SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 — Case No. 11842-2018

BETWEEN:

SOLICITORS REGULATION AUTHORITY — Applicant

and

OLUSEGUN AFOLAYAN-JEJELOYE — Respondent

Before:

Mr E. Nally (in the chair)
Mr T. Smith
Mr M. Palayiwa

Date of Hearing: 13 November 2018

Appearances

Inderjit Singh Johal, barrister of Solicitors Regulation Authority of Solicitors Regulation Authority, The Cube, 199 Wharfside Street, Birmingham, B1 1RN, for the Applicant.

Herbert Anyiam, barrister of Great James Street Chambers, 37 Great James Street, London WC1N 3HB for the Respondent.

JUDGMENT

Allegations

1. The Allegations against the Respondent made by the Applicant were that he:

1.1 Between December 2016 and February 2018 he practised as a sole practitioner through the firm of Michael James Solicitors Limited and subsequently as Micmatt Solicitors Limited trading as Michael James Solicitors knowing that the firms had not been authorised by the SRA in breach of all or alternatively any of the following:

1.2 Rule 10.1 of the Practice Framework Regulations 2011 (PFR 11);

1.3 Rule 5.1 of the Solicitors Indemnity Insurance Rules 2013 (SIIR13) and Outcome 1.8 of the SRA Handbook;

1.4 Rule 29 of the SRA Accounts Rules 2011 (SRA AR11);

1.5 Section 14 of the Legal Services Act 2007 (LSA 07).

1.6 Principles 1, 2, 4, 6, 7 and 8 of the SRA Principles 2011 ("the Principles");

2. Made applications for authorisation of Micmatt solicitors Limited to the SRA on the 24 January 2017 and on the 20 December 2017 indicating that he wished to commence providing legal services on a date in the future when in fact he had already started providing legal services in December 2016 through Michael James Solicitors Limited and subsequently through Micmatt solicitors on or around the 17 January 2017.

The applications were therefore misleading and the Respondent acted in breach of all or alternatively any of the following Principles, 2 and 6 of the Principles.

3. Dishonesty was alleged against the Respondent in respect of allegations 1.1 and 2.1; however proof of dishonesty was not an essential ingredient for proof of the any of the allegations.

Preliminary Matter

4. The Respondent had made an application to adduce an affidavit out of time, specifically three weeks after the date specified in the standard directions. This application had not been opposed. The Tribunal considered that it was in the interests of justice to allow the Respondent to rely on this document and the application was therefore granted.

Factual Background

5. The Respondent was born in 1981 was admitted to the Roll of Solicitors on the 15 December 2011. He had practised at Dennings solicitors until the 30 April 2015. He subsequently practised as a sole practitioner through an unauthorised firm, Michael James Solicitors Limited. The name of the company was changed to Micmatt Solicitors Limited on the 24 January 2017. The Respondent subsequently practised as Micmatt Solicitors Limited trading as Michael James Solicitors ("the Firm").

6. On the 29 September 2017 the SRA received a complaint from a solicitor following a hearing at Romford County Court in family law proceedings. The Respondent had represented the applicant in those proceedings.

7. The solicitor had concerns about the Respondent's competence and whether he was operating through a regulated firm. The complaint led to concerns that the Respondent was practising through an unauthorised firm and that prompted a forensic investigation into Michael James Solicitors which began on the 18 January 2018. The investigation was undertaken by David Bailey, the SRA's Forensic Investigation Officer ("FIO"). The investigation resulted in the production of a Forensic Investigation Report ("FIR") dated 5 February 2018. This established that the Respondent had been practising effectively as sole practitioner for about a year through an unauthorised firm trading as Michael James Solicitors. The FIR led to an intervention into the firm.

8. Michael James Solicitors Limited was incorporated by the Respondent on the 23 August 2016. The Applicant's case was that the Respondent had begun practising through Michael James Solicitors Limited in December 2016 despite not having authorisation to do so. From early 2017, the firm operated from an office at 327A Barking Road, London, E13 8EE. The Respondent changed the firm's name to Micmatt Solicitors in January 2017. Companies House records showed that the Respondent was the sole director and shareholder of Micmatt Solicitors trading as Michael James Solicitors.

