of the Criminal Procedure Rules.
7. In *Fenyvesi* the Divisional Court considered the interpretation of section 29(4) of the 2003 Act which set out the equivalent conditions to section 27(4) in the context of an application by a judicial authority to rely on fresh evidence in support of an appeal against an order for the discharge of the requested person. The Divisional Court held that these provisions should not be construed liberally given the aims of the 2003 Act and Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between member states. These aims include removing complexity and the potential for delay inherent in extradition proceedings, and ensuring that extradition requests are dealt with speedily and are not held up by attempts to introduce equivocal fresh evidence which was available to a diligent party at the extradition hearing: see *Fenyvesi* [29] and [32].
8. At [32], May P said this in relation to the interpretation of the equivalent of the section 27(4)(a) condition:

“evidence which was “not available at the extradition hearing” means evidence which either did not exist at the time of the extradition hearing, or which was not at the disposal of the party wishing to adduce it and which he could not with reasonable diligence have obtained. If it was at the party's disposal or could have been so obtained, it was available. It may on occasions be material to consider whether or when the party knew the case he had to meet. But a party taken by surprise is able to ask for an adjournment.” (emphasis added)
9. He went on to say:

“A party seeking to persuade the court that proposed evidence was not available should normally serve a witness statement explaining why it was not available.” (emphasis added)
10. As to the other statutory conditions, May P said this at [32]:

“In addition, the court needs to decide that, if the evidence had been adduced, the result would have been different resulting in the person's discharge. This is a strict test....”

11. At [34] he added that:

“there may occasionally be cases where what might otherwise be a breach of the European Convention in Human Rights may be avoided by admitting fresh evidence, tendered on behalf of a defendant, which a strict application of the section would not permit.”

12. However, at [35] he said:

“Even for defendants, the court will not readily admit fresh evidence which they should have adduced before the district judge and which is tendered to try to repair holes which should have been plugged before the district judge, simply because it has a Human Rights label attached to it. The threshold remains high. The court must still be satisfied that the evidence would have resulted in the judge deciding the relevant question differently, so that he would not have ordered the defendant's discharge. In short, the fresh evidence must be decisive.”

13. Rule 50.20(6)(b) of the Criminal Procedure Rules also provides that:

“(b) if the grounds of appeal are that ..evidence is available which was not available at the extradition hearing, the appeal notice must—

(i) identify that..evidence,

(ii) explain why it was not then..available,

(iii) explain why that..evidence would have resulted in the Magistrates' court deciding a question differently at the extradition hearing, and

(iv) explain why, if the court had decided that question differently, the court would have been required not to make the order it made.” (emphasis added)

14. See, also, Rule 50.20(7)(b) in relation to appeals against orders by the Secretary of State.

15. Quite apart from the professional duties of those representing an appellant, then, the case law and the relevant procedural rules require an explanation of “why..the evidence was not available” at the hearing before the district judge. Late evidence may give rise to considerable practical difficulties in the appeal process. By definition, it has not been tested by cross-examination in the Magistrates' court and the respondent was not given an opportunity to adduce responsive evidence, and yet the appeal court is typically being asked to make findings of fact on the basis of the late evidence and to say that in the light of these findings, taken with the findings made in the Magistrates' court, the decision of the district judge was wrong. The relevant requirements are there so that the appellate court can make a properly informed and fair judgment as to whether it is consistent with the aims of the legislation that the additional evidence should be admitted. It is therefore very important that they are complied with fully and that the professional obligations of legal representatives are discharged with these aims firmly

in mind. Failure to provide a sufficiently detailed explanation should normally result in the application being refused.

The duty of candour in judicial review proceedings

16. The duty of candour in judicial review proceedings is well explained in Chapter 15 the Administrative Court Guide 2024 and section 15.2 deals specifically with the duty as it applies to claimants and their representatives. It is sufficient for present purposes to quote [15.2.1] and [15.2.2]:

“15.2.1 A claimant is under a duty to make full disclosure to the Court of material facts and known impediments to the claim (e.g. alternative remedy, delay, adverse case law, statutory ouster, change of circumstances). This duty is a continuing one: it applies throughout the judicial review procedure.

15.2.2 The fact that a defendant has a right to file an Acknowledgment of Service and summary grounds of defence does not justify a claimant in taking a more relaxed view of the duty of candour.”

17. Section 15.2 goes on to stress the importance of full compliance with the duty of candour in the context of urgent applications ([15.2.3]). [15.2.4] also highlights the duty of cooperation with the court which requires claimants and their representatives to assess and reassess “the viability and propriety of a challenge, and review the claimant’s continued compliance with the duty of candour”.

