

IN THE MATTER OF MICHAEL AZUKA OTOBO, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr J C Chesterton (in the chair)
Mr N Pearson
Mr D Gilbertson

Date of Hearing: 9th, 10th, and 11th November 2009
(the Tribunal having adjourned on 9th November to give the Respondent
the further opportunity to attend)

FINDINGS

of the Solicitors Disciplinary Tribunal
Constituted under the Solicitors Act 1974

An application was duly made on behalf of The Law Society by Robert Simon Roscoe, solicitor and partner in the firm of Victor Lissack, Roscoe & Coleman, solicitors, 70 Marylebone Lane, London, W1U 2PQ on 11th May 2005 that Michael Azuka Otobo of 59 Byron House, Slough, SL3 8TS, 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 27th March 2009 the Applicant made further statements, the first entitled "Further Amended and Amalgamated Statement" and the second entitled "Second Supplementary Statement", each of which contained further allegations.

The allegations set out below are those contained in all three statements made by the Applicant.

The allegations were that the Respondent had been guilty of conduct unbecoming a solicitor in the following particulars namely:

- (i) He failed to comply with undertakings given to Mr Nigel Lloyd, a solicitor and principal of Lloyd & Co, solicitors, concerning the return of files and papers in his possession, contrary to Rules 1(a), (d) and (e) of the Solicitors Practice Rules 1990.
- (ii) He retained files belonging to Lloyd & Co, solicitors, without authority and despite requests for their return, contrary to Rule 1(d) of the Solicitors Practice Rules 1990.
- (iii) He acted as a solicitor prior to admission and in breach of the Solicitors Separate Business Code 1994, contrary to Rules 1(a), (b), (c), (d) and (e) and 5 of the Solicitors Practice Rules 1990.
- (iv) He failed to deal promptly and substantively with correspondence from The Law Society in breach of Practice Rule 1 of the Solicitors Practice Rules 1990.
- (v) (a) That he abandoned his practice, Collisons Maker Hayward, and that firm's clients in breach of Practice Rules 1(c) and 1(d) of the Solicitors Practice Rules 1990.
- (v) (b) That he failed to ensure that there was a supervising partner or solicitor present at the firm at the time of his resignation from the partnership in breach of Practice Rules 1(c) and 1(d) of the Solicitors Practice Rules 1990.
- (vi) That he failed to ensure compliance with Practice rule 13 of the Solicitors Practice Rules 1990.
- (vii) That he failed to deliver to The Law Society an Accountant's Report in respect of his practice as a solicitor for the period ending 31st March 2005, contrary to s. 34 of the Solicitors Act 1974.
- (viii) That he failed to deal promptly and substantively with correspondence from The Law Society.
- (ix) That he practised or held himself out to practise as a solicitor without holding a current practising certificate contrary to Section 1 and Section 1A of the Solicitors Act 1974 (as amended).
- (x) That he failed to deal with the Solicitors Regulation Authority and its investigators in an open, prompt and cooperative way in breach of Rule 20.03 of the Solicitors Code of Conduct 2007.
- (xi) That he misled or attempted to mislead the Asylum and Immigration Tribunal in breach of Rule 1 of the Solicitors Practice Rules 1990 and/or Rule 1 of the Solicitors Code of Conduct 2007.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London, EC4M 7NS on 9th, 10th and 11th November when Robert Simon Roscoe appeared as the Applicant. The Respondent did not appear and was not represented.

The evidence before the Tribunal included the oral evidence of Mr Lloyd and the oral evidence of Mr Awan. The Applicant had prepared a written opening note which had been provided to the Respondent and was before the Tribunal. The Respondent had before it an

affidavit to which the Respondent had attested in earlier disclosure proceedings, that affidavit being dated 10th January 2006.

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

The Tribunal Orders that the Respondent, Michael Azuka Otobo of 59 Byron House, Slough, SL3 8TS, solicitor, be Struck Off the Roll of Solicitors and it further Orders that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £20,000 not to be enforced without the consent of the Tribunal.