9. The Respondent made two applications to the SRA for authorisation of a firm. The first application was made on the 24 January 2017 and the second on the 20 December 2017. The Respondent withdrew the first application on 14 August 2017 after an authorisation officer recommended refusal due to risks identified in relation to the management and governance of the firm. The SRA wrote to the Respondent on 11 January 2018 about his second application. That application was superseded by the intervention into the firm.

10. Both of the application forms submitted by the Respondent to the SRA for authorisation made it clear that he could not start practising through a firm until it had been authorised by the SRA and that it was a criminal offence to carry out reserved legal activities. In both applications for authorisation, the Respondent confirmed that he had read and understood the guidance notes and that the information in the applications was correct and complete to the best of his knowledge. In the first application, the Respondent confirmed that the date upon which he would like to start providing legal services was 10 February 2017. In the second application, he gave the date as the 10 February 2018. The Respondent also confirmed in both applications that a new professional indemnity insurance policy would start in respect of the firm. In both applications, the Respondent signed a declaration which made it clear that knowingly or recklessly giving information which is false or misleading, or failing to inform the SRA of significant information may lead to, amongst other things, disciplinary action being taken.

11. The Respondent operated both a client and office account and received monies from clients.

12. The accounting records consisted of excel spreadsheets setting out the financial position of the firm as at June 2017. There were no accounting records post June 2017. There were 15 manual ledgers, four of which contained a note in red - 'mistakenly received money in office account'. Many of the ledgers were undated and combined office and client monies. The Respondent did not maintain a cash book, client listing or reconciliations. The Respondent did not provide the FIO with any other accounting records. The FI officer was consequently unable to express an opinion as to whether the firm held sufficient monies to meet its liabilities.

Witnesses

13. David Bailey (FIO)

13.1 Mr Bailey confirmed that his witness statement was true to the best of his knowledge and belief. He had interviewed the Respondent on 18 January 2018, when the Respondent had made admissions. The Respondent had admitted practising when not authorised to do so and he had told Mr Bailey of the sort of work that he performed, which included reserved legal activities. The Respondent had told Mr Bailey that he had an office account and a client account. The ledgers were not compliant with the rules and office and client monies appeared to have been mixed. Mr Bailey had not seen any reconciliations.

13.2 In cross examination it was put to Mr Bailey that there were no documents that he had exhibited from client files from 2016. Mr Bailey did not dispute this but noted that the Respondent had stated in interview that he has been practising since 2016.

13.3 Mr Bailey confirmed that when he had spoken to the insurance broker, it was the Respondent who had made the call and passed the phone to him. When he had first met the Respondent he had assumed that he had professional indemnity insurance, but it subsequently emerged that he did not and that his premium payments had been refunded.

14. The Respondent

14.1 The Respondent adopted his affidavit as his evidence in chief. He told the Tribunal that he assumed that he was entitled to practise as a solicitor and barrister and that he held a practising certificate. The Respondent told the Tribunal that he was "very conscious that we needed authorisation" and that as a result he had not created a website or any advertising for the Firm. All the clients that the Firm had acted for were close friends of his and members of his church. Much of this work was pro bono and he would only start charging if he incurred expenses in assisting these clients.

14.2 The Respondent told the Tribunal that he made a lot of mistakes due to the fact that he had not consulted with experts when seeking the authorisation of the SRA. He told the Tribunal that he made a mistake in filing the application forms and that he could have done better in his interview with Mr Bailey. He told the Tribunal that this had been very difficult him and his family. He now realised that he needed to do more training and he should seek help out. These are things that he would do differently in the future. He told the Tribunal that is definitely not been his intention to mislead the SRA. He told the Tribunal that he had no previous disciplinary records.