Relevant professional duties of barristers

18. It should not be necessary to rehearse the professional duties of barristers in the circumstances of the two referrals before us. These are set out in the Bar Standards Board Handbook (“the Handbook”) and we do not set them all out. However, we highlight the following which are particularly relevant.
19. The first is Core Duty 1 (“CD1”): “You must observe your duty to the court in the administration of justice”. As is well known, where there is any conflict between the duty to the court and another core duty the former overrides the latter: see the Guidance to the Core Duties at gC1 of the Handbook. The duty, under CD2, to act in the best interests of each client is therefore subject to the duty to the court: see Rule C4.
20. The outcomes which CD1 is designed to achieve include that the court “is able to rely on information provided to it by those conducting litigation and by advocates who appear before it”: see Outcomes at oC1 of the Handbook. Accordingly, under Rule C3 the specific obligations which apply to a barrister include a duty not knowingly or recklessly to mislead or attempt to mislead the court; and to take reasonable steps to ensure the court has “all relevant decisions and legislative provisions” before it.
21. Rule C6 provides further detail in relation to the duty not to mislead the court and the Guidance to Rules C3-C6 at gC4 provides that:

“1 knowingly misleading the *court* includes being complicit in another person misleading the court;

2 knowingly misleading the *court* also includes inadvertently misleading the court if you later realise that you have misled the *court*, and you fail to correct the position;

3 recklessly means being indifferent to the truth, or not caring whether something is true or false; and

4 the duty continues to apply for the duration of the case.”

22. The duty not to mislead the court does not require a barrister to act in breach of their duty to keep the affairs of each client confidential: Rule C5. However, that does not mean that counsel are permitted to withhold privileged or confidential information where the effect of doing so would be to risk the court being misled. In those circumstances, there is a conflict between CD1, the duty to the court, and CD6, the duty of confidentiality, and the former prevails. As is clearly stated in the Guidance at gC11 of the Handbook:

“If there is a risk that the court will be misled unless you disclose confidential information which you have learned in the course of your instructions, you should ask the client for permission to disclose it to the court. If your client refuses to allow you to make the disclosure you must cease to act, and return your instructions...”.

23. Secondly, we highlight Core Duty 3: “You must act with honesty, and with integrity.” Rule C9 provides:

“Your duty to act with honesty and with integrity under CD3 includes the following requirements:

“...2 you must not draft any statement of case, witness statement, affidavit or other document containing:.....

..b any contention which you do not consider to be properly arguable...”

24. Thirdly, we also note that Rule C3.4 requires those who are acting as an advocate or are otherwise involved in the conduct of litigation in whatever role “to take reasonable steps to avoid wasting the court’s time”. Such a duty is also implicit in Rule 1.3 of the Civil Procedure Rules which requires the parties to assist the court to further the overriding objective, and 1.2 of the Criminal Procedure Rules which requires participants in a criminal case to prepare and conduct the case in accordance with the overriding objective.

25. Fourthly, we note Core Duties CD2 and CD7: the duty to act in the best interests of the client and the duty to provide a competent standard of work. Rule C21 provides so far as material as follows:

“You must not accept instructions to act in a particular matter if:...

.6 your instructions require you to act other than in accordance with law or with the provisions of this Handbook; or

.7 you are not authorised and/or otherwise accredited to perform the work required by the relevant instruction; or

.8 you are not competent to handle the particular matter or otherwise do not have enough experience to handle the matter...”

26. At gC70 of the Guidance in the Handbook the examples of where a barrister may be required to refuse to accept instructions include: “where the instructions relate to the provision of litigation services and you have not been authorised to conduct litigation...”. The conduct of litigation is also a reserved legal activity for the purposes of the Legal Services Act 2007, section 14 of which provides that it is an offence to do so without authorisation.

Relevant professional obligations of solicitors

27. The Solicitors Regulation Authority (“SRA”) Code of Conduct includes the following requirements:

“1.4 You do not mislead or attempt to mislead ...the court or others, either by your own acts or omissions or allowing or being complicit in the acts or omissions of others....

2.4 You only make assertions or put forward statements, representations or submissions to the court or others which are properly arguable....

2.6 You do not waste the court’s time.

2.7 You draw the court’s attention to relevant cases and statutory provisions, or procedural irregularities of which you are aware, and which are likely to have a material effect on the outcome of the proceedings.”

28. The SRA Principles “comprise the fundamental tenets of ethical behaviour” which the SRA “expect all those that we regulate to uphold”. Principle 1 is to act “in a way that upholds the constitutional principle of the rule of law and the proper administration of justice.”. Principle 4 is to act “with honesty” and Principle 5 is to act “with integrity”.

29. The SRA Guidance on conduct in disputes provides:

“Should the Principles come into conflict, those which safeguard the wider public interest take precedence over an individual client's interests. These include the rule of law and public confidence in a trustworthy solicitors' profession and a safe and effective market for regulated legal services.

You should, where relevant, inform your client of the circumstances in which your duty to the court and other professional obligations will outweigh your duty to them. For example, you must not allow a client to knowingly mislead the court in order to further their case.”

30. The Guidance also states that:

“Solicitors who are complicit with their client in misleading the court, or who do so themselves, risk serious consequences. The courts have made it very clear that

they regard this as 'one of the most serious offences that an advocate or litigator can commit'. Examples include... making false or misleading statements...”