The Tribunal's findings of fact

The facts are set out in paragraphs 1 – 54 hereunder:

1. The Respondent, born in 1963, was admitted as a solicitor on 17th April 2001. His name remained on the Roll of Solicitors. He did not hold a current practising certificate.
2. Nigel Lloyd was a solicitor and partner in Lloyd Rehman & Co, solicitors of Cannon Street, London. He was previously in practice as Lloyd & Co, solicitors of Aldermanbury Square, London.
3. On 30th October 2001 Mr Lloyd engaged the Respondent as a self-employed assistant solicitor at Lloyd & Co.
4. During (and since) his employment with Lloyd & Co, the Respondent lived at 59 Byron House, Common Road, Slough, SL3 8TS. He had Mr Lloyd's permission to have Lloyd & Co files at his home address while he was working on them. The files were normally kept at Lloyd & Co.
5. On 16th May 2003 the Respondent left Lloyd & Co. It had become apparent to Mr Lloyd that a large number of files on which the Respondent was working had been removed from the office. Mr Lloyd arranged a meeting with the Respondent on 20th May 2003. No-one else was present at the meeting. Mr Lloyd prepared a handwritten form of undertaking for the Respondent to sign. This took the following form:

"20th May 2003

I, Michael Otobo have agreed the following with Nigel Lloyd of Lloyd & Co:

1. By 4pm on Thursday 22nd May 2003 I will undertake to provide Lloyd & Co with:
 - a) a comprehensive list of all Lloyd & Co files in my possession;
 - and b) completed bills with no [sic] appropriate claim forms in respect of all matters save for those relating to Dr GS.

2. With regard to the S files Lloyd & Co will agree to allow the transfer of the case to Messrs A & R subject to a satisfactory form of undertaking with regard to payment of Lloyd & Co's outstanding work in progress/profit costs and disbursements and Counsel's fees.
3. I give Lloyd & Co my personal undertaking that by 4pm on Thursday 29th May 2003 I will have completed the billing in respect of Lloyd & Co's work in progress/profit costs and disbursements and Counsel's fees relating to the S matters namely:
 - a) the criminal legally aided matter;
 - b) the privately funded criminal matter;
 - c) the privately funded High Court matter.

In the event that I, Michael Ootobo am unable to meet the above deadlines I will seek to agree an extension with Nigel Lloyd and if this cannot be agreed I undertake to return all Lloyd & Co files save those of Dr S to Lloyd & Co forthwith.

Signed Michael Ootobo

Signed Nigel Lloyd"

6. The Respondent subsequently contacted Mr Lloyd and advised him that he could not comply with his undertakings. They agreed that the files should be returned by 27th May 2003. The Respondent faxed to Mr Lloyd a list of files he retained, dated 25th May 2003 and headed "Attn-Nigel".
7. On 27th May 2003 Mr Lloyd expected the Respondent to attend at the offices of Lloyd & Co at 11.00 am. When the Respondent failed to arrive Mr Lloyd telephoned him. The Respondent told Mr Lloyd he would be with him at 4.00 pm. Mr Lloyd did not think the Respondent would keep the appointment and he contacted the City of London Police at Bishopsgate Police Station about his concerns. The police subsequently informed Mr Lloyd that the Respondent would attend Lloyd & Co's offices at 4.00 pm. At that time both the Respondent and police officers attended. The Respondent was arrested and the police officers then travelled with the Respondent to his home address in Slough where they recovered various files and passed them to Mr Lloyd.
8. Mr Lloyd prepared three lists scheduling the files. The lists were expressed to record (a) Lloyd & Co files recovered from the Respondent's home, (b) files still missing from Lloyd & Co and the Respondent's files handed over by the police which had not been opened at Lloyd & Co.
9. Mr Lloyd explained with regard to the second list that his firm's system had logged client matters in respect of which there were no files at Lloyd & Co's offices. Mr Lloyd had no knowledge of these client matters, only that they had been recorded on his firm's electronic system.