14.3 In cross-examination, the Respondent confirmed that he had contacted the SRA in August 2016 concerning his intention to set up the Firm. The SRA had responded by making clear that they were only approving the name for the purposes of registration at Companies House but that the Respondent would need to make an application for approval. The Respondent told the Tribunal that he had not sought approval immediately as he knew that he had to get professional indemnity insurance and he had set about that process in August 2016. He had been unable to get a quotation in the name of Michael James and this was why he had changed the company name. He had obtained premises in November 2016 and he accepted that he had told Mr Bailey that he had started practising then. Mr Johal put to the Respondent that he had started practising knowing that he did not have authorisation. The Respondent agreed this was correct but stated that he was not taking on cases through the Firm and that the only cases he dealt with her family members that he represented in court. He was taken to the ledgers which showed monies coming into the Firm, albeit to the incorrect account. The Respondent reiterated that they were not clients but family members. The Respondent subsequently accepted that he had been providing services through the Firm. It was put to the Respondent that he had continued to receive instructions throughout 2017. The Respondent accepted this but stated that he thought he could do some legal work as he had a practising certificate. However the Firm had not advertised itself and it was not open to the general public.

14.4 The Respondent was asked why, on his first application for authorisation, he had put the date 10 February 2017 as the date on which he wished to begin providing legal services. The Respondent stated that he was confused as to the necessity as he had a valid practising certificate. It was put to him that he had made a false declaration. The Respondent stated that he was not sure that he had paid particular attention to the paragraph. In response to questions from the Tribunal the Respondent stated that he had chosen that date as he anticipated the application being processed in one or two weeks.

14.5 In respect of the second application it was put to him that he been practising for about a year but that he had put 10 February 2018 as the intended commencement date and that this too was a lie. The Respondent stated that he had been copying the information from the first form and had not been paying attention. He denied any intention to mislead and told the Tribunal that he had been confused by the whole process but had tried his best to comply. The Respondent told the Tribunal that after leaving Dennings in 2015 he had struggled to get a job and this had been difficult as he had a very young family. However he denied that he was under significant financial pressure as he was being supported by his father. He denied that he had started to practice without authorisation as he needed the money.

Findings of Fact and Law

15. The Applicant was required to prove the allegations beyond reasonable doubt. The Tribunal had due regard to the Respondent's rights 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.

16. The Tribunal considered carefully all the documents, witness statements and oral evidence presented. In addition it had regard to the oral and written submissions of both parties, which are briefly summarised below.

17. The test for considering the question of dishonesty was that set out in Ivey v Genting Casinos (UK) Ltd t/a Crockfords [2017] UKSC 67 at [74] as follows:

> "the test of dishonesty is as set out by Lord Nicholls in Royal Brunei Airlines Sdn Bhd v Tan and by Lord Hoffmann in Barlow Clowes: ..... When dishonesty is in question the fact-finding tribunal must first ascertain (subjectively) the actual state of the individual's knowledge or belief as to the facts. The reasonableness or otherwise of his belief is a matter of evidence (often in practice determinative) going to whether he held the belief, but it is not an additional requirement that his belief must be reasonable; the question is whether it is genuinely held. When once his actual state of mind as to knowledgeable belief as to facts is established, the question whether his conduct was honest or dishonest is to be determined by the factfinder by applying the (objective) standards of ordinary decent people. There is no requirement that the defendant must appreciate that what he has done is, by those standards, dishonest."

18. The Tribunal applied the test in Ivey and in doing so, when considering the issue of dishonesty adopted the following approach:

- Firstly the Tribunal established the actual state of the Respondent's knowledge or belief as to the facts, noting that the belief did not have to be reasonable, merely that it had to be genuinely held.

- Secondly, once that was established, the Tribunal then considered whether that conduct was honest or dishonest by the standards of ordinary decent people.

