The Respondent appealed to the High Court against the Tribunal's Order dated 12 March 2012 (Tribunal Judgment dated 2 April 2012). His appeal was dismissed by Mr Justice Phillips on 22 November 2013 with costs awarded against the Respondent not to be enforced without leave of the Tribunal - Ijomanta v Solicitors Regulation Authority [2013] EWHC 3905 (Admin.).

The Respondent's renewed application for permission to appeal to the Court of Appeal was refused by Lord Justice Moore-Bick on 9 June 2015 – Ijomanta v Solicitors Regulation Authority [2015] EWCA Civ 793.

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 10824-2011

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

GODWIN NWANKWO IJOMANTA Respondent

Before:

Mr A. G. Gibson (in the chair)
Mr M. Fanning
Mr S. Marquez

Date of Hearing: 8th March 2012

Appearances

Geoffrey Williams QC, solicitor, of Geoffrey Williams & Christopher Green Solicitor **Advocates** of The Mews 38 Cathedral Road, Cardiff CF11 9LL for the Applicant.

The Respondent was present and represented himself.

JUDGMENT

Allegations

1. The allegations against the Respondent, Godwin Nwankwo Ijomanta were that he had:

1.1 Given false and misleading information in an application for professional indemnity insurance contrary to Rule 1(d) Solicitors Practice Rules 1990 (as amended) ("SPR");

1.2 Breached the terms of an undertaking contrary to Rule 1(d) SPR;

1.3 Failed to cooperate with SRA contrary to Rule 20.05 The Solicitors Code of Conduct 2007.

Documents

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

Applicant:

- Application dated 12 September 2011;
- Rule 5 Statement with Exhibits dated 12 September 2011;
- Copy Civil Evidence Act Notice dated 15 November 2011;
- Schedule of Costs of the Applicant dated 29 February 2012.

Respondent:

- No documents submitted.

Preliminary Matter (1)

3. At the commencement of the hearing the Chairman informed the parties that Mr Marquez believed he may have had some dealings with papers relating to the Respondent on a previous occasion and that he recognised the Respondent. Mr Marquez emphasised that he had no recollection of the circumstances in which he may have had previous contact with the Respondent, such as why he knew the Respondent's name or recognised him, so had no preconceptions about the Respondent. The parties were told that Mr Marquez offered to excuse himself so that the case could be heard by another Tribunal if there was any risk of prejudice. However, that would mean that the hearing would not take place today. The Respondent thanked Mr Marquez but stated that he, the Respondent, did not recognise Mr Marquez. The Respondent indicated that he would accept the position if Mr Marquez considered he could not sit but the Respondent did not consider that there was any prejudice and was content for Mr Marquez to sit if he wished to do so.

4. The parties were informed that in all of the circumstances, and given that he had no recollection of the circumstances in which he may have had any dealings with the Respondent, Mr Marquez would sit and hear this case.

5. In the course of the hearing the Respondent referred to an incident concerning a prison visit, and referred to a previous Tribunal hearing. Mr Fanning informed the parties that he may have been involved in that matter as he recognised the circumstances described by the Respondent.

6. It was noted that it was not usual in Tribunal proceedings for any reference to be made to previous appearances by the Respondent until the Tribunal had made its findings of fact and law. In this instance the Respondent had chosen to give certain information. As all of the Tribunal members had heard what the Respondent had said, Mr Fanning did not consider that there was any reason he should recuse himself.

7. The Respondent thanked Mr Fanning for his frankness. The Respondent did not recognise or know Mr Fanning and was satisfied that no prejudice would arise from Mr Fanning's presence on the Tribunal.

8. In all of the circumstances the Tribunal was satisfied that it was appropriate for the members of this Division to hear and determine the case.

Preliminary Matter (2)

9. For the avoidance of any doubt, the Tribunal noted that the burden of proving the case rested on the Applicant and that in accordance with its usual practice the Applicant would have to seek to prove those allegations to the highest standard, i.e. beyond reasonable doubt.

10. The Tribunal noted that the test to be applied in relation to the allegation of dishonesty which had been made was as set out in Twinsectra Ltd v Yardley and Others [2002] UKHL 12 where it is stated by Lord Hutton:

> "...Before there can be a finding of dishonesty it must be established that the defendant's conduct was dishonest by the standards of reasonable and honest people and that he himself realised that by those standards his conduct was dishonest."

