

The Respondent's appeal against the Tribunal's decision on sanction and costs was struck out by the High Court (Administrative Division) for failure by the Respondent to comply with directions.

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No.10423/2010

BETWEEN:

SOLICITORS REGULATION AUTHORITY

Applicant

and

GBENGA ADEDAPO OGUNRINDE

Respondent

Before:

Miss N Lucking (in the chair)

Ms A Banks

Mr D Gilbertson

Date of Hearing: 19 October 2011 and 30 January 2012

Appearances

Robin Havard, solicitor of Morgan Cole LLP, Bradley Court, Park Place, Cardiff, CF10 3DP for the Applicant.

The Respondent attended and was represented by Richard Heller of Counsel.

JUDGMENT

Allegations

- 1.1 The Respondent conducted himself in a manner that was likely to compromise his integrity contrary to Rule 1(a) of the Solicitors' Practice Rules 1990 and/or, where such conduct related to a period after 1 July 2007, Rule 1.03 of the Solicitors' Code of Conduct 2007.
- 1.2 The Respondent conducted himself in a manner which was likely to compromise or impair the good repute of the solicitors' profession contrary to Rule 1(d) of the Solicitors' Practice Rules 1990 and/or, where such conduct related to a period after 1 July 2007, Rule 1.06 of the Solicitors' Code of Conduct 2007.
- 1.3 The Respondent submitted a document to the SRA, namely a Form RF1 for the year 2001/2002 knowing it to be false by stating that Folashade Mojisola Olowu was a partner in the firm of O S Johnson & Co Solicitors when he knew she was not a partner.
- 1.4 The Respondent submitted a document to the SRA, namely a Form RF1 for the year 2002/2003 knowing it to be false by stating that Folashade Mojisola Olowu was a partner in the firm of O S Johnson & Co Solicitors when he knew she was not a partner.
- 1.5 The Respondent submitted a document to the SRA, namely a Form RF1 for the year 2003/2004 knowing it to be false by stating that Folashade Mojisola Olowu was a partner in the firm of O S Johnson & Co Solicitors when he knew she was not a partner.
- 1.6 The Respondent made representations in correspondence to the SRA which he knew to be false.
- 1.7 At a hearing on 27 June 2006, the Respondent allowed the Tribunal to proceed on the basis that at all material times, Ms Folashade Mojisola Olowu was a partner in the firm of O S Johnson & Co when he knew that was not true.
- 1.8 As a consequence of the conduct alleged at allegations 1.3 to 1.7 above, the Respondent acted dishonestly.

Documents

2. The Tribunal reviewed all the documents submitted by the Applicant and Respondent which included:

Applicant:

- Application dated 20 January 2010 together with attached Rule 5 Statement and exhibits
- Witness Statement of Folashade Mojisola Olowu dated 30 April 2010
- Schedule of Costs

Respondent:

- Witness Statement of Gbenga Ogunrinde dated 19 October 2011
- Respondent's Reply to the Rule 5 Statement
- Skeleton Argument dated 18 October 2011
- Witness Statement of Mike Macdonalds Uyi dated 4 March 2011
- Witness Statement of Esther Ashamu dated 4 March 2011
- Witness Statement of Claudia Rochester dated 4 March 2011
- Solicitors Professional Indemnity Insurance Quotation Form for Zurich
- Grant of Waiver Form from The Law Society dated 9 March 2001
- Letters dated 15 May 2001 and 1 March 2002 from Hill Dickinson Solicitors to Ms Olowu
- Judgment in Default from Liverpool County Court against Ms Olowu dated 26 February 2002
- Letter dated 11 October 2000 from Ms Olowu to Kingston University
- Letter dated 23 April 2001 from Kingston University to Ms Olowu

The Respondent's Application to Strike Out/Stay Proceedings made on 19 October 2011

