

IN THE MATTER OF ADEBOWALE MOFOLUSHO OMAFADE, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

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Mr J P Davies (in the chair)  
Mr A G Gibson  
Mr M G Taylor CBE

Date of Hearing: 13th October & 15th December 2005

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## **FINDINGS**

of the Solicitors Disciplinary Tribunal  
Constituted under the Solicitors Act 1974

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An application was duly made on behalf of the Law Society by Inderjit Singh Johal, a barrister employed by the Law Society at Victoria Court, 8 Dormer Place, Leamington Spa, Warwickshire, CV32 5AE on 10th November 2004 that Adebowale Mofolusho Omafade of Oakwood, London N14, solicitor, might be required to answer the allegations contained in the statement which accompanied the application and that such order might be made as the Tribunal should think right.

On 18th January 2005 Inderjit Singh Johal made a supplementary statement containing further allegations.

The allegations set out below are those contained in the original and supplementary statements of the applicant.

The allegations were that the Respondent had been guilty of conduct unbecoming a solicitor in each of the following respects:-

- (i) That he failed to join the Assigned Risks Pool prior to 1st September 2003, contrary to Rule 8 of the Solicitors Indemnity Insurance Rules 2003;
- (ii) That he failed to make payment of the Assigned Risks Pool premium to the Assigned Risks Pool manager within 30 days of being notified that such payment was required;

- (iii) That he failed to deal promptly or substantively with correspondence from the Office for the Supervision of Solicitors in breach of principle 30.04 of the Guide to the Professional Conduct of Solicitors 1999;
- (iv) That he failed to deliver or alternatively delayed in delivering to the Law Society an Accountant's Report for the period ending 4th January 2004 contrary to Section 34 of the Solicitors Act 1974 and the Rules made thereunder;
- (v) That he failed to deal promptly or substantively with correspondence from the OSS.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London, EC4M 7NS when Inderjit Singh Johal appeared as the Applicant and the Respondent was represented by Mr Cameron of Counsel.

The evidence before the Tribunal included the admissions of the Respondent.

The Tribunal had been concerned as the hearing on 13th October 2005 that the Respondent had not filed his outstanding Accountant's Report but noted that he would be able to do so imminently. The Tribunal adjourned the hearing to 15th December 2005 to give the Respondent the opportunity to take appropriate steps.

At the conclusion of the hearing the Tribunal made the following Order:-

“The Tribunal Orders that the Respondent, Adebowale Mofolusho Omafade of Oakwood, London, N14, solicitor, do pay a fine of £500.00, such penalty to be forfeit to Her Majesty the Queen, and it further Orders that the Respondent, be suspended from practice as a solicitor for an indefinite period to commence on the 28<sup>th</sup> February 2006 if the Respondent has not by that date filed with the Law Society his outstanding Accountant's Report.

The Tribunal further Orders that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £1,114.60.”

**The facts are set out in paragraphs 1 to 11 hereunder:-**

1. The Respondent, born in 1965, was admitted as a solicitor in 1997. From 30th September 2000 until 4th January 2004 the Respondent carried on in practice on his own account under the style of Omafade & Co Solicitors, 140 Liverpool Road, London, N1 1LA. Subsequently he worked as a consultant at Lawson Adefope Solicitors at 91-93 High Street, London, NW10 4NT. That consultancy ended on 1st April 2004.

Allegations (i) and (ii)

2. The Respondent should have applied to join the Assigned Risks Pool before 1st September 2003 but in breach of Rule 8 of the Solicitors Indemnity Insurance Rules 2003 did not do so. The proposal form was received by the Assigned Risks Pool from the Respondent on 17th December 2003. The Assigned Risks Pool issued a debit note in respect of the premium to the Respondent on 17th December 2003. The amount had not been paid within 30 days of its issue, in breach of Rule 16 of the Solicitors Indemnity Insurance Rules 2003.