Turner v Ireland

Preliminary point

31. On behalf of Mr Arora, Mr Doble took the point that some of Mr Arora’s evidence as to his dealings with Mr Turner was subject to legal professional privilege (“LPP”) and he invited us to anonymise Mr Turner. He relied on *Financial Reporting Council Ltd v Sports Direct International Plc* [2020] EWCA Civ 177; [2021] Ch 457 where the Court of Appeal confirmed that the only exceptions to LPP are where the communication between client and adviser was for a criminal purpose, and where the privilege has been overridden by statute. He also pointed out that in an analogous situation the court in *Solicitors Regulation Authority v Williams* [2023] EWHC 2151 (Admin) at [68] held that the names of the clients of a solicitor who was subject to disciplinary proceedings before the SRA should be anonymised.
32. This point was taken shortly before the hearing before us and we did not have the benefit of submissions which tested Mr Doble’s argument. At this stage, Ms Priory and Mr Arora had provided information about their dealings with Mr Turner in their application to rely on Dr Gupta’s report in the extradition appeal, in answer to Holgate J’s questions at the appeal hearing and in subsequent submissions to him in relation to the question of costs. This information had then been referred to in his judgment which was promulgated in the usual way without objection from the parties. In the course of the *Hamid* investigation Mr Arora, in particular, had then provided further information about his dealings with Mr Turner’s case without raising the issue of LPP.
33. Given that the judgment of Holgate J is in the public domain there would be little practical utility to anonymising Mr Turner at this stage or, if we did, it would be necessary to provide little or no detail in our judgment so as to prevent jigsaw identification. We therefore concluded that we would not make an anonymity order in this case. The proportionate course was to refrain from disclosing, in our judgment, communications between lawyer and client which were not already in the public domain and could properly be regarded as still confidential and subject to LPP.

The facts giving rise to the Hamid referral

34. It is necessary briefly to summarise the extradition proceedings before the Westminster Magistrates’ Court in order to understand the context in which the application to admit fresh evidence was made.
35. Mr Turner was arrested in connection with the extradition proceedings on 1 March 2023 and remanded in custody. He instructed Mr Arora, a consultant solicitor who works on a self-employed basis for Saunders Solicitors Limited, and a legal aid certificate was granted on 25 April 2023.
36. At a case management hearing on 19 May 2023, Mr Arora indicated that a psychiatric report may be required to deal with mental health issues in relation to Mr Turner. More time was also needed to prepare for the extradition hearing in any event. The extradition hearing, which had been listed for 26 June, was therefore relisted for 24 August 2023.

37. There were then call over hearings on 16 June 2023, when Mr Turner was represented by Georgia Beatty of counsel, and on 14 July when he was represented by Mr Arora. However, legal aid funding for the psychiatric report was not applied for until 17 July 2023. Mr Arora says that this is because it was only at the hearing on 14 July, after he had spoken to Ms Beatty, that it was clear that the seriousness of Mr Turner’s mental health issues was such that a report would be required.
38. There were difficulties in identifying a psychiatrist who had capacity to provide a report but, on 5 August 2023, Dr Gupta was instructed. However, Mr Arora was told that Dr Gupta was unable to see Mr Turner until 4 September 2023 i.e. after the extradition hearing.
39. The next call over hearing before the magistrates’ court was on 11 August 2023, at which Mr Turner was represented by Ms Beatty. We have no reason to think that she did not give him appropriate advice as to his options and we note that, notwithstanding this, no application to postpone the extradition hearing was made.
40. On 23 August, Mr Arora was informed that Ms Beatty would be unavailable for the extradition hearing scheduled for the following day, and Ms Priory was briefed. Ms Priory’s instructions were that Mr Turner did not wish to apply for an adjournment.
41. On the morning of the 24 August hearing, Ms Priory discussed the question of a postponement with Mr Turner whose instructions remained that she was not to apply for one. When her opponent asked her about the position in relation to the possible psychiatric report which had been mentioned at the 19 May hearing, Ms Priory informed him that her instructions were to “crack on” without the psychiatric report and that she was not relying on any ground based on mental health issues. The hearing then went ahead and the extradition of Mr Turner was ordered by District Judge Griffiths.
42. Holding grounds of appeal were lodged on 29 August 2023. These challenged the extradition order on the grounds that it was contrary to Articles 2, 3 and/or 8 of the European Convention on Human Rights (“ECHR”) i.e. the arguments which had been run before the District Judge.
43. Dr Gupta’s report was then produced on 11 September 2023 after the interview with Mr Turner on the 4th. This said, amongst other things, that Mr Turner was an extremely vulnerable person. Dr Gupta’s view was that if Mr Turner were to be extradited there was a high likelihood that his mental health would deteriorate significantly and that in this event there was a high likelihood of both planned and impulsive suicide as he would not have any of the protective factors which were available to him in this country.
44. Perfected Grounds of Appeal, dated 13 September 2023 and drafted by Ms Priory, were then lodged. These now challenged Mr Turner’s extradition on the grounds that it was contrary to Article 8, and contrary to section 25 of the Extradition Act 2003 in that the risk of him committing suicide was such that it would be unjust or oppressive to order his extradition. The Grounds of Appeal indicated that the section 25 point was new and that an application to adduce Dr Gupta’s report as fresh evidence would be made shortly.
45. On 18 September 2023 Ms Priory emailed Mr Arora, saying that she was drafting the application to adduce fresh evidence and requesting “a brief chronology of efforts to

obtain the report so that we can persuade them that there is no way this was going to be available at first instance!". On 2 October 2023 Mr Arora then sent her a "breakdown of key dates" which was as follows:

"MT was originally unrepresented, legal aid was granted to us at some point late May.

POE and SOI were served 16-6-23. I was sent an advice to instruct a psychiatrist by Georgia Beatty on the 17th July.