19. **Allegation 1 - Between December 2016 and February 2018 he practised as a sole practitioner through the firm of Michael James Solicitors Limited and subsequently as Micmatt Solicitors Limited trading as Michael James Solicitors knowing that the firms had not been authorised by the SRA in breach of all or alternatively any of the following:**

1.2 Rule 10.1 of the Practice Framework Regulations 2011 (PFR 11);

1.3 Rule 5.1 of the Solicitors Indemnity Insurance Rules 2013 (SIIR13) and Outcome 1.8 of the SRA Handbook;

1.4 Rule 29 of the SRA Accounts Rules 2011 (SRA AR11);

1.5 Section 14 of the Legal Services Act 2007 (LSA 07).

1.6 Principles 1, 2,4, 6, 7 and 8 of the SRA Principles 2011 ("the Principles");

Applicant's Submissions

19.1 Mr Johal submitted that the Respondent was aware, by at least the 24 January 2017 that he required prior authorisation of his sole practice before he could supply legal services through it and to do so would otherwise be a criminal offence. Despite this he had started practising as a sole practitioner in December 2016. He had continued to practise

throughout 2017, despite withdrawing his first application for authorisation in August 2017 and making a second application in December 2017, knowing that his firm was unauthorised. Mr Johal submitted that this conduct would be regarded as dishonest by the standards of ordinary decent people.

Respondent's Submissions

19.2 Mr Anyiam presented written submissions in closing, which the Tribunal read carefully. These submissions highlighted the following points, which were relevant to both Allegations:

- The Respondent admitted all the Allegations save for dishonesty, which was denied;
- The test for dishonesty was that set out in Ivey;
- The Respondent had made a "serious error of judgement" as a result of "financial pressure, impatience and ignorance" as he believed he could practice under a similar regime to that in Nigeria, where he had first qualified;
- The Respondent's conduct was based on a genuine, honest and reasonable belief that he had been doing the right thing;
- The Tribunal should have regard to the character references in assessing both credibility and propensity;
- The Respondent had not deliberately intended to breach any of the Rules.

The Tribunal's Findings

19.3 The Respondent had admitted the factual basis of Allegation 1 together with the breaches of the Rules and Principles and Section 14 of the Legal Services Act 2007. The Tribunal was satisfied that these admissions were properly made on the evidence. The ledgers showed that there was activity taking place in respect of clients in 2016. Nothing turned on whether it was late 2016 or early 2017 but it did appear that he was operating in 2016 and receiving payments on account. By his own admission the Respondent had been aware that he was not authorised to provide legal services but despite this he was undertaking work for family and friends.

19.4 The Respondent had told the Tribunal that he saw a distinction between acting for family and friends on the one hand and advertising and having a website on the other. The Tribunal rejected this distinction. The fact was that the Respondent had been charging individuals for the provision of legal services and how he came to know these individuals was of no relevance to the question of whether he was authorised. The SRA had emailed him in August 2016 making clear that he would be required to make an application for approval. This was a very clear piece of advice and instruction. The Respondent clearly knew what was required of him as he had proceeded to make such an application in January 2017. The Tribunal noted that the Respondent had made admissions in his interview with Mr Bailey and the Tribunal had found Mr Bailey to be a credible witness.

19.5 The Tribunal found Allegations 1.1 to 1.6 proved beyond reasonable doubt based on the Respondent's admissions and on the evidence.

Dishonesty

19.6 The Tribunal considered the Respondent's state of knowledge at the material time. The Respondent was aware that he was not authorised, indeed he had told the Tribunal in evidence that he had been "very conscious" that he was not authorised and that he needed to be. The Respondent was in possession of the email from the SRA of August 2016, indeed he had exhibited it to his affidavit. He had known that he had made an application in January 2017 which he had withdrawn in August that year. The Respondent knew the consequences of practising without authorisation as this was stated in unequivocal terms on the form. With that in mind, the Respondent had continued to provide legal services to clients and to charge them for their services. The Tribunal rejected the Respondent's evidence that he had a genuine belief based on his experience of the legal system in Nigeria, for which the Respondent had provided no supporting evidence.

19.7 The Tribunal considered the character references that had been provided and took them into account both in assessing credibility and propensity. However despite the nature of these character references they could not displace the weight of the evidence in this case.

19.8 The Tribunal was satisfied beyond reasonable doubt that by continuing to practise despite knowing that he was not authorised to do so the Respondent had acted dishonestly by the standards of ordinary decent people.

