SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 11233-2014

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

CHIKA EMMANUEL IKE-MICHAEL Respondent

Before:

Mr J.A Astle (in the chair)
Ms A. E. Banks
Mrs V. Murray-Chandra

Date of Hearing: 10 February 2015

Appearances

Mr Andrew Bullock, Senior Legal Advisor, employed by the Solicitors Regulation Authority ("the SRA") of The Cube, 199 Wharfside Street, Birmingham B1 1RN for the Applicant.

The Respondent did not appear and was not represented.

JUDGMENT

Allegations

1. The allegations against the Respondent, made in a Rule 5 statement dated 3 April 2014, on behalf of the SRA, are that by virtue of his conviction upon indictment of conspiracy to assist unlawful immigration into the United Kingdom:

1.1 He has failed to uphold the rule of law and the proper administration of justice contrary to Principle 1 of the SRA Code of Conduct 2011; and/or

1.2 He has failed to act with integrity contrary to Principle 2 of the SRA Code of Conduct 2011; and/or

1.3 He has failed to behave in a way that maintains the trust the public places in him and in the provision of legal services contrary to Principle 6 of the SRA Code of Conduct 2011.

Documents

2. The Tribunal reviewed all the documents submitted by the parties, which included:

Applicant:

- Application and Rule 5 Statement dated 3 April 2014, together with Appendix JD1;
- Letters from the Applicant to the Tribunal dated 13 May 2014 and 22 September 2014;
- Schedule of Costs of the Applicant dated 26 January 2015.

Respondent:

- Letters from the Respondent to the Tribunal dated 1 May 2014, 22 May 2014, 4 September 2014, 22 September 2014, 26 September 2014 and 10 October 2014.

Tribunal:

- Memorandum of case management hearing on 23 June 2014;
- Memorandum of case management hearing on 24 September 2014;

Preliminary Matter

3. The Chair noted that the Respondent had applied for an adjournment of the proceedings until he was released from prison so that he would be able to attend. Mr Bullock told the Tribunal that the Applicant opposed the Respondent's application.

4. Mr Bullock asked the Tribunal to proceed to hear the matter. The application by the Respondent was a reiteration of an application made to another Division of the Tribunal on 24 September 2014, which had been rejected at that stage. He asked the Tribunal to note that in his latest submissions the Respondent was expressly adopting submissions he had already made on that previous occasion. This was therefore not a

fresh application to adjourn but an invitation for the Tribunal to reconsider a previous Division's decision on the basis that it had been erroneous. In Mr Bullock's submission this was not something that the Tribunal should do and had the Respondent really wished to appeal the previous Division's decision then that should have been by way of judicial review.

5. In any event, the Respondent's arguments were misconceived and Mr Bullock told the Tribunal that he wished to make five specific points in that regard:

   a) the Respondent placed reliance on Article 6(1) of the European Convention on Human Rights and upon equality of arms. He said that these principles were violated because he could not call witness evidence. However in Mr Bullock's submission, Article 6(1) did not guarantee the right to call witness evidence and that Article was not infringed simply on that basis provided there was otherwise a proper examination of all of the facts by the Tribunal;

   b) the Respondent had complained of his lack of facilities to prepare for the hearing and his inability to attend it. The requirements of Article 6(1) required that the hearing should be fair and that he was not placed at a significant disadvantage, it did not require that he should have the same opportunity to prepare and attend the hearing as a solicitor who was living at home. In Mr Bullock's submission there was no question of any significant disadvantage to the Respondent in this case. The Tribunal was an independent body, the Respondent had been furnished with a full set of the procedural rules governing the Tribunal and whilst he was not able to attend, he was able to participate by making written submissions and mitigation. It was not uncommon for impecunious solicitors to write in rather than appear in person. Article 6 guaranteed a right to participate in the proceedings but did not guarantee an absolute right to attend. The Respondent's complaint in this regard was in any event against the Prison Service rather than the Tribunal.

   c) Mr Bullock asked the Tribunal also to bear in mind that this was a conviction case with proof of the conviction under Rule 15(2) of the Solicitors (Disciplinary Proceedings) Rules 2007 ("the SDPR"). It followed that the SRA did not have to prove the case afresh but could simply point to the criminal conviction as conclusive proof of the allegations. There were no SRA witnesses present for the Respondent to challenge and it was not open to him to challenge his conviction in this forum. In Mr Bullock's submission all the Respondent could do would be to mitigate or to say that it was a different person who had been convicted.

   d) Mr Bullock told the Tribunal that it was in the public interest that the matter proceed as soon as possible. There was an ongoing reputational risk to the profession and a risk of allowing a solicitor who had been convicted of a serious offence to be able to re-enter practice as a solicitor without any sanction.

   e) The Tribunal was aware that the Respondent had now referred his case to the Criminal Cases Review Commission ("the CCRC"). However, if the Respondent were to be successful at the CCRC then under Rule 21 (5) of the SDPR it would be open to the Respondent as of right to apply to revoke any findings made against him by the Tribunal.