Prior authority was then granted and I struggled to get a Dr to take the matter on until i found Dr Gupta who was instructed on the 5th of August. He saw MT on the 4th of September and the report was sent to us on the 11th of September. Due to capacity reasons and lack of suitable dates at HMP Wandsworth Dr Gupta could not see MT any earlier. MT was asked by MT if he wanted to seek an adjournment of the FH till after he had seen DR Gupta but he stated he wanted to press on." (emphasis added)

46. In early October 2023, Mr Arora submitted a form EX 244 (an application notice pursuant to the 2003 Act) seeking an order "to allow for the appellant to rely upon fresh evidence namely the Psychiatric report of Dr Gupta dated 11-9-2023". In Section 3 (evidence), Mr Arora wrote, "please see the attached document setting out the background to the application as drafted by counsel...". He also signed a statement of truth confirming that he believed that the facts stated in the application were true.
47. The document attached to the EX 244 was an "Application to Adduce Fresh Evidence" dated 2 October 2023 which had been drafted by Ms Priory. Quite properly, the *Fenyvesi* principles were set out including that evidence which was not available at first instance was "evidence that either did not exist at the time of the extradition hearing, or which was not at the disposal of the party wishing to adduce it and which she could not with reasonable diligence have obtained." Submissions were then made in relation to those principles.
48. Under the heading "Was the evidence available at first instance?" Ms Priory stated the following:
 4. The evidence was not available at first instance, although the need for the evidence was identified at that stage in the proceedings.
 5. The Requested person was originally unrepresented in these proceedings, with those instructing being granted Legal Aid in **late May 2023**.
 6. The Applicant's Proof of Evidence and counsel's Statement of Issues were promptly served following instruction on **6 June 2023**, with the following issues having been raised therein:
 - Section 21 / Article 8. – right to private and family life
 - Section 21 / Article 2 & Article 3- right to life / not to be subjected to inhuman or degrading treatment (non-state actors)

7. Following further instructions from the Applicant concerning his mental health, counsel advised that the Applicant be psychiatrically assessed with a view to serving an expert report concerning the same on the court as part of defence evidence. To this end, counsel drafted an advice for the purposes of submitting an application for prior authority to the Legal Aid Agency on **17 July 2023**.
8. When Prior Authority for funding was granted, those instructing sought to formally instruct the expert who had provided a quote. Those instructing struggled to find a Psychiatrist who had capacity to take on the matter at present. Eventually, Dr Gupta confirmed that he had capacity to assess the Applicant an draft expert report and was instructed on **5 August 2023**.
9. The final extradition hearing took place before District judge Griffiths on **24 August 2023**. At this stage there were insufficient instructions and no evidence to warrant raising an additional challenge under section 25 Extradition Act 2003. (underlining added)
10. Due to significant delays in booking legal visits at HMP Wandsworth, the earliest that Dr Gupta could assess the applicant was on **4 September 2023**. Dr Gupta then promptly provided his expert report to those instructing on **11 September 2023**".
49. Thornton J granted permission to appeal on 9 February 2024 on the basis that the admissibility of Dr Gupta's report would be for determination at the full hearing but that it was arguable that the *Fenyvesi* test was satisfied. In so doing she noted that "the application ... explains the difficulties that led to the report being produced after rather than before, the hearing.". In the light of the information which subsequently emerged, and we have summarised, it is clear that in fact it did not do so. In particular, as we have noted, the date of the grant of legal aid was 25 April 2023 rather than "late May 2023". The history of the emergence of the need for a psychiatric report and the hearings before the Magistrates' Court at which an application to postpone the extradition hearing might have been made was not fully explained. Nor was it explained that, contrary to the suggestion that there were "insufficient instructions" to take the section 25 point, in fact Mr Turner had given clear instructions not to apply for a postponement so that the report could be obtained, and to "crack on" rather than take the section 25 point.
50. In her skeleton argument for the appeal hearing dated 2 May 2024, Ms Priory essentially repeated, rather than corrected, the submissions from the application to adduce fresh evidence which we have quoted at [48] above. It appears that she may have cut and pasted them rather than considering, afresh, whether they gave an accurate and comprehensive explanation of why Dr Gupta's report was not before the Magistrates' Court.
51. The full appeal hearing took place before Holgate J on 16 May 2024. He refused to admit Dr Gupta's report on the grounds that it could, with reasonable diligence, have been put before the Magistrates' Court. However, so that there could not be any doubt about the matter, he went on to consider whether the report was decisive in relation to the Article 8 and section 25 issues, and concluded that it was not. Dr Gupta's report was very flawed, for reasons which Holgate J explained, and did not establish the case which it was said to support.