19.9 The Tribunal found Allegation 1 proved in full including the allegation of dishonesty.

20. **Allegation 2 - Made applications for authorisation of Micmatt solicitors Limited to the SRA on the 24 January 2017 and on the 20 December 2017 indicating that he wished to commence providing legal services on a date in the future when in fact he had already started providing legal services in December 2016 through Michael James Solicitors Limited and subsequently through Micmatt solicitors on or around the 17 January 2017.**

Applicant's Submissions

20.1 Mr Johal submitted that the Respondent knew that the dates he had given and the declarations he had made in the application form were misleading as he was already providing legal services. He could not have held that belief in respect of the dates which he gave for the commencement of legal services. Again, Mr Johal submitted that this conduct would be regarded as dishonest by the standards of ordinary decent people.

Respondent's Submissions

20.2 Mr Anyiam's submissions are set out above in relation to Allegation 1. The Tribunal also had regard to those submissions in relation to Allegation 2.

The Tribunal's Findings

20.3 The Tribunal had made a number of factual findings in relation to Allegation 1 that were also relevant to Allegation 2. The Respondent had, again, admitted the factual basis of Allegation 2 together with the breaches of Principles 2 and 6. The Tribunal was satisfied that these admissions were properly made and consistent with the evidence. The Respondent had chosen random dates in the future his applications. But future date in the form the Respondent was demonstrating that he knew that he could not lawfully practise without authorisation. The Tribunal had already rejected the Respondent's reliance on the absence of advertising as implausible and irrelevant . The Respondent had struggled in his evidence to give explanations for matters. He had asserted that there was confusion about the extent of his right to carry out work by virtue of his holding a practising certificate. The Tribunal rejected this, having noted earlier that the forms were very clear. The Respondent would not have been making applications for authorisation if he did not believe that authorisation was required.

20.4 The Tribunal found the factual basis of Allegation 2 and Principles 2 and 6 proved beyond reasonable doubt.

Dishonesty

20.5 The Tribunal considered the Respondent's state of knowledge at the time that he completed the application forms. As noted above, he knew that he was not authorised and he knew that he should have been authorised before he carried out reserved legal activities. Having received the email from the SRA in August 2016 he had commenced practising but had not made the application until January 2017. The Tribunal rejected the Respondent's case that he had not paid attention to the form when completing it. The Tribunal was not convinced by the Respondent's evidence on this point. The Tribunal found that the Respondent had known what the form required from him and that he knew that he was putting a date in the future when in fact he had been practising for between two and 12 months at the time of the respect of applications.

20.6 The Tribunal was satisfied beyond reasonable doubt that this conduct would be considered dishonest by the standards of ordinary decent people.

20.7 Allegation 2 was proved in full beyond reasonable doubt including the allegation of dishonesty.

Previous Disciplinary Matters

21. There were no previous findings before the Tribunal.

Mitigation

22. Mr Anyiam invited the Tribunal to consider all other options to a strike-off. Specifically he invited the Tribunal to consider a suspension. The misconduct had arisen out of naivety and ignorance. He drew the Tribunal's attention to the following points:

- The Respondent had made admissions to all the Allegations save for dishonesty;

- He had no previous disciplinary history here or in any other jurisdiction;
- No client had suffered any loss;
- The acts were of a very brief nature at a time when he had a very small number of clients;
- The Respondent had demonstrated deep remorse;
- He had been unfamiliar with the process;
- He did pro bono work for clients;
- The Respondent had thought the application would result in a visit before approval. The fact that nobody was there when the FIR arrived demonstrated that the firm was not open to the public;
- The Respondent had been trying to do things properly but had gone about it the wrong way;
- This was one of those rare and exceptional cases where there should not be a strike-off.

23. Mr Anyiam told the Tribunal that there could be a combination of sanctions owing to the "peculiar facts of this case" arising from the Respondent's inexperience. A Suspension with restrictions would be the appropriate sanction. These restrictions could include a requirement not to practice as sole practitioner for as long as the SRA deemed appropriate. Although he had undertaken the Management Course Stage 2, he required more training.