The Tribunal further noted that if it was to make a finding of dishonesty by inference, the inference would have to be irresistible.

Factual Background

11. The Respondent was born in 1965 and was admitted as a solicitor in 1998. His name remained on the Roll of Solicitors.

12. At the material times the Respondent practised as a solicitor under the style of Mantas & Co Solicitors ("the firm") at 206A High Road, London, N15 4NP. The Respondent ceased to practice on or about 31 July 2006 and did not currently hold a practising certificate.

13. Between 1 October 2005 and 30 September 2006 the firm held professional indemnity insurance issued by Novae Insurance Company Limited ("Novae").

14. The Respondent signed the Proposal Form which led to the issue of insurance cover by Novae on 14 August 2005. On 31 August 2005 the Respondent sent an email concerning questions raised in relation to the proposal form.

15. Contracts of insurance are in all cases contracts of the utmost good faith. The proposal form signed by the Respondent contained a declaration which, inter alia, stated that the contents of the Proposal Form would form the basis of the ultimate contract of insurance.

16. Prior to the insurance with Novae the firm was insured via The Law Society's Assigned Risks Pool ("ARP"). The Respondent sought to obtain replacement cover in the open market for the practice year 2005/2006.

17. In the Proposal Form the Respondent answered the question:

> "Has any fee earner in the firm.... practised in a firm subject to an investigation or an intervention by The Law Society (including the OSS and CCS)?"

with the answer,

> "No".

18. On 8 February 2005 an inspection of the firm's books of accounts and other documents had commenced. That inspection was carried out by Mr Norton, a Senior Investigation Officer who wrote a Report dated 26 May 2005. No allegations arose out of the contents of the Report. The SRA relied on the Report to show that the Respondent played a significant role in the investigative process.

19. The firm had been subject to a visit by The Law Society's ARP Monitoring Unit which led to a Report dated 22 March 2005. A formal letter in relation to that Report had been written to the Respondent on 12 July 2005.

20. The proposal form signed by the Respondent contained the statement:

> "I/We undertake to inform insurers of any material alterations to the information provided or any new fact or matter arising before completion of the contract of insurance which may be relevant to the contract of insurance."

21. On 7 September 2005 proceedings were issued against the Respondent before the Tribunal. The Respondent did not inform Novae of those proceedings.

22. During the period of cover provided by Novae (2005/2006) many claims for professional negligence arose against the firm. No allegations arose out of such claims in these proceedings. Fishburns Solicitors were instructed by Novae in relation to its position with respect to the provision of indemnity to the Respondent/the firm. On 13 May 2010 Fishburns complained to the SRA that the Respondent had not cooperated. The SRA wrote formally to the Respondent on 11 January 2011 dealing with conduct issues arising out of the Fishburns' complaint and seeking to obtain information needed by Novae which the Respondent was

contractually obliged to provide. The Respondent did not reply and the issue of proceedings against the Respondent in the Tribunal was then authorised by the SRA.

Witnesses

23. The Respondent gave evidence on his own account. He had not previously provided a Witness Statement.

Findings of Fact and Law

24. **Allegation 1.1: Given false and misleading information in an application for professional indemnity insurance contrary to Rule 1(d) Solicitors Practice Rules 1990 (as amended) ("SPR").**

24.1 This allegation was denied by the Respondent.

24.2 The Tribunal considered carefully the proposal form which had been completed by the Respondent and signed by him on 14 August 2005.

24.3 The Tribunal accepted that insurance contracts are in all cases contracts of the utmost good faith. In evidence the Respondent confirmed that he knew that to be the case. The Respondent was therefore aware of a duty to provide information to insurers which could be relevant to whether an insurer would choose to offer an insurance contract and the terms on which that offer was made.

24.4 The Tribunal noted that at paragraph 15 of the proposal form under the heading "Basis of Contract" it was stated:

> "I/We declare that, after full enquiry of all partners and staff, all claims and circumstances which may give rise to a claim had been reported to SIF or current insurers and that the statements in this proposal form (and attachments if any) are true and complete and shall form the basis of any contract of insurance effected thereupon. I/We undertake to inform insurers of any material alterations to the information provided or any new fact or matter arising before completion of the contract of insurance, which may be relevant to the contract of insurance".