3. The Tribunal was referred to the Respondent's Skeleton Argument. Mr Heller, Counsel for the Respondent, submitted the Applicant was prevented from pursuing these proceedings, as to do so would be contrary to the principles of res judicata. Alternatively, Counsel for the Respondent submitted proceedings should be stayed as an abuse of process.
4. Counsel for the Respondent accepted the applications had been made late and that the Skeleton Argument had been given to the Applicant on the morning of the substantive hearing, however, he stated that the points had previously been raised in general terms and that Memoranda from previous hearings made reference to these issues.
5. Counsel submitted it was not appropriate for the Authority to advance facts which were contradictory to Findings that had been made by previous divisions of the Tribunal in 2006 and 2007 against the Respondent and Ms Olowu. Other divisions of the Tribunal had dealt with a case against the Respondent and Ms Olowu and had found that Ms Olowu was a partner of the practice at the relevant time to which these allegations related. She had been suspended as a result. Until those Findings were appealed or overturned they stood as a final determination made by previous divisions of the Tribunal. The Authority now sought to rely on Ms Olowu as a witness but yet had not made any attempt to set aside, or vary those decisions, or allow Ms Olowu to do so. Counsel argued this was a significant factor and that if the Authority had any doubts that Ms Olowu was a partner of the practice then the previous Findings should have been disturbed.
6. Counsel accepted Ms Olowu had not attended either of the previous Tribunal hearings, but argued that for the Tribunal to have found she had breached the

Solicitors Accounts Rules 1998, it was implicit that she had to be a partner of the practice. Furthermore, if this Tribunal now found that Ms Olowu was not a partner of the practice, then at the end of these proceedings, there would be two inconsistent Findings which would be an abuse of process. There would be two mutually inconsistent Findings in existence. It was also significant that Mr Havard, who now acted on behalf of the Authority, had also acted in the previous proceedings in 2006 and 2007. Counsel conceded that if the Tribunal formed the view that this argument may have merit, then it may be necessary to adjourn the application to allow the Applicant an opportunity to consider the points made.

7. The Applicant reminded the Tribunal that he had been served with the Respondent's Skeleton Argument that morning and had not expected such applications to be made. The arguments had not been mentioned to him previously and whilst questions had been raised about why the Authority had pursued this route, the Applicant argued these were issues that should have been determined at a preliminary hearing not on the day of the substantive hearing. Witnesses had come a long way to give evidence to the Tribunal and it was not appropriate for this application to be made in this way. Furthermore the Respondent had, only a week earlier, served 3 witness statements from witnesses who appeared to have signed those statements in March 2011.
8. The Authority had received information from Ms Olowu and whilst it was accepted that the previous Findings were clearly open to question, the Tribunal was reminded that Ms Olowu had not attended the previous hearings and therefore the issue of whether she was a partner had not been tested. The previous Tribunal's decisions had been based on documents submitted by the Respondent to the Authority and the fact that he had held her out to be a partner of the practice. Ms Olowu had found out about those previous proceedings long after the Tribunal's decisions. She could have applied for leave to appeal those decisions out of time to the Administrative Court. She could not have applied for a rehearing as, under the Tribunal's rules, she was out of time to be able to do that. The crucial issue was that the full facts needed to be aired and if Ms Olowu were to try to appeal, the Respondent could not be compelled to attend any appeal hearing. This was a case where a decision had to be made about who was telling the truth and an Appeal Court would only have heard one side of the story. By pursuing the route that the Authority had taken, there was an opportunity for the Tribunal to hear all the evidence and make a decision on that evidence, particularly in circumstances where an allegation of dishonesty had been made against the Respondent.
9. The Applicant had not expected to deal with arguments of res judicata or abuse of process today and, accordingly, if the Tribunal was of the view that the Respondent's applications had any merit at all, the Applicant requested an adjournment to enable him to be able to prepare properly to deal with such arguments.