52. As far as the reasonable diligence issue is concerned, Holgate J's findings were as follows:
- i) Even taking the explanation in the application to adduce Dr Gupta's report at face value, no explanation for the delay between the grant of a legal aid certificate "in late May" and the instruction of Dr Gupta on 5 August 2023 was provided: [34]-[35]. On the face of it, the report could have been ready for the extradition hearing if steps to obtain it had been taken promptly.
 - ii) Even if Dr Gupta's report could not have been available on 24 August, at that stage it was due shortly. Once he had been instructed an application for a short postponement of the extradition hearing should have been made immediately so that his report would be available. This had been the approach on 26 June 2023 and it would have resulted in less delay and cost, and avoided the use of public resources in the appeal: [36].
 - iii) "Because, and only because, I asked questions during the hearing... Ms Priory responded with more information.... which showed the position to be substantially worse than the explanation accompanying" the application she had drafted. This included the misleading reference to the date of the legal aid certificate which appeared to be part of an attempt to explain why Dr Gupta was not instructed sooner. Ms Priory had apologised for this error and had explained that she had relied on what she was told by Mr Arora. Holgate J did not consider that, without further investigation, he was able to say that the misleading was deliberate on Mr Arora's part but he described it as "plainly careless and possibly reckless" given that it would have been very simple to check the facts: [37]-[40].
 - iv) In addition to this, when Ms Priory was instructed, shortly before the extradition hearing, the obvious question which followed from the fact that Dr Gupta's report was due shortly was whether an application should be made to adjourn. In response to questioning during the appeal hearing, Ms Priory said that her lay client had instructed her not to seek an adjournment, and that she had told counsel for the respondent that the appellant wished to "crack on": [41]-[42]. Nothing was therefore said on this topic to the District Judge.
 - v) Given the postponement of the 26 June hearing, Mr Turner's legal representatives ought to have told the District Judge that they had instructions not to apply for a further postponement so that the psychiatric issue could be addressed. Moreover they ought to have obtained Mr Turner's consent to disclose those instructions to the High Court in the context of the appeal, or, if consent were refused, to have returned their instructions on the basis that they could not continue to act for him. It was misleading for the appellant's skeleton argument to have said that the section 25 point was not taken because "at that stage there were insufficient instructions" when the true position was that there were clear instructions not to pursue the issue: [43]-[44].
 - vi) The failure to volunteer a full and accurate explanation to the High Court in the application to rely on additional evidence meant, particularly at the permission stage, that the Court could not properly assess the application before it: [45]-[46].

53. A transcript of Holgate J’s judgment and a draft order were circulated to the representatives. The latter provisionally stated, *inter alia*, that an assessment of the appellant’s legally aided costs was refused. Submissions were then received from Ms Priory and Mr Arora, principally concerning the costs issue. In her letter of 26 June 2024, Ms Priory said that she had taken advice from senior practitioners about the criticisms contained in the judgment, and that she:

“remain[ed] profusely and sincerely apologetic...and indeed mortified that the concerns needed to be raised at all. I maintain, as I stated during the hearing, that any inaccurate information offered to the Court was entirely inadvertent and certainly not an attempt... to paint a more favourable picture for the Appellant...”.

54. Ms Priory said that having reflected on the matter and taken advice there was “a concern that I ought not to have provided certain information which was privileged”. However, she recognised that:

“the position is perhaps not that simple given my relaying ...that my client wished to ‘crack on’... I recognise that it is at the very least arguable that in preparing the written permission application, I should have been alert to the fact that the Court needed to know that the decision not to seek an adjournment... was one that the Applicant had been party to... I should probably have sought his permission... to divulge this fact.”

55. Mr Arora also submitted a letter which gave an account of his dealings with Mr Turner. He reiterated that his instructions were not to seek an adjournment, and said that in any event he considered that an application would have failed. He offered his profound apologies and said that whilst errors had been made he had acted in good faith throughout.

56. By an Order made on 22 July 2024, Holgate J referred the conduct of the representatives to Linden J under the *Hamid* jurisdiction. His reasons included the following:

“1. For the reasons set out in my judgment at [2024] EWHC 1526 (Admin) is it plain this was not a case where it could properly be argued that the psychiatric evidence, said to represent fresh evidence, could not have been obtained with reasonable diligence and put before the District Judge at the extradition hearing. Furthermore, the Appellant’s legal representatives knew that the Appellant had instructed them not to apply for an adjournment of the hearing fixed 24 August 2023. It could not properly be said that the psychiatric report was not available at the extradition hearing for the purposes of s 27 of the Extradition Act 2003 (see *Hungary v Fenyvesi* [2009] EWHC 231 (Admin).

2. It was wholly inappropriate for the Appellant’s legal representatives to present an application to the High Court seeking to rely upon the psychiatric report as fresh evidence, unless the Appellant agreed to the court being told that he had instructed them not to apply for an adjournment of the hearing on 24 August 2023, with a proper explanation of that decision. The application was seriously misleading. Thornton J was misled into accepting the explanation given in the Appellant’s application that there had been “difficulties that led to the report being produced after rather than before, the hearing”. There were no such difficulties”.

The Hamid investigation

57. On 1 August 2024, show cause letters were sent to Mr Arora and Ms Priory. Witness statements with exhibits were then provided by Ms Priory on 23 August and by Mr Arora on 28 August. The latter explained Mr Arora's dealings with Mr Turner's case and the issue relating to his mental health in detail.
58. Further show cause letters were sent on 25 September seeking to clarify the chronology and what each of the representatives was aware of, and when. Mr Arora provided a second witness statement dated 7 October and Ms Priory provided a statement dated 8 October 2024. The latter confirmed that Ms Priory had not been aware, at the material times, of the whole of the history of the case related in Mr Arora's first statement, but that she had been briefed by Ms Beatty about the 11 August hearing before the Magistrates' Court at which no application to postpone the extradition hearing had been made.
59. Shortly before the hearing on 6 December 2024 Mr Arora and Ms Priory provided third witness statements dated 3 and 5 December respectively.
60. Mr Arora's witness statements can be summarised as follows.
 - i) At all times he was acting in good faith to advance the interests of his client, and putting forward points which he believed to be properly arguable. The contents of Dr Gupta's report were of such concern that "I believed that it was important for the High Court to be made aware of the report, and thought that it was likely, and certainly arguable, that the Court should consider it regardless of the procedural history".
 - ii) He accepts that he told Ms Priory that the legal aid certificate was granted in "late May" and that this information was wrong. He cannot recall how he came to make this error. He worked from memory, whereas he accepts he should have checked the representation order. He failed to notice this error in the application of 2 October 2023 or the skeleton argument of 2 May 2024, both of which he read.
 - iii) He accepts that a fuller account, including the fact that Mr Turner had given instructions not to apply for a postponement, should have been given in the application to adduce fresh evidence and the skeleton argument for the appeal hearing. However, the failure to ensure that this happened was not the result of an attempt to mislead the court. He regarded the information about his client's instructions as confidential and privileged but, in any event, he did not have concerns about not disclosing this information at the relevant times, as he did not appreciate its relevance. With hindsight he realises that this was an error on his part, for which he apologises.
 - iv) In his third witness statement Mr Arora produces his email of 2 October 2023 (referred to above at [45]) which, he says, he located on the previous day. He says that he has no recollection of filling in the EX 244 but that this email shows that he anticipated that the court would be told of the instructions not apply for a postponement or, at least, that he was not seeking to conceal this fact.