10. In respect of the third list it was Mr Lloyd's evidence that these files had not been opened in respect of clients of Lloyd & Co.
11. Amongst the papers passed to Mr Lloyd by the police was a letter dated 6th May 2003 from a company called Regus. The letter was addressed to "Mike Otopo, Mike Consultancy, The Nova Building, Slough, Berks" and confirmed that (office) facilities had been provided to the Respondent and his company for the previous nine months. The letter pointed out that the Respondent's licence/service agreement was due for renewal on 31st August 2003. Mr Lloyd had no knowledge of the "Mike Consultancy" or that the Respondent was renting premises for business purposes.
12. Also amongst the papers passed to Mr Lloyd by the police was a handwritten letter dated 15th December 2000. Mr Lloyd recognised the signature and handwriting as that of the Respondent. The letter was addressed to the Willesden County Court and sought to inform the court that the Respondent was representing a Mrs REB in connection with divorce proceedings before that court. The Respondent required the court to direct correspondence to his address at 59 Byron House.
13. Also amongst the papers passed to Mr Lloyd by the police was correspondence for the period January 2001-May 2001 between the Home Office Immigration and Nationality Directorate and the Respondent as "Mike & Associates" of 59 Byron House, in respect of an application on behalf of G. The correspondence referred to Ms SG as the Respondent's client.
14. The Respondent had addressed a letter from Mike & Associates dated 26th May 2001 to the Immigration and Nationality Directorate asking that an appeal on Human Rights grounds be considered on behalf of a client. The letter had been signed "Mike Otopo LLB (Hons)" on behalf of a client. The Immigration and Nationality Directorate of the Home Office had addressed letters to Mike & Associates in April/May 2001 referring to "G" as Mike & Associates client. Mike & Associates had also addressed an application to the Initial Consideration Unit of the Immigration and Nationality Directorate on 30th January 2001 concerning client "G".
15. Mr Lloyd made complaint to the SRA which wrote to the Respondent about these matters on 2nd October 2003 and on dates thereafter. The Respondent had written to the SRA on a number of occasions but his responses did not deal with the substantive issues and were not provided promptly.
16. The Respondent was or had been in partnership as Collisons Makers Hayward, solicitors of 41d Kilburn High Road, London, NW6 5SB ("the firm"). The firm was a successor firm to Otchere Collisons.
17. The SRA's records showed that on 22nd November 2004, the firm changed its name from Otchere Collisons to Collisons Makers Hayward. The partners notified to the SRA were Kaakam Roger Opara-Udu, Alfred Alcide and the Respondent. Mr Alcide was not three years qualified when the Respondent resigned from the partnership.
18. Mr Opara-Udu had formerly been a partner in Otchere Collisons with George Otchere, a solicitor. As a consequence of practising certificate conditions imposed

by The Law Society in July 2004, Mr Otchere could not continue as a partner in that firm. He was not a partner or employee of Collisons Makers Hayward because The Law Society had refused to approve his employment or partnership with that firm. The Respondent and Mr Alcide had not previously been partners of Mr Otchere.

19. The SRA Records showed that Mr Opara-Udu had become a partner in Collisons Makers Hayward on 22nd November 2004 and had resigned as a partner on 23rd December 2004.
20. Mr Alcide went to St Lucia in, it was believed, November 2004. He did not return.
21. The SRA had accepted that although before he went to St Lucia Mr Alcide had agreed to become a partner in Otchere Collisons, he had not agreed to become a partner in Collisons Makers Hayward and he was unaware at the time of his departure of either the change of name or that he was held out to The Law Society or the public on Collisons Makers Hayward's letterhead, and otherwise, as a partner.
22. The Respondent told the SRA's Investigation Officer ("the IO") that he had resigned from Collisons Makers Hayward on or about 25th February 2005. According to The Law Society records, the Respondent resigned from Collisons Makers Haywards on 31st January 2005. The Respondent would have been aware that the only other "partner", Mr Alcide, had not returned to the firm from St Lucia. At that time there was no other solicitor available to run or supervise the firm.
23. Notwithstanding his resignation the Respondent continued to write to The Law Society about partnership issues on Collisons Makers Hayward letterhead which showed him to be a partner, in particular his letter of 16th February 2005.
24. On 16th and 17th February 2005 the IO attended Collisons Makers Hayward for the purpose of inspecting the firm's books of account and other documents. The IO's Report dated 21st March 2005 was before the Tribunal and the IO gave oral evidence.
25. The IO had been unable to serve the appropriate notice on a partner and was obliged to terminate his inspection. Whilst at the firm's premises the IO met persons apparently employed by the firm, one of who was the wife of George Otchere and George Otchere was himself also in attendance at the firm's premises, in breach of The Law Society's decisions made about him.
26. The staff told the IO that the Respondent was in charge. The IO did not see him at any time during his visit.
27. The IO was also advised that the Respondent was mandated to sign on the client bank account and so were George Otchere and Roger Opara-Udu, the latter remaining a solicitor employed within the practice at the time of the IO's visit.
28. The IO had spoken by telephone with the Respondent on 18th February 2005 when the Respondent indicated he had resigned from the partnership on 31st January 2005 but was continuing to supervise the practice.