The Tribunal's Decision on the Respondent's Applications

10. The Tribunal had considered carefully the submissions made by both parties and the documents provided. The Respondent's application raised two issues, one of res judicata and another of abuse of process. The Tribunal found no merit in the res judicata argument. The fact of a partnership was never argued in previous Tribunal proceedings and therefore had not been established. It was simply assumed, based on

the Respondent's assertion that there had been a partnership. Ms Olowu had not been present at either of the previous Tribunal hearings, she had not had any input or made any contribution to those hearings and indeed, at paragraph 24 of the Tribunal's Findings relating to the hearing on 27 March 2007 the Tribunal had stated:

“The Tribunal wished to make it clear that they were not closing the door to the Respondent. It was possible that the Respondent might appear and say that she had known nothing of the proceedings and it would be open to her in those circumstances to seek to apply to determine the indefinite suspension at an early stage.”

11. It was clear that that division of the Tribunal was mindful that Ms Olowu had not appeared, that she was not represented and indeed, she may have known nothing about the hearings that had taken place. Accordingly, this Tribunal found no merit in the res judicata argument preventing the substantive hearing from proceeding today.
12. As to the argument regarding an abuse of process, the Tribunal accepted there was some awkwardness in reconciling these proceedings with the previous findings, but Ms Olowu did not participate in those proceedings and this was certainly in the mind of the Tribunal who had indicated this clearly. The Tribunal reminded the parties that this was an expert Tribunal, able to confidently determine the credibility of witnesses, having heard all the evidence, which of course could be tested by both parties. The Tribunal was satisfied that hearing all the evidence in this case could not be an abuse of process. Accordingly, the Respondent's applications were refused.

The Respondent's Application to Adduce Additional Documents

13. During Ms Olowu's cross-examination, Counsel for the Respondent produced a number of documents which had not previously been disclosed to the Applicant. The Applicant objected to the Respondent relying on those documents on the basis that they would cause the Applicant prejudice and had not been previously disclosed. Furthermore, Ms Olowu had already finished her evidence in chief and therefore the Applicant had been denied any opportunity to either take her instructions on those documents, or deal with those documents in her evidence. He submitted the Respondent had ambushed the witness by deliberately not disclosing these documents prior to the hearing. He reminded the Tribunal that at a hearing on 8 March 2011, the Tribunal had been invited to make directions regarding disclosure and the Respondent's representative had given an assurance to the Tribunal that he would do his best to provide any relevant documents within six weeks.
14. Counsel for the Respondent submitted the additional documents were relevant and the interests of justice required those documents to be produced. He submitted that even if the Applicant had been in possession of those documents prior to today, they would not have assisted him. One of the documents was evidence that the Respondent had been given a waiver allowing him to practise as a sole practitioner prior to being qualified for a period of three years. Another document was evidence that the practice's turnover was very low and that 84% of the practice's work related to immigration. The documents were relevant to the issue of whether the Respondent needed a partner and the benefits to him of such an arrangement. Counsel for the Respondent submitted there would have been no benefit to the Respondent in

apparently having a partner. There were further documents which related to a debt Ms Olowu had accrued at university and the purpose of these was to indicate that these were personal documents she had left at the office which came into the hands of the intervention agents, who provided the documents to the Respondent. Counsel apologised profusely for the documents being produced late and indicated there had been funding issues and it had been anticipated the Respondent may be acting as a litigant in person. This had led to the very late preparation of the case and the documents had been produced very recently.

The Tribunal's Decision on the Respondent's Application to Adduce Additional Documents

15. The Tribunal was extremely concerned that the documents had been produced at such a late stage. This was discourteous to the Tribunal and did not give the Applicant opportunity to consider the additional documents with his witness. Nevertheless, in the interests of justice, the Tribunal would allow the additional documents to be produced, but adjourned the proceedings for five minutes in order to allow the Applicant to consider the documents in more detail and take instructions from Ms Olowu.