Allegation (iii)

3. The Respondent failed to reply to a letter dated 20th February 2004 addressed to him by the Law Society pointing out it had been notified of the position by the Assigned Risks Pool and requiring an explanation within 14 days.
4. The Office for the Supervision of Solicitors (the OSS) sent a further letter to the Respondent dated 9th March 2004, again in relation to the Respondent's application to the Assigned Risks Pool. The Respondent contacted the caseworker by telephone on 11th March 2004. The Respondent was advised that he should make representations by letter, which he did not do. The caseworker phoned the Respondent on 25th March 2004 and left a message requesting the Respondent to call back. The Respondent did not return the call.
5. The OSS again wrote to the Respondent on 25th March 2004, addressing the letter both to his home and work addresses. The Respondent did not reply.
6. The OSS sent another letter to the Respondent's new home address on 5th April 2004. He did not reply.
7. The OSS caseworker then attempted to contact the Respondent by email and telephone. There was no response.
8. The OSS was informed that the Assigned Risks Pool, on 18th May 2004, had served a statutory demand on the Respondent for outstanding premiums of £78,533.61.

Allegations (iv) and (v)

9. On 11th August 2004 the Law Society wrote to the Respondent noting that his Accountant's Report for the period ending 4th January 2004 (relating to Omafade & Co) was outstanding. The Report was due for delivery by 4th July 2004.
10. The Law Society wrote to the Respondent again on 8th September 2004, 15th November 2004 and 13th December 2004. The Respondent failed to reply to all of the letters.
11. The Accountant's Report remained outstanding.

**The Submissions of the Applicant**

12. The Respondent had been guilty of breaches of the regulatory requirements with which practising solicitors were bound to comply.

**The Submissions of the Respondent**

13. Following admission to the Nigerian Bar, the Respondent practised as a junior barrister in Nigeria for two years. He conducted many criminal trials before the high courts and various military tribunals in what was a common law jurisdiction. Human

rights abuses were rife under the military regime in Nigeria and he successfully took several applications for release of unlawfully detained clients as far as the Supreme Court. He also made numerous successful bail applications and made applications for habeas corpus, certiorari and mandamus and held briefs to appear before appellate courts and tribunals.

14. The Respondent returned to the UK in 1990 and worked as a judge's clerk at the Old Bailey. In 1993 the Respondent began work at Woolwich Crown Court as a judge's clerk. These were positions of responsibility and the Respondent gained much valuable experience.
15. Following admission as a solicitor in 1997 the Respondent began to work for a firm of solicitors in London as a solicitor advocate. He was head of the criminal department which undertook the defence of clients accused of the most serious offences. Following this the Respondent continued to work in criminal law Legal Aid practices in London until he set up his own practice, Omofade & Co Solicitors, in February 1999.
16. Omofade & Co Solicitors specialised in criminal defence work. The Respondent employed a total of seven solicitors between 1999 and 2004. The Respondent was a principal solicitor and trained other staff in advocacy and case file management. The firm handled a number of serious cases. In 2000 the firm was classified as a Category 1 Franchised Firm and the Respondent dealt with very high profile criminal cases. He was a duty solicitor in the Highbury Corner Scheme and conducted most of his magistrates court advocacy himself.
17. Changes in regulations by the Legal Services Commission relating to criminal franchised firms made it virtually impossible for the Respondent to continue with his small practice. In addition, he faced a number of personal difficulties. A combination of these factors put him under a great deal of physical and emotional strain. The firm did not make a profit: the Respondent got into and remained in severe personal debt. He was unable to find suitable professional partners. He had never intended to be a sole practitioner.
18. Between January and December 2004 the Respondent worked on a freelance basis as a solicitor in the criminal department of M & Co Solicitors in London.
19. By early 2005 stress, financial strains and severe matrimonial difficulties caused the Respondent to become ill. He stopped working. He was trying to sort out his marriage (there was a young child) and cope with debts. The Respondent sought help from his GP and in May 2005 instructed solicitors to help him in relation to the disciplinary proceedings. Although at the dates of the hearing the Respondent continued to suffer from stress he was much better and was actively seeking employment in line with the current conditions on his Practising Certificate.
20. The Respondent did in fact apply for the renewal of his professional indemnity insurance with AON Insurance, but the quotation given to him and the initial instalments were impossible for him to pay. By this time he had already decided to wind down the practice owing to his ill health and the financial issues.