61. Mr Arora also relied on character references, principally from barristers whom he had instructed. On his behalf Mr Doble accepted that what was said in the application to adduce fresh evidence and the skeleton argument was misleading and that the errors which were made by Mr Arora were serious. But he pointed out that Mr Arora has been in practice for 28 years and has not had any previous disciplinary issues, nor been the subject of judicial criticism before. Mr Arora was highly apologetic and felt devastated by the fact that he was now subject to the *Hamid* procedure. Mr Doble's submission was that it was sufficient for the court's disapproval to be marked in a public judgment.
62. Ms Priory's witness statements can be summarised as follows:
- i) She is a relatively inexperienced junior barrister. Although she was called to the Bar in November 2016 she did not begin pupillage until around 3 years later and she was taken on in 2021. *Turner* was her first full extradition appeal.
 - ii) She stated that the legal aid certificate had been granted in late May because that was what Mr Arora had told her. She had not appreciated that this was incorrect although she accepts that she ought to have asked him for a precise date, whereupon the true date was likely to have become apparent.
 - iii) On further reflection, she fully accepts that she was in error in failing to appreciate that the court should be told about Mr Turner's instructions on the question of an application to postpone and in failing to seek his permission to disclose his instructions in this regard. The statement that "there were insufficient instructions and no evidence to warrant raising an additional challenge under section 25" in the documents which she wrote was clumsy wording which was intended to convey that her client did not wish to pursue the section 25 issue. However, she did not act in bad faith or intend to mislead the court. This was a situation in which she had made an innocent mistake. She would be much more careful in the future.
63. Ms Priory also relied on a witness statement from her Head of Chambers, Mr David Josse KC, dated 9 October 2024. Mr Metzger KC accepted on her behalf that she had made a serious error but emphasised that it was no more than this. There had been no intention to mislead the court and Ms Priory was highly apologetic about what she had done.

Conclusion

64. We have concluded that referrals to the Bar Standards Board and the Solicitors Regulation Authority are not necessary in these cases.
65. We consider that the application to rely on Dr Gupta's report was deficient in any event in that it failed to provide a full and detailed account of when and how the need for a psychiatric report became apparent and the decision making in relation to this issue in the course of the proceedings before the Magistrates' Court. As Ms Priory and Mr Arora accept, it was also seriously misleading in relation to the grant of the legal aid certificate and in failing to volunteer the fact that there had been more than one opportunity to apply for a postponement of the extradition hearing after Dr Gupta had been instructed and Mr Turner's instructions had been not to do so and therefore not to object to his extradition on the basis of issues relating to his mental health. We also noted that

Holgate J considered that it was not properly arguable that Dr Gupta's report could not, with reasonable diligence, have been put before the Magistrates' Court.

66. However, having said this, we accept that these failings were the result of careless errors rather than recklessness or any attempt to mislead the Court. We also accept that at all material times Ms Priory and Mr Arora believed that it was properly arguable that the *Fenyvesi* test could be satisfied and that Dr Gupta's report should be admitted in evidence, even though they were wrong about this. Both have accepted the criticisms of them, both are highly apologetic and both have unblemished professional records. There is no evidence of any previous conduct of this nature in either of their cases and we accept that this experience has been salutary for them. We have been persuaded to give them the benefit of the doubt on this occasion and that it is sufficient for us to mark our disapproval in a public judgment.
67. Lessons should be learned from this experience. Quite apart from their duties where their client is legally aided, the fact that there is a statutory right to seek permission to appeal does not mean that practitioners can put forward cases that are not properly arguable, whether at the initial stage or in the context of a renewed application for permission. Moreover, if an application to rely on additional evidence is made, extradition practitioners will be expected to have taken note of what we have said (at [5]-[30], above) about *Fenyvesi*, the requirements of Rule 50.20, the overriding objective and their professional obligations.

R (RP) v National Crime Agency

Preliminary point

68. Judgment on the renewed application for permission to appeal against the extradition order in this case was given orally by Swift J and there has been no publication of a written judgment. Mr Lixandru's explanation for his conduct included disclosure of information which, at least in principle, was subject to LPP. As far as we are aware, he did not seek the permission of his client to waive privilege. Accordingly, of our own motion we will anonymise his client by referring to him as the Requested Person ("RP").