Factual Background

16. The Respondent, whose date of birth was 16 July 1968, was admitted to the Roll on 1 July 1999.
17. At all material times, the Respondent purported to practice as a partner at the firm of O S Johnson & Co Solicitors, 126 Church Street, Croydon, Surrey, CR0 1RF ("the practice") until its closure following intervention by the SRA on 27 February 2006. It was alleged that at all material times, the Respondent held out Ms Folashade Mojisola Olowu ("Ms Olowu") as a partner in the practice.
18. Ms Olowu, whose date of birth was 9 August 1969, was admitted to the Roll on 9 August 1999. Previous disciplinary proceedings alleging breaches of Rule 32 of the Solicitors Accounts Rules 1998 were brought against both the Respondent and Ms Olowu. On 27 June 2006, as a result of a hearing before the Tribunal, the Respondent was suspended from practice for a period of two years. The allegations were not disputed and the proceedings against Ms Olowu were severed to enable matters in respect of her to be dealt with separately. At a hearing before the Tribunal on 27 March 2007, Ms Olowu was suspended from practice indefinitely. She did not appear and was not represented in those proceedings.
19. On 25 May 2004, an Investigation Officer ("IO") from the Law Society conducted an inspection of the practice and produced a Forensic Investigation Report ("FIR") dated 2 August 2004. During that investigation the Respondent was interviewed on 6 July 2004. Ms Olowu was not at the office on the occasions that the IO attended, she was never interviewed and nor was any correspondence received from her in relation to the investigation. On 9 August 2004, the Law Society wrote to the Respondent and Ms Olowu enclosing a copy of the FIR and on 17 August 2004, the Respondent provided a reply and explanation on behalf of both himself and Ms Olowu. He accepted full responsibility for the accounts of the practice but blamed the book keeper for the inadequacies of the accounting records. The Respondent sent further

representations to the Law Society on 18 October 2004 on behalf of both himself and Ms Olowu in reply to correspondence received. Both of the letters dated 17 August 2004 and 18 October 2004 showed the Respondent and Ms Olowu as being partners in the practice.

20. On 6 October 2008, the SRA received a complaint from Ms Olowu about the conduct of the Respondent. She was concerned that she had been held out as a partner in the practice, when this was not the case. She stated she had never been in partnership of any kind with the Respondent, and that she had never, to the best of her knowledge and belief, signed her name on any documentation relating to the practice or the Respondent.
21. Ms Olowu stated she had been resident in Nigeria since April 2001 and that she had not travelled to the United Kingdom between April 2001 and June 2008, other than to visit her sister. She provided the SRA with a copy of extracts from her passport and documents from the British High Commission in Lagos confirming she had been refused entry clearance to visit the United Kingdom on 17 July 2001 and 9 January 2003.
22. The SRA conducted an investigation which included a review of the documentation submitted by the practice to the Law Society. A number of documents were obtained, which included Forms RF1 for the periods 2001/2002, 2002/2003 and 2003/2004, and an Accountant's Report for 2003/2004. All these forms were signed by the Respondent and the address of the practice was given. The SRA wrote to the Respondent on 9 February 2009 raising concerns and he responded on 18 February 2009. He stated:
- “I confirm unequivocally that the allegation is contrived, baseless and perhaps a vendetta. I assert that this is a poor conspiracy and no more. [I]t will amount to an act of reckless irresponsibility for the purported Ms F M Olowu to suggest remotely that she is not part and parcel of my practice. I confirm that I am not aware of any RFs form ever being signed by Ms Olowu, but am aware that application for practising certificate was applied for as a practice. I assert that the allegations are untrue, unfounded and baseless”.
23. The Respondent wrote to the SRA again on 5 May 2009 maintaining Ms Olowu was a partner at the practice. In a letter dated 18 June 2009, the Respondent stated:
- Ms Olowu was a non-equity partner;
 - He could not recall the date or circumstances of his meeting with Ms Olowu;
 - He did not know the dates on which Ms Olowu was in England or working for his practice;
 - Ms Olowu conducted general legal practice at his practice;
 - He was unable to recollect the name of any file of which Ms Olowu had conduct;
 - He was unable to locate the Partnership Agreement between himself and Ms Olowu as a result of a theft of documents from his car;