24.5 Any reasonable and honest person, including any solicitor, would understand the duty to ensure that the information provided in the form was correct and complete, and a duty to inform the potential insurers of any change in circumstances or new information which would be relevant.

24.6 The Tribunal considered the section in the Proposal Form on which the allegation was based. The relevant section asked whether any fee earner in the firm "practised in a firm subject to an investigation or an intervention by The Law Society....". The Tribunal accepted that some of the wording of the insurance proposal form was less than ideal. However, any reasonable and honest person, including a solicitor, would understand that where any sort of investigation had been carried out by or on behalf of the Regulatory Body, that ought to be disclosed. The Tribunal considered that disclosure ought to be made even if no adverse findings had been made in the

investigation: providing a copy of the Investigation Report would clarify the necessary matters. Indeed, on the proposal form at Section 6 it was stated:

> "If yes, please provide full details and include a copy of all reports issued by the OSS, CCS and Disciplinary Tribunal and/or Regulatory Body".

The Respondent had clearly answered "No" to the question set out above. That answer was clearly untrue in that the Respondent himself practised in a firm which had been subject to an investigation.

24.7 The Tribunal noted that Mr Norton of The Law Society had conducted what was described as an "inspection" which started on 8 February 2005 and which led to a Report dated 26 May 2005. The Respondent was the principal of the firm and had been the main person to whom Mr Norton had spoken in the course of the investigation. The Tribunal further noted that the firm had been visited by the ARP Monitoring Unit which led to a Report dated 22 March 2005, about which the Respondent had been sent a formal letter on 12 May 2005.

24.8 The Respondent was therefore fully aware of two monitoring/investigative visits by or on behalf of the profession's Regulatory Body in the six month period before he signed the proposal form.

24.9 The Respondent gave evidence that he had not answered the question untruthfully.

24.10 Firstly, he told the Tribunal that he had answered "No" because he had not practised in a firm subject to an investigation. The Respondent told the Tribunal that the question did not ask about the present practice, Mantas & Co, but referred to any previous firms. In cross-examination the Respondent told the Tribunal that he may have answered "Yes" if the question had been asked in relation to Mantas & Co.

24.11 The Tribunal could not accept the contention that the proposal form should be read as referring only to any previous firm in which a fee earner had worked and not the current firm. The correct interpretation of the form, and one which any reasonable and honest person would adopt, was that the question related to any practice in which a fee earner had worked up to the date of the signing of the form: that would clearly include Mantas & Co.

24.12 In evidence the Respondent told the Tribunal that he did not believe the firm had been subject to an investigation. The Respondent referred to the visit by Mr Norton as an "inspection" of the books. He drew attention to references throughout Mr Norton's Report to there being an "inspection". The Respondent told the Tribunal that Mr Norton had not told him that he was "investigating". Further, he stated he had been told that the ARP Monitoring visit was a routine visit to assist the firm. Accordingly, the Respondent told the Tribunal he had given a truthful answer. Under cross-examination the Respondent continued to deny that the visit from which a Report dated 26 May 2005 had been written was an "investigation".

24.13 The Tribunal rejected this contention by the Respondent. Mr Norton's job at the relevant time was "Senior Investigation Officer" and he had been so described in his report. The matters on which he had reported included the existence of a significant cash shortage. In some cases a routine inspection may become an "investigation" if

matters of concern were identified. In this instance it was clear from the matters considered by Mr Norton and referred to in his report that he was investigating potential irregularities in the accounts.

24.14 The Tribunal rejected the Respondent's evidence concerning what he said his understanding was about the nature of the visits by The Law Society's Officers. His explanation was not credible. Two investigations had taken place and should have been reported to the potential insurers.

24.15 In evidence the Respondent contended that he had provided further information to the insurers beyond that which was recorded in the Applicant's bundle. The Respondent referred to an email he had sent to the insurance brokers on 31 August 2006 which answered some queries raised by the brokers, which was exhibited to the Rule 5 Statement. The Tribunal noted that the Respondent had given information concerning a conditional practising certificate and a penalty order. The Tribunal noted that these were the two issues to which the Respondent had answered "Yes" in section 6 of the Proposal Form.