The facts giving rise to the Hamid referral

69. On 22 August 2023, an order for the extradition of the RP was made by District Judge Leong, sitting at the Westminster Magistrates' Court. The RP appealed to the High Court pursuant to the Extradition Act 2003 on 28 August 2023. Permission to appeal was refused on the papers by Mould J on 27 February 2024. The application for permission was renewed and Swift J heard it on 11 July and refused permission on 12 July 2024. Mr Lixandru represented the RP throughout the appeal proceedings.
70. By email dated 16 July 2024, and marked urgent, Mr Lixandru purported to file a judicial review claim form ("first claim form") on behalf of the RP. The National Crime Agency ("NCA") was named as the Defendant with the Judicial Authority as an interested party, but it was stated in section 3.2 of the form that the RP was seeking judicial review of the decision of DJ Leong. The detailed statement of grounds (section 6 of the form) relied on the same arguments as had failed on his extradition appeal i.e. that section 13 of the 2003 Act applied and that the extradition amounted to a

disproportionate interference with the RP's rights under Article 8 ECHR. The claim form made no reference to the prior appeal. The statement of truth was electronically signed by Mr Lixandru who had ticked the box "Claimant's legal representative (as defined by CPR 2.3(1))".

71. On 18 July 2024, the Administrative Court Office ("ACO") wrote to Mr Lixandru, stating that the claim form could not be issued because (1) it did not appear from the BSB Barristers' Register that Mr Lixandru was authorised to conduct litigation, (2) the claim was out of time and no application to extend time had been made, (3) no bundle had been filed and (4) no fee had been enclosed. The ACO also noted that Mr Lixandru had "already appealed the decision of DJ Leong" and referred him to [6.3.3] of the Administrative Court Guide 2023 (on adequate alternative remedy).
72. On 24 July 2024, a second judicial review claim form was filed ("the second claim form"). The form was materially identical to the first claim form, save that the statement of truth appears to have been signed by the RP. The second claim form was filed alongside an N244 application to extend time and for an order for "suspension of the deportation notice dated 22 July 2024 pending the JR outcome", also apparently signed by the RP. The following was stated in box 10:

"I would kindly request permission for an extension of time to file my Judicial Review application related to my extradition case 2300708738 due to the fact that I initially appealed the judgement of Judge Grace Leong dated 22nd August 2023 and I had to wait for the appeal outcome.

Unfortunately I am not satisfied with the appeal result and I now want to have the case judicially reviewed".
73. On 30 July 2024, Mr Lixandru wrote to the NCA, copying the ACO, stating that the RP was due to be extradited on 6 August 2024 and that:

, "we have applied for his case to be Judicially Reviewed by the High Court of Justice and the application is being processed. We therefore kindly request you to postpone the extradition pending the Judicial Review outcome."
74. The application was put before Swift J and, by an order dated 1 August 2024, it was refused and certified as totally without merit for a number of reasons:
 - i) the statutory right of appeal under the 2003 Act was an appropriate and sufficient alternative remedy;
 - ii) the proceedings were an abuse of process in that they attempted to circumvent the appeal process and/or were a form of collateral attack on the decision in the appeal; and
 - iii) the challenge to the extradition order was well out of time given that the order had been made nearly a year earlier. No explanation for the delay had been given and there were no good reasons to extend time.

75. Swift J's order confirmed that the extradition of the RP on 6 August 2024 was not prevented and he referred the papers in the case to Linden J under the *Hamid* jurisdiction. Swift J considered that the claim was:

“a transparent attempt to misuse the judicial review procedure to delay surrender pursuant to the extradition warrant”.

The Hamid investigation

76. On 2 August 2024 a show cause letter was sent by the ACO to Mr Lixandru. The letter drew attention to relevant case law on the *Hamid* procedure. It highlighted the concerns raised by Swift J and it stated that Linden J considered “that the appearance which has been given by your conduct is that you knowingly filed a hopeless and abusive claim, long out of time, in order to frustrate the extradition of your client.”. The letter emphasised the importance of Mr Lixandru explaining his actions fully and asked him to provide a full, candid and frank response to the concerns raised by Swift J. It also asked him a series of questions about his practice, his qualifications, his authorisations to practise and any steps which he proposed to take to address the concerns which had been raised.
77. Mr Lixandru responded by a 3 page witness statement on 29 August 2024 which exhibited certain documents. He stated that he was admitted to the Bar in 2012 as a Registered European Lawyer, having qualified in Romania. His position was that he had complied with his instructions although he had explained to RP that he did not personally feel that he had “any chances to succeed”. He had also said to his client that the claim would be a waste of time and advised him not to do it, but he had to comply with the cab rank rule. He had been paid a £1,000 refresher fee (he later corrected this to £1,100), after the appeal, to review the case and to advise and assist in relation to the judicial review. The naming of the NCA as defendant had been the result of a mistake.
78. Mr Lixandru did not fully answer the questions which had been put to him, including as to his qualifications and areas of practice and experience of extradition work. He purported to apologise but it appeared that he did not consider that his actions were to be criticised.
79. A further second cause letter was therefore sent to Mr Lixandru on 25 September 2024. This stated that Linden J was concerned that he had not addressed the issues raised by him and Swift J fully as requested, and that he wished to give Mr Lixandru a further opportunity to do so before a decision was taken as to whether to refer his case to a Divisional Court. He was asked to re-read Swift J's order and the first show cause letter and then explain fully:

“1) Whether you drafted the claim form dated 16 July 2024.