- Ms Olowu approached him to become a partner;
 - Ms Olowu performed a non-equity role within the practice.
24. On 3 August 2009, the Respondent wrote to the SRA and provided the following documents:
- A diary entry for 16 November 2000 which referred to a meeting with “Sade” (purportedly Ms Olowu);
 - A note referring to a meeting on 3 November 2000 (which was claimed to have relevance to the date on which the Respondent met Ms Olowu);
 - A note dated 22 November 2000, referring to registration papers for a charity known as the “ Lawyers Christian Fellowship” purportedly from Ms Olowu (which was claimed to have relevance to the date on which the Respondent met Ms Olowu);
 - An RF3 Form for the year 2000/2001 completed by Ms Olowu, which the Respondent claimed had been given to him by Ms Olowu “during the acceptance and her coming on board my practice, as a partner”;
 - A note dated 2 April 2001 (which was claimed to refer to a meeting about a partnership agreement with another individual).

Witnesses

25. The following witnesses gave evidence:
- Ms Folashade Mojisola Olowu.

Findings of Fact and Law

26. **Allegation 1.1: The Respondent conducted himself in a manner that was likely to compromise his integrity contrary to Rule 1(a) of the Solicitors’ Practice Rules 1990 and/or, where such conduct related to a period after 1 July 2007, Rule 1.03 of the Solicitors’ Code of Conduct 2007.**

Allegation 1.2: The Respondent conducted himself in a manner which was likely to compromise or impair the good repute of the solicitors’ profession contrary to Rule 1(d) of the Solicitors’ Practice Rules 1990 and/or, where such conduct related to a period after 1 July 2007, Rule 1.06 of the Solicitors’ Code of Conduct 2007.

Allegation 1.3: The Respondent submitted a document to the SRA, namely a Form RF1 for the year 2001/2002 knowing it to be false by stating that Folashade Mojisola Olowu was a partner in the firm of O S Johnson & Co Solicitors when he knew she was not a partner.

Allegation 1.4: The Respondent submitted a document to the SRA, namely a Form RF1 for the year 2002/2003 knowing it to be false by stating that Folashade

Mojisola Olowu was a partner in the firm of O S Johnson & Co Solicitors when he knew she was not a partner.

Allegation 1.5: The Respondent submitted a document to the SRA, namely a Form RF1 for the year 2003/2004 knowing it to be false by stating that Folashade Mojisola Olowu was a partner in the firm of O S Johnson & Co Solicitors when he knew she was not a partner.

Allegation 1.6: The Respondent made representations in correspondence to the SRA which he knew to be false.

- 26.1 The Tribunal had considered carefully all the evidence given, the submissions of both parties and all the documents provided. The Tribunal confirmed the allegations had to be proved beyond reasonable doubt and that the Tribunal would use the criminal burden of proof when considering each of the allegations. In this case, all the allegations relied upon representations made by the Respondent holding out Ms Olowu as a partner of his practice. The Tribunal therefore had to decide whether Ms Olowu was indeed a partner of his practice at the material times.
- 26.2 The Tribunal had heard evidence from Ms Olowu in which she was quite clear that she had never been a partner of the Respondent's practice and although she had met the Respondent a few times, she had never practised law in the UK and nor had she lent her name to his practice at any time. She maintained this throughout cross-examination and referred the Tribunal to documentation which confirmed she had not and could not have been in the United Kingdom at the material times, save for a period in 2001.
- 26.3 Counsel for the Respondent had submitted Ms Olowu did not have a passing acquaintance with the Respondent and that she had entrusted him with her application for a practising certificate. Counsel sought to question her credibility by raising issues about her immigration status and making reference to correspondence referring to a judgment against her that had been posted to her at a UK address during the material time in 2001/2002. He cross examined Ms Olowu on the matter of her handwriting on a Form RF3 for 2000/2001 and submitted that she had been reluctant to answer this question, as it undermined her position. Counsel also submitted that personal papers belonging to Ms Olowu had been found by the intervention agents and this was further evidence that she had left them at the practice. Counsel for the Respondent asked the Tribunal to consider what the Respondent would have achieved from claiming Ms Olowu was a partner of the practice when she was not. He submitted there was no benefit to the Respondent in having entered into such an arrangement and no conceivable purpose for holding her out to be a partner.
- 26.4 The Tribunal had heard from only one witness in this case, Ms Olowu. The Tribunal had found her evidence to be consistent and it was given in a credible manner. It was also supported by documentary evidence. Three witness statements, all dated 4 March 2011 were served on 10 October 2011, nine days before the substantive hearing. None of those witnesses gave evidence before the Tribunal and the Applicant was not given the opportunity to test their evidence. The Tribunal therefore attributed little weight to their statements.