21. The Respondent had been for interviews with the Hague International Criminal Court. He hoped shortly to be offered a temporary contract by a firm of solicitors in central London. This would be dependent on retaining his Practising Certificate, albeit with conditions.
22. The Respondent on 13th October 2005 had indicated to the Tribunal that he would be in a position to file his outstanding Accountant's Report by the end of 2005.

### **The Tribunal's Decision to adjourn the hearing on 13th October 2005**

23. The Tribunal noted that the Respondent indicated that he would shortly be in a position to file his outstanding Accountant's Report with the Law Society. The Tribunal felt that the taking of this step would be an important factor in the outcome of the disciplinary proceedings and of its own motion adjourned the hearing on 13th October 2005 until 15th December 2005 to afford the Respondent the opportunity to file his outstanding Accountant's Report before the Tribunal reached its decision.

### **The Tribunal's Direction**

24. The Tribunal directed the Respondent to file his outstanding (Cease to Hold) Accountant's Report than no later than 4 pm on Friday 18th November 2005.

### **The Continuation of the Hearing on 15<sup>th</sup> December 2005**

25. The Respondent had not filed his outstanding Accountant's Report. He had not sought statements from his bankers as speedily as he should have done owing to his personal difficulties. Some bank statements had been obtained and made available to his accountant. The remainder of the relevant bank statements were expected to be made available by the Respondent's bankers almost immediately after the hearing date. The Respondent's accountant indicated that provided these statements were passed to him forthwith, he would be in a position to finalise the outstanding Accountant's Report by the end of January 2006.
26. Since the previous hearing, the Respondent had faced bankruptcy proceedings and proceedings, up to an eviction notice, for possession of his house in respect of which he had substantive mortgage arrears and in which he held no equity.
27. The Respondent hoped that he might be able to continue to practise as a locum solicitor (in the field of criminal law) so that he could pay the ARP premium as agreed by instalments and pay rent for accommodation for his wife and two year old daughter.

### **The Findings of the Tribunal**

28. The Tribunal found the allegations to have been substantiated.
29. The Tribunal recognised that the Respondent had suffered severe financial difficulties. The Tribunal noted that The Law Society has already imposed restrictions on his ability to practise. The Respondent had reached an agreement with the Assigned Risks Pool to pay the sum due from him by instalments.

30. The Tribunal noted that the Respondent had not yet complied with the requirement to file a "Cease to Hold" Accountant's Report with The Law Society but believed him when he said that he would be able to do so early in 2006.
31. The Tribunal could not ignore the breaches of important regulatory requirements and concluded, bearing in mind the enormous difficulties in which the Respondent found himself, that a fine would be the appropriate sanction.
32. The Tribunal ordered the Respondent to pay a fine of £500, such fine to be forfeited to Her Majesty the Queen. The Tribunal also ordered that if the Respondent did not file his outstanding Accountant's Report by 28<sup>th</sup> January 2006 he would be suspended from practice as a solicitor for an indefinite period of time. The Respondent might not expect to have an application for the indefinite period of suspension to be brought to an end unless and until he could demonstrate that he had fulfilled all of his outstanding regulatory requirements.
33. The Tribunal also ordered the Respondent to pay the Applicant's costs. The Tribunal considered the figure sought to be reasonable and the Respondent agreed them. The Tribunal therefore fixed the costs payable by the Respondent in the sum of £1,114.60.
34. The Tribunal will wish formally to be notified that the Respondent has indeed filed his "Cease to Hold" Accountant's Report within the specified period. The Tribunal will require by way of formal notification an affidavit by the Respondent confirming the date upon which his Accountant's Report was filed with The Law Society and there should be exhibited to that affidavit a copy of the Accountant's Report.
35. The Tribunal recommends to The Law Society that the Respondent should not be permitted to practise in the foreseeable future otherwise than in approved employment.

Dated this 7th day of February 2006

On behalf of the Tribunal

J P Davies  
Chairman