

# SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 10811-2011

## BETWEEN:

SOLICITORS REGULATION AUTHORITY

Applicant

and

JACOB OLADIPUPO ILARA

First Respondent

and

OLUTOBI DANIEL FAYEMIWO

Second Respondent

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Before:

Mr R Nicholas (in the chair)

Mr R Hegarty

Mr P Wyatt

Date of Hearing: 16th February 2012

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## Appearances

Iain Miller, Solicitor of Bevan Brittan LLP, Fleet Place House, 2 Fleet Place, London EC4Y 7RF for the Applicant.

The Respondents did not appear and were not represented.

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## JUDGMENT

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## **Allegations**

1. The allegations against the Respondents, Jacob Oladipupo Ilara and Olutobi Daniel Fayemiwo, made on behalf of the Solicitors Regulation Authority (“the SRA”) were that:
  - 1.1 They failed to pay the premium due for indemnity insurance for the indemnity year 2009/2010 to Capita (which manages the Assigned Risks Pool (“ARP”) on behalf of the SRA) within the prescribed period for payment and are in policy default in breach of Rule 16.2 of the Solicitors Indemnity Insurance Rules 2009.
  - 1.2 They failed to respond to the SRA’s enquiries in an open, prompt and co-operative way in breach of Rule 20.05 of the Solicitors Code of Conduct 2007.

## **Documents**

2. The Tribunal reviewed all the documentation submitted by the Applicant which included:-
  - Application dated 1 September 2011
  - Rule 5 Statement dated 31 August 2011 and Appendix IGM1
  - Statement of Costs dated 14 February 2012

The Respondents had not filed any documentation.

## **Preliminary Matters**

3. Mr Miller told the Tribunal that the relevant documentation, including the notice of the hearing date, had been sent to the First Respondent at his last known address. It had been signed for. There was some indication from Capita that the First Respondent may be out of the country, but Mr Miller did not have any further information about this.
4. The Tribunal was told that the relevant documentation had been sent to the Second Respondent and had been returned marked “not called for”. Mr Miller then referred the Tribunal to an extract from an Affidavit sworn by an enquiry agent. The Affidavit confirmed that the relevant documentation, including the notice of the hearing date, had been served at what appeared to be the current address of the Second Respondent. Mr Miller asked the Tribunal to proceed with the matter in the absence of both Respondents.
5. The Tribunal was satisfied that notice of the hearing had been served on both Respondents and in accordance with Rule 16(2) of the Solicitors (Disciplinary Proceedings) Rules 2007 proceeded to hear and determine the application notwithstanding that the Respondents had failed to attend in person and were not represented at the hearing.

## Factual Background

6. The Solicitors Indemnity Rules (“the Rules”) required all firms in private practice to take out and maintain professional indemnity insurance which must be Qualifying Insurance within the meaning of the Rules (i.e. insurance on the minimum terms). The relevant Rules in this matter were the Solicitors Indemnity Insurance Rules 2009 (SIIR09).
7. The Rules required that insurance was obtained from either a Qualifying Insurer within the meaning of the Rules or from the Assigned Risks Pool (ARP). The ARP existed for firms who had been unable to obtain insurance on the open market in a particular year. The ARP operated as a buffer to provide time for firms with temporary insurance difficulties to obtain Qualifying Insurance and for those firms with greater difficulties to wind down their practice.
8. The costs of the ARP were partly covered by premiums paid by firms within the ARP and the balance was funded by Qualifying Insurers who passed this on to the rest of the profession in the level of premiums charged in providing Qualifying Insurance.
9. The Rules stated that if a firm was admitted to the ARP then the firm and any person who was a Principal of that firm would be jointly and severally liable to pay the ARP premium in accordance with the Rules, together with any sums due to the ARP Manager under the ARP policy.
10. Under the SIIR09, the maximum period for which a firm could be insured through the ARP was 24 months in any five year indemnity period.
11. A firm within the ARP which ceased to practice would be required to pay a run-off premium, as calculated by the ARP in accordance with Appendix 2 to the Rules.
12. Rule 16 referred to the disciplinary consequences of failing to comply with the Rules. Rule 16.2 provided:
 

"... it shall be a disciplinary offence for any Firm or any person who is at the relevant time a Principal in a Firm to be in Policy Default, or to fail to implement any Special Measures to the satisfaction of the Society".
13. The First Respondent was born on 9 December 1966 and admitted as a solicitor on 3 October 2005. His name remained on the Roll of Solicitors. The Second Respondent was born on 29 October 1965 and admitted as a solicitor on 1 December 2005. His name remained on the Roll of Solicitors. Both Respondents previously worked at King Partners Solicitors of Milton Keynes ("the firm"). The SRA were notified that the firm closed on 30 September 2010.
14. The firm entered the ARP during the indemnity year 2009/2010. The premium for cover, as quoted by Capita was £18,195.87. Full payment was due by 1 September 2010. Capita received the sum of £1,500 from the Respondents. The sum of £16,695.87 was still owed. The Respondents also owed £18,195.87 to Capita in respect of run-off premium following the closure of the firm.