24.16 The Respondent told the Tribunal that there had been other exchanges, telephone calls and the like, before the insurance was issued. The Tribunal did not accept this contention. The Respondent had been served with a Civil Evidence Act Notice on 15 November 2011. He had not served any counter-notice, nor had he produced any documents on which he sought to rely. Indeed, the Respondent had not informed the Applicant, or the Tribunal, in advance of the hearing that he intended to refer to the existence of any other documents.

24.17 The Tribunal did not accept that the Respondent had provided any information to the insurers/brokers prior to the issue of the insurance, or thereafter, which corrected the incorrect information the Respondent had given at section 6 of the proposal form.

24.18 The Tribunal was satisfied beyond reasonable doubt that the information that the Respondent had provided on the insurance proposal form was false and misleading.

24.19 The Tribunal considered whether that information had been given dishonestly.

24.20 The Respondent denied that he acted dishonestly: as set out above he told the Tribunal he had not answered the question incorrectly and had given all relevant information to the insurers/brokers.

24.21 The Tribunal found that in answering incorrectly the question:

> "has any fee earner in the firm practised in a firm subject to an investigation?...

the Respondent's conduct was dishonest by the standards of reasonable and honest people. Reasonable and honest people would understand that the question related to the current firm as well as any past practices and that the processes undertaken during 2005 were "investigations". Had there been any doubt about the status of those processes, the reasonable and honest person would answer the question "Yes", provide information and seek further clarification from the insurers if required. Having heard and seen the Respondent give evidence and heard his explanations for

why he answered the question untruthfully, the Tribunal was satisfied so that it was sure that the Respondent did not have an honest belief that he answered the question correctly and therefore that he knew that what he was doing was dishonest by the standards of reasonable and honest people.

24.22 In reaching this conclusion the Tribunal took into account that the Respondent was not a credible witness and his various explanations were not reasonable. The Respondent knew the relevance of the enquiries on the proposal form to the issue of whether he would be granted insurance and the premium he would be charged, and that insurance contracts were contracts of the utmost good faith but he chose not to reveal the investigations to which his firm had been subject.

24.23 The Tribunal found the allegation, including the allegation of dishonesty to be proved beyond reasonable doubt.

25. **Allegation 1.2: Breached the terms of an undertaking contrary to Rule 1(d) SPR.**

25.1 The allegation was denied by the Respondent. The Tribunal noted that the SRA relied on what was expressed to be an undertaking in the "Basis of Contract" section of the proposal form. The Tribunal accepted that the insurers intended to make it clear that a solicitor would be obliged contractually to inform the insurers of any material information which might affect the insurance cover. However, in the context of the Proposal Form the Tribunal was not satisfied that what was set out therein was indeed an "undertaking": describing it as such did not make it a true undertaking. Breach of any term of a contract with an insurer, given the nature of the contract, would be a serious matter. However, the allegation was pleaded as relating to the breach of the terms of an undertaking, and the Tribunal was not satisfied so that it was sure that what the Respondent had signed amounted to a professional undertaking.

25.2 Accordingly, the Tribunal was not satisfied that this allegation ha d been proved.

26. **Allegation 1.3: Failed to cooperate with SRA contrary to Rule 20.05 The Solicitors Code of Conduct 2007.**

26.1 This allegation was denied by the Respondent.

26.2 The Tribunal noted that this allegation related to the Respondent's failure to respond to correspondence from the SRA dated 11 January 2011 (which set out a number of issues raised by Fishburns Solicitors who were then acting for Novae). The only other correspondence referred to from the SRA was a letter dated 21 March 2011 which informed the Respondent that the matter would be referred to the Legal Directorate to institute formal disciplinary proceedings.

26.3 In evidence, the Respondent told the Tribunal that he had been out of the country for much of 2011 and offered his passport as proof of this. The Respondent told the Tribunal that he had been in England on 6 January 2011 and had left the country again in about February, returning in May 2011. The letter of 11 January 2011 had been sent to his home address in England. However, the Respondent told the Tribunal he had not attended that address whilst he was in England on that occasion, due to marital difficulties, and that his mail was not forwarded. The Respondent told the

Tribunal that if he had seen the letter he would have responded to it. He told the Tribunal that he had tried to cooperate with Fishburns, and had attended their office on several occasions.

