



IMMIGRATION AND PUBLIC LAW

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# Hamid Courts: How Best to Avoid Them & Some Tips if You Can't

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# Introduction

In this webinar we will cover:

- ▶ the circumstances in which Hamid Courts are likely to be convened against legal practitioners;
- ▶ the process which has been developed by the Administrative Court for dealing with these cases;
- ▶ advising on best practice in order to reduce the risk of becoming involved in a Hamid Court hearing, with a particular focus on urgent injunctions; and
- ▶ tips on how we think it would be advisable to deal with the situation if, unfortunately, you do become involved in Hamid proceedings, with reference to a recent case in which Anthony Metzer QC appeared.

# The *Hamid* case

*R (Hamid) v SSHD* [2012] EWHC 3070 (Admin)

- ▶ Professional misconduct can arise if an application was made with a view to postponing the implementation of a decision where there were no proper grounds for so doing
- ▶ The Court accepted the solicitor's apology but gave a stark warning that non-compliance like this would not be allowed to continue.
- ▶ Failure by a firm to comply with correct procedures in future would result in: the attendance in open court of the solicitor from the responsible firm, together with their senior partner and the firm would be publicly named. The court would also refer persistent failure to the Solicitors Regulation Authority ("**SRA**").

# When are Hamid Courts being convened?

*R (Awuku & Ors) v SSHD* [2012] EWHC 3298 (Admin) and *R (Awuku (No 2) & Ors) v SSHD* [2012] EWHC 3690 (Admin) contain several separate cases of misconduct by representatives including:

- ▶ Failing to disclose a previous application and its refusal;
- ▶ Claiming that a suspensive appeal was pending when it was not;
- ▶ Failing to disclose the SSHD's position in an ex parte application;
- ▶ Failing to raise issues in earlier proceedings and a failure to explain this; and
- ▶ Pursuing an unarguable grounds of challenge

# When are Hamid Courts being convened?

- ▶ *R (B & Anor) v SSHD* [2012] EWHC 3770 (Admin): counsel drafting without sufficient competence and solicitor over-reliant on counsel
- ▶ *R (Okondu and Abdussalam) v SSHD (wasted costs; SRA referrals; Hamid) IJR* [2014] UKUT 377 (IAC): misleading documents with statements of truth signed without reading content
- ▶ *R (Akram & Anor) v SSHD* [2015] EWHC 1359 (Admin): TWM applications and solicitor signing statements of truth without scrutinising them
- ▶ *Re Sandbrook Solicitors* [2015] EWHC 2473 (Admin): dishonestly making TWM applications for injunctions without pursuing proceedings
- ▶ *R (Hoxha) (Representatives: Professional Duties) v SSHD* [2019] UKUT 124 (IAC): representatives acting beyond their regulated reserved legal activities

# Hamid Court Jurisdiction

- ▶ *R (Shrestha) v SSHD (Hamid jurisdiction: nature and purposes)* [2018] UKUT 242 (IAC): the inherent jurisdiction that enables the Court to convene a Hamid Court is also claimed by the Upper Tribunal (IAC)
- ▶ The *Hamid* jurisdiction is not limited to dealing with immigration matters and extends to *all* matters dealt with by the Administrative Court

# The Hamid Procedure

*R (Sathivel) v SSHD* [2018] EWHC 913 (Admin):

- ▶ Referral to responsible Judge
- ▶ Show cause notice
- ▶ Response must include a witness statement to include response to questions in show cause notice.
- ▶ Court can refer to the SRA as a complaint on receipt of response
- ▶ Court will consider referring to the SRA on the *first occasion*

# Urgent Injunctions

Codes of Conduct duties to:

- ▶ Uphold the proper administration of justice
- ▶ Uphold the public trust in the professions
- ▶ Act with independence
- ▶ Not mislead the court



# Urgent Injunctions: Essential Reading

- ▶ Administrative Court Judicial Review Guide, particularly the section on urgent cases (section 16 & 17 of the 2018 guide)
- ▶ Law Society Practice Note on Immigration Judicial Review
- ▶ R (Madan) v SSHD [2007] 1 WLR 2891
- ▶ R (SB (Afghanistan)) v SSHD [2018] EWCA Civ 215

# A Few Tips

- ▶ Consider carefully before taking on such cases
- ▶ Make any application as soon as possible
- ▶ Use the correct form and fully complete it
- ▶ Be extremely aware of the duty of candour
- ▶ Put the SSHD on notice at the earliest opportunity and by all practical means

# When Hamid Courts can't be avoided

- ▶ Failures in *Singh & Others v SSHD*:
  - ▶ A failure to include relevant documents;
  - ▶ Irrelevant and misleading post-decision material;
  - ▶ Legal argument was totally without merit;
  - ▶ A failure by the qualified staff to properly supervise
- ▶ Panel were persuaded not to refer to the SRA:
  - ▶ Contrition and acceptance of errors
  - ▶ Evidence of staff training and changes to supervision

# Responding to a show cause notice

- ▶ Detailed witness statement
- ▶ Unequivocal apology for accepted failings
- ▶ Explain, don't justify
- ▶ Evidence changes to systems, processes, staffing and training

# Contact Details

Thank you for joining us – please put any questions in the Q&A

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