15. On 10 May 2011, an SRA Caseworker sent separate letters to each Respondent in relation to the monies owed to Capita and requested an explanation for the non payment. The letter stated:
- “Failure to pay premiums due for indemnity insurance for more than two months after the due date for payment is a policy default. Rule 16.2 of the Solicitors Indemnity Insurance Rules 2009/2010 states that it is a disciplinary offence for a firm or any principal of a firm to be in policy default.
- Please let me have your explanation concerning this matter raised by within the next 15 days, i.e. by 5 pm on 25 May 2011”
16. The Respondents did not reply to the letters and on 27 May 2011, the Caseworker sent a letter to each of the Respondents reminding them of their duty to reply and stating that a failure to do so may be deemed to be a breach of the Solicitors Code of Conduct 2007. Neither Respondent replied.
17. Copies of both letters were sent to the Respondents again by special delivery under cover of a letter dated 10 June 2011. Neither Respondent replied. The letter to the Second Respondent was returned by the Royal Mail.
18. On 21 June 2011, the Caseworker sent a Memorandum to an SRA Authorised Officer who was made aware of the outstanding premium and the fact that the Respondents had not replied to correspondence.
19. On 11 August 2011, the Authorised Officer decided to refer the Respondents’ conduct to the Solicitors Disciplinary Tribunal.

#### Witnesses

20. None.

#### Findings of Fact and Law

21. The Tribunal determined all the allegations to its usual higher standard of proof, that is beyond reasonable doubt.
22. **Allegation 1.1: They failed to pay the premium due for indemnity insurance for the indemnity year 2009/2010 to Capita (which manages the Assigned Risks Pool (“ARP”) on behalf of the SRA) within the prescribed period for payment and is in policy default in breach of Rule 16.2 of the Solicitors Indemnity Insurance Rules 2009.**
- Allegation 1.2: They failed to respond to the SRA’s enquiries in an open, prompt and co-operative way in breach of Rule 20.05 of the Solicitors Code of Conduct 2007.**
- 22.1 Mr Miller told the Tribunal that this was one of a group of cases that had been brought by the SRA in relation to non-payment of ARP premiums. There had been a

breakdown in the integrity of the system of insurance for solicitors over recent years and the SRA wished to deal with the matter robustly.

- 22.2 The Tribunal was told that there were a number of factors which should be considered when dealing with cases of this type. This included the Respondents' failure to attend at the hearing which was consistent with their failure to engage with both Capita, who managed the ARP, and the SRA.
- 22.3 Mr Miller asked the Tribunal to note that the Respondents had been in the ARP for one year. Although an initial payment of £1,500 had been made to Capita, there had been no further payments towards the outstanding premium and the total amount now due was £16,695.87. The Respondents had not made any payments towards the run-off premium either. The firm had closed on 30 September 2010.
- 22.4 The Tribunal noted that allegation 1.1 related to the non-payment of the ARP premium only. The Tribunal found the allegations substantiated against both Respondents on the facts and documents before it.

### **Previous Disciplinary Matters**

23. None.

### **Mitigation**

24. None.

### **Sanction**

25. The Tribunal considered the range of sanctions available. It was essential that the integrity of the system of insurance for solicitors was preserved as this had an impact on the public's confidence in the profession. The Respondents could not be allowed to practice regardless of their regulatory obligations.
26. In all the circumstances, the Tribunal considered that the appropriate Order in relation to both Respondents was an indefinite suspension. The Tribunal did not wish to fetter the discretion of any future Tribunal but recommended that any application for the termination of the period of indefinite suspension by either Respondent should not be granted until there had been payment in full of the outstanding indemnity insurance premium for the year 2009/2010.

### **Costs**

27. The Applicant's claim for costs was £2,938.29. This included the costs of substituted service in relation to the Second Respondent in the sum of £916.12.
28. The Tribunal considered that the Respondents should pay the costs as claimed, and ordered that the First Respondent pay costs fixed in the sum of £1,011.08 and the Second Respondent pay costs, to include the costs of substituted service, fixed in the sum of £1,927.21.

**Statement of Full Orders**

29. The Tribunal Ordered that the Respondent, Jacob Oladipupo Ilara, solicitor, be suspended from practice as a solicitor for an indefinite period to commence on the 16th day of February 2012 and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £1,011.08.
  
30. The Tribunal Ordered that the Respondent, Olutobi Daniel Fayemiwo, solicitor, be suspended from practice as a solicitor for an indefinite period to commence on the 16th day of February 2012 and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £1,927.21.

Dated this 7<sup>th</sup> day of March 2012  
On behalf of the Tribunal

R Nicholas  
Chairman