26.4 The Tribunal noted that the allegation was based on a failure to respond to one letter. The Respondent had told the Tribunal that he had not received the letter, and had given a reasonable explanation for that. It had not been alleged in the allegations that any failure to cooperate with Fishburns was equivalent to failure to cooperate with the SRA. In those circumstances, where the Respondent's alleged default related only to a failure to respond to one letter, which he may well not have received, the Tribunal was not satisfied to the required standard that the allegation had been proved.

Previous Disciplinary Matters

27. In matter 9340/2005, heard on 28 and 29 September 2006, the findings document dated 1 March 2007 recorded that the Respondent had been suspended from practice for a period of two years and had been Ordered to pay 50% of the costs of and incidental to the application.

28. In matter 10563/2010 heard on 5 January 2011 the Tribunal had Ordered the Respondent to be suspended from practice for one year and Ordered that he do pay the costs of and incidental to the application and enquiry fixed in the sum of £7,014.75, not to be enforced without leave of the Tribunal.

29. The Tribunal noted that the Respondent had given evidence in matter 9340/2005, and it was in this context that Mr Marquez had seen him at the hearing on 26 October 2010.

Mitigation

30. The Respondent told the Tribunal that he had been suspended from practice in 2006 and in relation to those proceedings a costs order in the region of £12-£13,000 remained outstanding. In the second proceedings, heard in January 2011, the Respondent had again been suspended but the costs ordered in that case were not to be enforced without permission.

31. The Respondent told the Tribunal that he was not working at present and was maintained by his family and friends. He had very little money. The Respondent asked the Tribunal to deal with him as leniently as it could.

Sanction

32. The Tribunal had made a finding of dishonesty against the Respondent. In the absence of any exceptional and compelling circumstances, the appropriate order was to strike off the Respondent. Further, the Respondent had been before the Tribunal on two previous occasions, and on both occasions had been suspended from practice. The background papers in the present case showed that there had been a number of claims brought against the Respondent's firm, on which the insurers may be required to pay compensation. The Respondent's failure to deal with the Proposal Form correctly and honestly had therefore been serious in principle and in practice.

33. In all of the circumstances of the case, and in particular in light of the finding of dishonesty, the Tribunal determined that the Respondent should be struck off the Roll.

Costs

34. The Applicant sought costs in the total sum of £7,825.50.

35. The Respondent made no objection to the amount of costs claimed but asked the Tribunal that any award made should not be enforced without the Tribunal's further permission. He still owed money under the previous costs award and had no assets or income of his own.

36. On behalf of the Applicant it was submitted that the Respondent had not provided information about his means. It was submitted that although only one allegation had been proved, the allegations had been properly brought, so that no discount should be applied on that basis.

37. The Tribunal considered that all three allegations had been properly brought. One allegation had not been proved as the Tribunal did not regard the alleged undertaking as a solicitors' professional undertaking in the normal sense, and the other had not been proved as the Tribunal was not satisfied the Respondent had received the letter. Had the Respondent provided before the hearing the information about his whereabouts that he had given to the Tribunal during the hearing, the latter allegation may not have been pursued. In any event, it was right for the SRA to have investigated and brought these proceedings.

38. The Tribunal was satisfied that the amount of costs claimed and set out in the schedule were reasonable and proportionate. The Tribunal took into account the cases of Merrick v The Law Society [2007] EWHC 2997 (Admin) and D'Souza v The Law Society [2009] EWHC 2193 (Admin) in relation to the Respondent's ability to pay costs. The Tribunal accepted that the Respondent was not in a position to pay the costs and noted that he had been now struck off, so it was unlikely that he would be able to pay costs in the foreseeable future. Accordingly, the Tribunal considered it appropriate to order the full amount of costs to be paid, but that the order should not be enforced without the further permission of the Tribunal.

Statement of Full Order

39. The Tribunal Ordered that the Respondent, Godwin Nwankwo Ijomanta, 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 £7,825.50, such costs not to be enforced without leave of the Tribunal.

Dated this 2nd of April 2012
On behalf of the Tribunal

A. G. Gibson
Chairman