29. On 7th March 2005 the Respondent informed the IO that he had ceased to hold any responsibility for the firm since 25th February which he confirmed in his letter to The Law Society dated 27th June 2005.
30. After his resignation as a partner, the Respondent took no action to protect the interests of the firm's clients nor to ensure that anyone was responsible for the clients or their interests, the employees or the creditors of the firm.
31. The Law Society intervened into the firm on 29th June 2005.
32. Collisons Makers Hayward's accounting year ended on 31st March 2005 and the firm's Accountant's Report was due to be delivered to The Law Society by 30th September 2005. No Report had been received by The Law Society.
33. The Law Society wrote to the Respondent on 10th November 2005 and on 15th December 2005. He did not reply. On 5th January 2006 The Law Society again wrote to the Respondent pointing out his obligation to respond. He did not.
34. On 30th November 2006 at the Solicitors Disciplinary Tribunal and in his absence, the Respondent was struck off the Roll of Solicitors. The Law Society had previously terminated the Respondent's practising certificate for the practice year 2004-2005 on 28th February 2006. The matter currently before the Tribunal was in part a re-hearing.
35. On 11th June 2008, following his application to the Administrative Court, the Respondent had been restored to the Roll of Solicitors.
36. On 17th June 2008 the SRA sent the Respondent an application form (form RF3) for him to renew his practising certificate. The application form at paragraph 6 advised the Respondent that parts of s.12 of the Solicitors Act 1974 applied to him. The notified relevant parts were:
 - " i) Section 12C - when, on what would be the commencement date for the practising certificate, if it were granted, a period of more than 12 months will have elapsed since he held a practising certificate in force; and
 - iii) Section 12E - after he had been invited by the Society to give an explanation in respect of any matter relating to his conduct and has failed to give an explanation in respect of that matter which the Council regard as sufficient and satisfactory, and has been notified by the Society that he has so failed; and
 - iii) Section 12EE - when, having been required to Section 34(1) to deliver an accountant's report to the Society, he has not delivered that report within the period allowed by Section 34(2); and
 - iv) Section 12H - while he is an undischarged bankrupt."

37. Solicitors to whom s.12 related were required to submit Form RFS12. The Respondent completed form "RFS12", dating it 24th June 2005.
38. In completing Form RF3 the Respondent indicated that since 24th June 2008 he had been an assistant solicitor at Cardinal Solicitors of Unit 215 Prosper House, 146-154 Kilburn High Road, London, NW6 4JD.
39. On 13th October 2008 the SRA wrote to the Respondent to ascertain if he had been practising uncertificated in the period post 24th June 2008. The letter was sent to the Respondent at the Cardinal Solicitors' address. The letter drew to the Respondent's attention the issue of practising uncertificated and sought clarification from him as to what work he might have conducted whilst employed as an assistant solicitor by Cardinal Solicitors. The Respondent telephoned the SRA to acknowledge receipt of the letter but asked that all correspondence be sent to his home address. He was informed that he could not practise without a current practising certificate and this was repeated in a further telephone conversation on 21st October 2008.
40. The Respondent wrote to the SRA on 21st October 2008 indicating that he had asked that his "practising certificate be backdated". He did not deal with the questions asked of him in the SRA's letter of 13th October.
41. The SRA wrote to the Respondent again on 31st October 2008 and 14th November 2008 reminding him that he had failed to provide the information and explanation sought by the SRA. The Respondent's delay in providing all necessary information meant that his practising certificate was not issued until 25th November 2008. That practising certificate was subject to conditions restricting the way in which the Respondent might practise.
42. In a letter dated 18th November 2008 the principal of Cardinal Solicitors confirmed that the Respondent had been working at Cardinal Solicitors on a consultancy basis since on or about 20th June 2008. She confirmed that she had been shown the court order restoring the Respondent to the Roll but that she had made no further checks on his professional background. She indicated that the Respondent had attended court "on a number of occasions especially with regards to his matter with The Law Society".
43. The Respondent had submitted to the Asylum and Immigration Tribunal a letter dated 5th September 2008 on Cardinal Solicitors' letterhead that said, "Please be advise that Mr Michael A Otobo is a solicitor of this firm".
44. Between 2005 and 2008 the Respondent supported his wife in proceedings before the Asylum and Immigration Tribunal in respect of her leave to remain in the United Kingdom. His wife had Nigerian nationality.
45. The Respondent, who had joint Nigerian and Irish nationality, also acted on his own behalf in relation to the decision of the Secretary of State for the Home Office in refusing to grant him a permanent residence card as an EEA (European Economic Area) national.