Sanction

24. The Tribunal had regard to the Guidance Note on Sanctions (December 2016). The Tribunal assessed the seriousness of the misconduct by considering the Respondent's culpability, the level of harm caused together with any aggravating or mitigating factors.

25. In assessing the Respondent's culpability the Tribunal identified the following factors:

- The Respondent's motivation was to generate an income for himself. He wanted to get independent employment when he was out of work. The actions he had taken were therefore for personal benefit;
- The misconduct had been planned. A lot of preparation had gone into the setting up of the business. The application forms were deliberately filled in and there had been a lot of correspondence between himself, the SRA and PII providers;
- The Respondent was solely responsible for the misconduct;

- He was of moderate experience;

- The Respondent had deliberately misled the regulator;

26. In considering the level of harm caused, the Tribunal noted that there was no evidence of specific harm to an individual client. However the potential for harm was significant as he had been practising without authorisation or PII. The Tribunal noted that he had already encountered difficulty with the accounts and the Court had been misled. There was inevitable harm caused to the reputation of the profession when a solicitor acted in this way and had been dishonest in his dealings with his regulator.

27. The Tribunal identified the following aggravating factors:

- Dishonesty had been proved;

- There had been a breach of the criminal law (LSA 2007);

- The misconduct had been deliberate calculated and repeated; and the forward dating on the forms was a particularly deliberate decision to mislead the SRA;

- The misconduct had continued over a period of more than 12 months;

- The Respondent had known that he was in material breach of obligations.

28. The Tribunal identified the following mitigating factors:-

- He had no previous matters before the Tribunal;

- He had made admissions to the facts and the breach of the Principles including in interview with the SRA;

29. The Tribunal again had in mind the character references.

30. The most serious aspect of the case was the Respondent's dishonesty. Coulson J in Solicitors Regulation Authority v Sharma [2010] EWHC 2022 Admin observed:

> "34. there is harm to the public every time a solicitor behaves dishonestly. It is in the public interest to ensure that, as it was put in Bolton, a solicitor can be "trusted to the ends of the earth"."

31. The misconduct was so serious that a Reprimand, Fine or Restriction Order would not be a sufficient sanction to protect the public or the reputation of the profession from future harm by the Respondent. The misconduct was at the highest level and the only appropriate sanction was a Strike-Off. The protection of the public and of the reputation of the profession demanded nothing less. This had been a sustained period of serious misconduct in a wide range of areas.

32. The Tribunal considered whether there were any exceptional circumstances that would make such an order unjust in this case. The Tribunal did not consider the circumstances of the misconduct to be in any way rare or exceptional and certainly not in category of

case envisaged in Sharma. The Tribunal found there to be nothing that would justify an indefinite suspension. The only appropriate and proportionate sanction was that the Respondent be Struck-Off the Roll.

Costs

33. Mr Johal applied for costs in the sum of £9,424.00. He invited the Tribunal to reduce this sum as the hearing had not taken a full day.

34. Mr Anyiam did not take issue with the level of costs sought but invited the Tribunal to take account of the Respondent's limited means. In answer to questions from the Tribunal the Respondent had explained that he was not currently working, was not in receipt of benefits, had no savings and did not own home. His wife was not working and they had three children under the age of five.

35. Mr Johal reminded the Tribunal that the Respondent had not served a statement despite a direction that he do so if he wished his means to be taken into account.

The Tribunal's Decision

36. The Tribunal considered the cost schedule and found the cost to be reasonable and proportionate. The Tribunal reduced the level of costs by £390.00 which equated to a reduction of three hours in respect of attendance at the hearing. This brought the total costs to £9,034.00. The standard directions had required the Respondent to serve a statement of means 28 days before the hearing if he wished his means to be taken into account. He had failed to do so and the Tribunal saw no basis to reduce the amount of costs that he should pay on account of his means. The Tribunal therefore ordered costs in the sum of £9,034.00 in the usual terms.

Statement of Full Order

37. The Tribunal Ordered that the Respondent, OLUSEGUN AFOLAYAN-JEJELOYE, 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 £9034.00.

Dated this 4th day of December 2018
On behalf of the Tribunal

E. Nally
Chairman