2) How what you say was a procedural error – naming the National Crime Agency as defendant – came to be made.

3) Why that claim form did not include an application for an extension of time, why it was not supported by a bundle of relevant documents and why the fee was not enclosed.

- 4) Why that claim form did not explain to the court that the matter had been the subject of an appeal in which the same arguments had been put forward and, on 11 July 2024, they had been held not to be reasonably arguable.
 - 5) Why you filed that claim form if, as appears, you did not have authorisation to conduct litigation.
 - 6) How drafting and filing the 16 July 2024 claim form was consistent with your professional obligations more generally including your duties not to mislead the court, not to put forward a case which was not properly arguable, not to abuse the court's processes and not to waste the court's resources.
 - 7) The delay between 16 and 24 July when the 2nd claim form was filed.
 - 8) Whether you accept that you filed the 2nd claim form.
 - 9) Who drafted and filed the application notice dated 24 July 2024.
 - 10) Whether you accept that the 2nd claim form was an amended version of the first. You had merely removed your name as legal representative.
 - 11) Why the 2nd claim form did not explain to the court that the matter had been the subject of an appeal in which the same arguments had been put forward and, on 11 July 2024, had been held not to be reasonably arguable.
 - 12) How drafting and/or filing and/or assisting with the 24 July 2024 claim form (including by your emails to the ACO and the NCA on 30 July 2024) was consistent with your professional obligations more generally including your duties not to mislead the court, not to put forward a case which was not properly arguable, not to abuse the court's processes and not to waste its resources."
80. He was also asked, again, the questions about his experience and training etc which he had not addressed.
81. Later on 25 September 2024 Mr Lixandru provided a second, 2 page, witness statement and exhibited certain documents. It was clear from his reply that he had drafted the claim form although the second version was apparently filed by his client. He denied that he knowingly filed a hopeless and abusive claim and that he misled the court. He said that the claim form was sent to the same email address as the appeal had been sent to, and the court was therefore fully aware that there had been an appeal. He said that the RP had a right to file a claim which he had exercised. "As a professional, I purely complied with my client's instructions.". The statement failed specifically to address the majority of the questions which had been put to him in the second show cause letter.
82. The matter was therefore referred to the Divisional Court.
83. Mr Lixandru filed written submissions on 5 December 2024 and he attended the hearing before us in person. He accepted that he was not authorised to conduct litigation but said that, after this was pointed out to him by the ACO, he did not file the second claim form. The RP did. His position was as summarised above and he emphasised that ultimately the claim for judicial review had been dismissed and had not delayed the extradition of the RP. He said that if we considered that he had done something wrong

he apologised, that he was not perfect and that he was still learning, but that he had merely assisted his client in accordance with his instructions. He did not accept that he misled the court about the extradition appeal given that he had submitted the first claim form on the same email chain as he had used for the appeal and given that it was expressly referred to in the application for an extension of time dated 24 April 2024 which he had drafted for his client.

84. Mr Lixandru also relies on supportive character statements from colleagues.

Conclusion

85. We have decided to refer the matters raised by the *Hamid* referral to the Bar Standards Board. The particular concerns which we had were that:

- i) The claim for judicial review was abusive and bound to fail for the reasons identified by Swift J, and yet Mr Lixandru drafted and filed the first claim form and assisted the RP to file the second one and the application for an extension of time. In so doing, he advanced a case which was not properly arguable and wasted the resources of the court. On his own account, his advice to the RP was that he “did not see any chances to succeed” and he advised the RP not to claim judicial review because “it will be a waste of time”.
- ii) In filing the first claim form Mr Lixandru appears to have been purporting to conduct litigation on behalf of the RP when he did not have authorisation to do so, although this will be a matter for the Bar Standards Board to decide. The BSB may wish to consider whether this was the first occasion on which he had done so. He did not suggest that it was or appear to appreciate the seriousness of conducting litigation without authorisation.
- iii) The first claim form did not clearly flag up the fact that the same arguments had been run and rejected in the context of an appeal against extradition. Although it is true that Mr Lixandru used the same email chain to file it as he had used unsuccessfully to apply for the adjournment of the extradition appeal, and in the event the ACO did pick up that this was the same case, it was incumbent on him to draw attention to the appeal in the statement of facts and grounds and explain why, nevertheless, permission to claim judicial review should be granted.
- iv) Mr Lixandru charged the RP a substantial fee for representation and assistance in relation to the judicial review which, on his own account, he knew was a waste of his money. In this connection the BSB may wish to consider whether there are any parallels between the present case and the situation, described in *R (Akram) v Secretary of State for the Home Department* [2015] EWHC 1359 at [30], where the Divisional Court remarked on the risk that people who are facing imminent removal from the jurisdiction are vulnerable to being charged substantial fees without there being any prospect of them deriving any benefit.
- v) There appears to be a troubling lack of knowledge on Mr Lixandru’s part of the regulatory framework within which the profession of which he is part operates and of the obligations contained in the BSB Handbook. Mr Lixandru’s written responses to the show cause letters did not appear to recognise that he had done anything questionable or the seriousness of his situation, and that remained the

position before us: his apologies were for the most part conditional: "if you think I have done anything wrong I apologise".