46. On 30th August 2005 an appeal in respect of Mrs Otobo heard at the Asylum and Immigration Tribunal before Immigration Judge Oakley was successful in allowing the Respondent's wife to enter the United Kingdom.
47. In October 2005 the Respondent made an application to the Home Office for a permanent residence permit for himself. That application was refused. One of the reasons for that refusal was that the Respondent had not satisfied the Home Office that he was exercising Treaty rights in the United Kingdom as a solicitor. The Respondent unsuccessfully appealed. Mrs Otobo also appealed, unsuccessfully, in respect of the Home Office's decision to refuse her application for a residence permit.
48. At the appeal hearing before the Asylum and Immigration Tribunal on 19th May 2006, in rejecting the two appeals, Immigration Judge Jones QC in his Determination and Reasons noted that:
- i) The Respondent had put himself forward as a practising solicitor.
 - ii) Mrs Otobo had given as her employer "Mikis & Co" at a business address in Slough. Mrs Otobo's position had been given as "partner". The part of the form requiring the employer's stamp read "Michael Otobo Commissioner for Oaths".
 - iii) The Respondent's application was in similar terms save for the personal details.
 - iv) In evidence the Respondent had informed the judge that Mikis & Co was a firm or company and he further described it as a limited liability partnership.
 - v) In correspondence sent to the Asylum & Immigration Tribunal the Respondent had written on Mikis & Co letterhead from the address, Office 22, 111 Whitby Road, Slough and although the letterhead did not describe Mikis & Co as a firm or partnership of solicitors or as a limited liability partnership regulated by The Law Society, the Respondent was described on the letterhead as "M A Otobo - LLB, PGD", and that in using that letterhead and by telling the judge in evidence in chief that he had been a practising solicitor since 17th April 2001 and that Mikis & Co was a firm that had been started in October 2004 "he was implicitly representing that Mikis & Co was a firm of solicitors although he was content to leave that as a matter of implication rather than as a matter of express statement". The Respondent admitted that Mikis & Co was not a firm of solicitors when he was pressed by the judge to deal with this question.
 - vi) The Respondent had deliberately sought from the outset of the appeal to portray Mikis & Co as a firm of solicitors.
49. On 7th June 2007 Mrs Otobo's December 2006 application to the Home Office for a residence card was successful and she was granted residence until 7th June 2012.
50. On 19th November 2007 the Respondent again applied to the Home Office for a permanent residence card. The Respondent's application was refused on 5th August

2008 and, in consequence, the residence card previously granted to Mrs Otobo was revoked.

51. Both Mrs Otobo and the Respondent appealed the Home Office's decisions. An appeal hearing was heard by the Asylum and Immigration Tribunal on 9th September 2008 before Immigration Judge Hodgkinson.
52. Prior to or at the hearing on 9th September 2008 the Respondent submitted a signed but undated statement and a letter on Cardinal Solicitor's letterhead dated 5th September 2008, confirming his employment as a solicitor. The statement contained the following:
- "i) My name is Michael Otobo, a solicitor currently with the firm of Cardinal Solicitors. I joined Cardinal Solicitors in June 2008..... It is not true that I am not exercising my treaty rights as the attached payslips show. I worked for Mikis & Co, but I no longer work there. The system at Cardinal is that we get paid after the work had been done and bills raised. It is a common practice in the profession. How could a solicitor be practising and not exercising treaty rights...?"
53. In his Determination and Reasons Judge Hodgkinson noted that:
- i) In evidence the Respondent had told him that, "he is a qualified solicitor in the United Kingdom and that he had been in practice as a solicitor for a period in excess of five years. He indicated that such practice was with Mikis & Co until recently but that, since January 2008, he had worked for Cardinal Solicitors in London, NW6, as evidenced by a letter from that firm, dated 5th September 2008".
- ii) The Respondent told him that he did not have a current practising certificate as his application was presently pending before The Law Society, "asserting that his pre-existing practising certificate covered him in the interim".
- iii) The Respondent said:
- "he was now employed by Cardinal Solicitors and that he could not produce any evidence of pay from that firm, as he only received payment when he put in a bill, there being delays in payment by the Legal Services Commission".
54. In an affidavit dated 12th March 2009 Ms Christine Jones of the SRA confirmed that Mikis & Co was not and never had been a firm or partnership or LLP regulated by The Law Society.