- 26.5 The Respondent did not give evidence. In extensive correspondence with the SRA the Respondent categorically stated that Ms Olowu was a partner in his firm, and the Tribunal had seen a Form RF1 for the year 2001/2002 which contained a statement that Ms Olowu was a partner in the firm. That form contained a declaration stating that the signatory was authorised by all the applicants to sign the form on their behalves and the form was signed by the Respondent who described his status as “senior partner”. The Tribunal had also seen similar RF1 Forms for 2002/2003 and 2003/2004. The Tribunal had seen an Accountant’s Report for the year April 2003 to March 2004 in which Ms Olowu was stated to be a partner in the firm. None of those forms were signed by Ms Olowu and none of them were required to be signed by her.
- 26.6 The Tribunal had also seen two RFS12 Forms for 2004/2005 and 2005/2006, both of which were purportedly signed by Ms Olowu. However, her signature on these forms bore no similarity to her signature on the two RF3 Forms for 1999/2000 and 2000/2001 which the Tribunal had also seen. In her evidence Ms Olowu confirmed she had signed the two RF3 Forms but that she had not signed the two RFS12 Forms. The Tribunal believed her evidence.
- 26.7 The Respondent, during the course of the hearing, in fact during the course of Ms Olowu’s evidence, handed in a bundle of correspondence and papers relating to a claim for unpaid university fees addressed to Ms Olowu. Mr Heller had invited the Tribunal to place some significance on the fact that these copy papers were in the Respondent’s possession, but in the absence of any evidence from the Respondent as to how this occurred, the Tribunal could draw no conclusion. Apart from these documents the Respondent had not produced any documentary evidence to confirm that Ms Olowu was a partner in his firm. The Tribunal had been referred to a number of forms and correspondence sent by the Respondent to the SRA, all of which stated Ms Olowu was a partner in the practice. The Tribunal was satisfied that Ms Olowu was not, and had not at any time been, a partner of the Respondent’s practice and therefore found allegations 1.1 to 1.6 proved.
27. **Allegation 1.7: At a hearing on 27 June 2006, the Respondent allowed the Tribunal to proceed on the basis that at all material times, Ms Folashade Mojisola Olowu was a partner in the firm of O S Johnson & Co when he knew that was not true.**
- 27.1 This allegation related to a hearing that had taken place before another division of this Tribunal in 2006. It was clear from the Findings produced following that hearing that the Tribunal proceeded throughout on the basis that Ms Olowu was in partnership with the Respondent at the material time and that the Respondent had allowed that division of the Tribunal to proceed on that basis. The Tribunal, having found Ms Olowu was not, and had never been, a partner of the practice, found this allegation was also proved.
28. **Allegation 1.8: As a consequence of the conduct alleged at allegations 1.3 to 1.7 above, the Respondent acted dishonestly.**
- 28.1 This allegation was one of dishonesty in relation to allegations 1.3 to 1.7. The Tribunal had been referred by the Applicant to the case of Twinsectra Ltd v Yardley & Others [2002] UKHL 12 which set out the test to be applied when considering the

issue of dishonesty. Firstly, the Tribunal had to consider whether the Respondent's conduct was dishonest by the ordinary standards of reasonable and honest people. Secondly, the Tribunal had to consider whether the Respondent himself realised that by those standards his conduct was dishonest.