6. In Mr Bullock's further submission, there was no merit in the Respondent's argument that he would lose his livelihood, as he had not been practising as a solicitor at the time of his conviction. The fact that the Respondent had been convicted on his own admission was another factor that the Tribunal could legitimately take into account.

The Tribunal's Decision on the Preliminary Matter

7. The Tribunal had taken careful note of the contents of the Respondent's letters to the Tribunal and Mr Bullock's submissions.

8. The Tribunal had been persuaded by Mr Bullock's arguments. Whilst the Respondent was unable to attend the hearing the Tribunal had taken account of the fact that in all the circumstances it was unlikely that the Respondent would be prejudiced by his inability to attend or that he would not receive a fair hearing. He had produced no new points since the Tribunal had last fully considered the matter on 24 September 2014. Notwithstanding this and notwithstanding the previous decision of the Tribunal on his earlier application for adjournment, the Tribunal, whilst noting and placing due weight upon the decision on that earlier application, nonetheless took into account afresh all the points now raised by the Respondent.

9. It was apparent that the Respondent would seek to argue his conviction before the Tribunal and he made the point that he had no facilities with which to advance his case. However, the Tribunal had before it a Certificate of Conviction and following the principles in Shepherd v The Law Society [1996] EWCA Civ 977, the Tribunal concluded that the Respondent could not use the hearing before it to establish his innocence of the criminal convictions, particularly as his appeal had failed. If the Respondent were to be successful at the CCRC and his conviction quashed then he had the right to return to the Tribunal to seek to have its findings revoked.

10. The Tribunal had applied the principles in R –v- Jones [2002] UKHL5 and Tait –v- the Royal College of Veterinary Surgeons [2003] UKPC34 and had been mindful of its discretion to proceed with the hearing, balancing fairness to the Respondent with the public interest in proceeding with cases as expeditiously as possible. Any adjournment of the matter would be unlikely to achieve anything in the short term as the Respondent had not shown any greater likelihood of his being able to attend by means of a production order from the prison in the near future.

11. The Tribunal had proceeded with the utmost caution in deciding whether to proceed in the absence of the Respondent but had concluded that on balance it was right that the matter should proceed at this hearing.

Factual Background

12. The Respondent was born on 22 November 1965. He undertook the Qualified Lawyers Transfer Test in July 2004 and was admitted as a solicitor in England and Wales on 15 June 2006.

13. The Respondent's name remained on the Roll of solicitors and he did not hold a practising certificate.

14. The Respondent was a director of African Children Story Company Ltd and Illuminati Law Chambers Ltd. Neither organisation was regulated by the SRA and the SRA had no record of the Respondent having practised from a firm regulated by it.

15. On 14 October 2013, at Wood Green Crown Court, the Respondent was, upon his own confession, convicted upon indictment of conspiracy to assist unlawful immigration into the United Kingdom. On 20 December 2013 the Respondent received a sentence of five years imprisonment.

16. In his sentencing remarks, the Judge stated that the Respondent advised on how to create convincing sham marriages and drew up the required documents and certificates of eligibility to arrange those marriages. In passing sentence the Judge said of the Respondent that "your advice was key to the fraudulent applications. As a solicitor you had a professional duty to uphold the system of justice. Your actions bring all solicitors into disrepute. I regard you as the most culpable in the sham marriage enterprise, key to the organisation, procurement of the marriages and the recipient no doubt of considerable sums of money for such procurement and advice".

17. The Respondent's criminal trial and conviction attracted media coverage.

18. On 29 January 2014, the Respondent wrote to the SRA stating that he had lodged an appeal against the sentence imposed. In a further letter dated 4 September 2014 the Respondent told the Tribunal that the Court of Appeal had refused to give him permission to appeal against the sentence.

Submissions of the Applicant

19. Mr Bullock went through Appendix JD1 and took the Tribunal to the Certificate of Conviction in the Wood Green Crown Court which was dated 17 February 2014 and to the transcript of the sentencing remarks of Her Honour Judge May QC and specifically to her remarks regarding the Respondent. He confirmed that there was no suggestion that the Respondent had been involved in a second conspiracy regarding human trafficking and asked the Tribunal to put that aspect of the Crown Court case out of its mind.

20. Mr Bullock also took the Tribunal to the press reports of the trial and conviction of the Respondent, both in a national newspaper and a local one. In Mr Bullock's submission this was a case where the reputation of the profession had been damaged by a solicitor being identified in the press as having been convicted of such an offence.