- 28.2 The Tribunal was satisfied that by repeatedly holding Ms Olowu out to be a partner of his practice, when he knew she was not, would be regarded as dishonest by the ordinary standards of reasonable and honest people. Furthermore, as a solicitor, it was inconceivable that the Respondent did not know that his holding her out as a partner, when she was not, would be regarded as dishonest by those standards. The Tribunal was satisfied the Respondent knew that by those standards his conduct was dishonest. The Tribunal therefore found this allegation proved.

Previous Disciplinary Matters

29. The Respondent had appeared before the Tribunal previously on 27 June 2006.

Mitigation

30. Counsel for the Respondent submitted that although a number of allegations had been proved, in reality, there was only one issue, which was that the Respondent had held Ms Olowu out as a partner. Counsel submitted that the fact that the Respondent had done so over a period of time did not make it more serious. The Tribunal was reminded that the Respondent could have blamed Ms Olowu for the breaches alleged during the previous proceedings, as it was clear she would not appear and it was unlikely the Tribunal would find her, but he did not do so. He had admitted the allegations and taken full responsibility. He could have blamed Ms Olowu, knowing that she was in Nigeria, but he did not, and he deserved credit for his.
31. The Tribunal was told that it was difficult to conceive of the benefit the Respondent could have derived from the arrangement. His Professional Indemnity Insurance renewal forms indicated his gross fees for the period prior to September 2002 were very low and that his main area of practice was immigration. The Respondent had not needed a partner in practice with him to do that type of work. He did not do conveyancing and therefore did not need a partner to be eligible to join any lenders' panels.
32. This had been an extremely difficult time for the Respondent. The investigation had been going on since 2004, and shortly after the Respondent's suspension ended, Ms Olowu had lodged her complaint and the Respondent was investigated. He had been unable to work as a solicitor and had lost the chance to find employment and use his qualification as a solicitor. His personal life had been chaotic. He could not pay the mortgage on his property and it was repossessed in 2009. His wife had left him with his child, and he had been unable to pay maintenance due to his lack of employment, which had caused his wife to deny him contact with his child. The Respondent had endured a period of depression and the effects of this investigation had been far reaching.
33. Counsel for the Respondent submitted that this was not a severe case of dishonesty as there had been no criminal conduct and no client funds had been involved. It was

unclear what benefit the Respondent had gained and it was submitted that the Respondent's conduct could be marked by a period of suspension. This would serve the purpose of punishing the Respondent for the offence, preventing the conduct from being repeated and maintaining the public's confidence in the profession. Counsel submitted there were cases where dishonesty had been at the lower end of the scale of dishonesty and in those cases, the ultimate sanction had not been imposed. The Respondent had suffered considerably already and the Tribunal was reminded that this conduct had occurred before the previous suspension had been imposed. A further period of suspension would meet the Tribunal's concerns and conditions could be attached to the Respondent's practising certificate for the future. The consequences of this case were catastrophic on the Respondent who had been on benefits since 2009.

Sanction

34. The Tribunal had considered carefully the Respondent's submissions and statement. The Tribunal had found the Respondent had acted dishonestly and regarded this case to be a serious case of dishonesty. The conduct had been repeated over a number of years and resulted in the Respondent dealing dishonestly with the profession's regulator, a fellow professional, the public, his professional indemnity insurers and this Tribunal. The repercussions of the Respondent's conduct on Ms Olowu were profound. She had found herself to be suspended from practice without fault and without her knowledge, with the consequent damage and loss of her reputation. She was also made the subject of a costs Order. She had and continued to have the stress and inconvenience of having to fight to clear her professional name.
35. The Tribunal was also mindful of the case of the SRA v Sharma [2010] EWHL 2022 (Admin) in which Coulson J stated:

“Save in exceptional circumstances, a finding of dishonesty will lead to the solicitor being struck off the roll”

The Tribunal was satisfied that there were no exceptional circumstances and that accordingly the appropriate sanction was to strike the Respondent off the Roll of Solicitors.

Costs

36. The Applicant requested an Order for his costs and provided the Tribunal with a Schedule of Costs which indicated his costs came to a total of £21,256.84. He reminded the Tribunal that the case had been fully contested and that the costs were not unreasonable in all the circumstances.
37. Counsel for the Respondent took issue with the travel expenses claimed. He submitted that if London solicitors had dealt with the matter on behalf of the Authority, the travel expenses would have been less and that it was inappropriate for the Respondent to have to meet these costs. The Tribunal was provided with a statement dated 19 October 2011 from the Respondent giving details of his means. The Respondent was receiving jobseekers allowance and whilst he accepted that he may be able to seek other employment, he was likely to face challenges in explaining

his employment history. His practice had already been intervened and he had been deprived of earning a living. The Tribunal was also reminded that the Respondent did not have the means to pay any costs Order, particularly as the sanction would end his career. The Tribunal was requested to make any Order for costs not to be enforced without leave of the Tribunal in all the circumstances. The Respondent was willing to give evidence on his means if required.

38. The Applicant reminded the Tribunal that although he had charged for travel expenses, this had been at half the normal hourly rate. If solicitors in London had been instructed to deal with the matter, the Tribunal was reminded that their hourly rate would have been much higher than the hourly rate charged by the Applicant. Furthermore, the statement handed in by the Respondent on his means did not include any documentary evidence to support the financial circumstances. No evidence had been provided of the Respondent's income. If the Tribunal were to make an Order that costs should not be enforced without leave of the Tribunal, that would effectively prevent the Authority from taking proceedings to enforce costs against the Respondent and the rest of the profession would be responsible for the legal costs of these proceedings. The Applicant submitted that if, on proper enquiry, the Authority decided the Respondent could not pay costs, then an appropriate decision could be taken. The Applicant requested the Tribunal to assess the costs and allow the Authority to make its own enquiry as to how matters should proceed for the recovery of those costs from the Respondent.
39. The Tribunal had considered carefully the matter of costs and was satisfied that the amount of costs claimed was reasonable. Accordingly, the Tribunal made an Order that the Respondent should pay the Applicant's costs in the sum of £21,256.84. In relation to enforcement of those costs, the Tribunal noted the Respondent had provided a brief statement dated 19 October 2011 indicating he was receiving benefits. The Tribunal had particular regard for the case of SRA v Davis and McGlinchy [2011] EWHC 232 (Admin) in which Mr Justice Mitting had stated:
- “If a solicitor wishes to contend that he is impecunious and cannot meet an order for costs or that its size should be confined, it will be up to him to put before the Tribunal sufficient information to persuade the Tribunal that he lacks the means to meet an order for costs in the sum at which they would otherwise arrive.”
40. In this case the Respondent had not provided any documentary evidence of his income, expenditure, capital or assets and therefore it was difficult for the Tribunal to take a view of his financial circumstances. The Tribunal was also mindful of the cases of William Arthur Merrick v The Law Society [2007] EWHC 2997 (Admin) and Frank Emilian D'Souza v The Law Society [2009] EWHC 2193 (Admin) in relation to the Respondent's ability to pay those costs, as he had now been deprived of his livelihood. However, in this case, the Respondent was relatively young and it was possible he could gain some form of alternative employment in other fields, indeed his Counsel had conceded this. The Tribunal trusted the Authority would take into account the Respondent's financial circumstances and would only seek to enforce the Order for costs where there was some prospect of recovery.

Statement of Full Order

41. The Tribunal Ordered that the Respondent, Gbenga Adedapo Ogunrinde, solicitor, be Struck Off the Roll of Solicitors and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £21,256.84.

Dated this 2nd day of March 2012

On behalf of the Tribunal

Miss N Lucking
Chairman