Witnesses

21. None.

Findings of Fact and Law

22. The Tribunal had due regard to the Respondent's right to a fair trial and to respect for his private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

23. The Applicant was required to prove the allegations beyond reasonable doubt.

24. The Tribunal treated each of the allegations as having been denied by the Respondent.

25. **The allegations against the Respondent, Chika Emmanuel Ike-Michael, made in a Rule 5 statement dated 3 April 2014, are that by virtue of his conviction upon indictment of Conspiracy to assist unlawful immigration into the United Kingdom:**

1.1 He has failed to uphold the rule of law and the proper administration of justice contrary to Principle 1 of the SRA Code of Conduct 2011; and/or

1.2 He has failed to act with integrity contrary to Principle 2 of the SRA Code of Conduct 2011; and/or

1.3 He has failed to behave in a way that maintains the trust the public places in him and in the provision of legal services contrary to Principle 6 of the SRA Code of Conduct 2011.

25.1 The Tribunal noted that under Rule 15(2) of the SDPR:

> "… proof of a conviction shall constitute evidence that the person in question was guilty of the offence. The findings of fact upon which that conviction was based shall be admissible as conclusive proof of those facts save in exceptional circumstances."

25.2 The Tribunal had before it proof of the Respondent's conviction at the Wood Green Crown Court and the facts upon which that conviction was based. There was nothing before the Tribunal that cast any doubt on the fact that the Respondent had committed the offence for which he had been convicted and the Tribunal found no exceptional circumstances.

25.3 The Tribunal noted Principles 1, 2 and 6 of the SRA Principles 2011 SRA and was certain so that it was sure that in being convicted of the offence of conspiracy to assist unlawful immigration into United Kingdom, the Respondent had breached each of these Principles. The Tribunal therefore found each of the allegations against the Respondent to have been proved beyond reasonable doubt.

25.4 The Tribunal observed that should the conviction be quashed as a result of the Respondent's application to the CCRC, then he would be at liberty to have the matter reopened before the Tribunal.

Previous Disciplinary Matters

26. None.

Mitigation

27. Any mitigation by the Respondent was contained within his letters dated 1 May 2014, 22 May 2014, 4 September 2014, 22 September 2014, 26 September 2014 and 10 October 2014 which had been sent by him to the Tribunal.

Sanction

28. The Tribunal referred to its Guidance Note on Sanctions when considering sanction.

29. The Tribunal had been very careful to restrict itself to the one offence under consideration in imposing sanction. In this case the facts spoke for themselves and the Respondent had been convicted of a very serious criminal offence which had involved dishonesty. It was clear from the Judge's sentencing remarks that the offence had been planned and calculated and had involved a breach of trust by a solicitor.

30. The Respondent had bought the profession into disrepute and had expressed no remorse for his actions. The Tribunal had considered all available sanctions but in this case, in order to protect the public and maintain confidence in the profession the only appropriate sanction was that of strike off.

Costs

31. The Tribunal had before it the Applicant's schedule of costs in the sum of £4,134.20. Mr Bullock told the Tribunal that these costs were somewhat higher than would be normal for a conviction case as there had been two case management hearings and communications with the Respondent. However, there should be a reduction for the shorter than anticipated length of the hearing and some apportionment between this case and the other case also heard by this Tribunal. Mr Bullock agreed that there were some calculation errors on the first page of the costs schedule relating to letters and e-mails that had been charged at the wrong rate.

32. Mr Bullock said that the Respondent had put forward submissions to the Tribunal that he was impecunious and had provided a handwritten statement of his means within his letter dated 10 October 2014. Mr Bullock asked the Tribunal to note that there was no mention of any bank accounts in the Respondent's calculations and neither was there any documentary evidence to back up his assertions as required following the principle in SRA v Davis and McGlinchey [2011] EWHC 232 (Admin).

33. The SRA had made enquiries of HM Land Registry and found a person of a similar name who owned a property however it was not clear whether this was the Respondent or not. If the Tribunal did have concerns about the Respondent's ability to meet any costs order then Mr Bullock asked that, as a minimum, leave be granted to the Applicant to enforce costs by way of a charge upon any property owned by him.

34. The Tribunal concluded that in principle it was right and proper that the Respondent should be liable for costs in this case. The Tribunal had paid careful attention to the items listed on the costs schedule and determined that there should be some reductions to allow for those items already conceded by Mr Bullock as being too high. It would also make a deduction for what it regarded as excessive amounts in relation

to reviewing documentation. The total amount of costs that were justified and reasonable in all the circumstances was £2,900.

35. It was correct to say that there was no substantive evidence before the Tribunal concerning the Respondent's financial means. However, the Tribunal found that it would be very difficult for the Respondent to produce such evidence whilst he was in prison. It was also apparent that further investigations by the SRA might produce further information concerning his financial position and ownership of any property. The Tribunal would therefore make an Order for costs in the sum of £2,900.00, not to be enforced without its leave and allow the SRA to apply for a Charging Order on any property owned by him.

Statement of Full Order

36. The Tribunal Ordered that the Respondent, Chika Emmanuel Ike-Michael, 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 £2,900.00, such costs not to be enforced without leave of the Tribunal save that the Applicant may apply for a Charging Order in respect of any property owned by the Respondent.

Dated this 4th day of March 2015
On behalf of the Tribunal

J.A. Astle
Chairman