The submissions of the Applicant

55. The Respondent had breached the undertaking that he had given to Mr Lloyd and had retained files belonging to Lloyd & Co without Mr Lloyd's authority.

56. The Respondent had acted as a solicitor prior to his admission to the Roll and also in breach of the Solicitors Separate Business Code 1994. He further had failed to deal promptly and substantively with correspondence addressed to him by The Law Society.
57. In connection with the firm of Collisons Makers Hayward the Respondent had abandoned that firm and/or failed to ensure that there was a supervising partner or solicitor present at the firm at the time of his resignation. It was further the case that he had failed to ensure compliance with Rule 13 of the Solicitors Practice Rules 1990 as he had not ensured that there was in place a person who was qualified to supervise.
58. The Respondent had, in his capacity as a partner, been liable to deliver to The Law Society an Accountant's Report and this was not done.
59. It was further The Law Society's case in connection with this matter that the Respondent had not dealt promptly and substantively with correspondence addressed to him by The Law Society.
60. It had further been alleged against the Respondent that he practised or held himself out as practising as a solicitor without holding a current practising certificate and that in connection with that matter he had not dealt with the SRA and its investigators in an open, prompt and cooperative way.
61. It was a further allegation that he had misled or had attempted to mislead the Asylum and Immigration Tribunal.

The submissions of the Respondent

(The Tribunal here summarises the contents of the Respondents before mentioned affidavit dated 10 January 2006)

62. The Respondent was admitted on 17th April 2001. He practised briefly at Iyama & Co, solicitors, before joining Lloyd & Co, solicitors. He later joined Anthony & Roberts, solicitors. He practised briefly at Collisons Makers Hayward. His last place of practice was City Legal Partnership, East London (the affidavit had been prepared before the Respondent had any connection with Cardinals Solicitors).
63. After leaving Iyama & Co the Respondent met Nigel Lloyd and had an interview with him. He explained to Mr Lloyd that he was running a legal consultancy in Slough and was not prepared to close it down. The Respondent told him it was an immigration consultancy and he undertook some other non-contentious work as well, for example business registration. The Respondent set up the consultancy in about 2000. At no time did he hold himself out as a solicitor and he did not do any work as a solicitor through that consultancy. Mr Lloyd was content with that situation.
64. The Respondent informed The Law Society that he had this consultancy. In his submission there was nothing inconsistent with having a solicitor's practice and having the consultancy. The Respondent believed he indicated this in some of his applications for renewal of his practising certificate. The Law Society had never

asked him to stop running this consultancy nor had it placed a restriction on his practising certificate.

65. It was the Respondent's explanation that things had turned sour at Lloyd & Co when the Respondent was instructed in a major drug importation case. Mr Lloyd had made a racist remark about the client which offended the Respondent. As a self-employed solicitor the Respondent was free to leave at any time. He put in a letter of resignation. The client charged with importation of drugs wished to "follow" the Respondent and was free to do so as a privately paying client.
66. The undertaking that was before the Tribunal came about as a result of the meeting on 20th May 2003 in the morning. The Respondent and Mr Lloyd met to discuss billings and transfer of files. Mr Lloyd had agreed to transfer a major case (Dr S) on the client's instructions. In the course of that meeting the Respondent gave an undertaking.
67. The Respondent came to have the Lloyd & Co files with the approval of Mr Lloyd.
68. The Respondent did not fail to comply with his undertaking because he returned the files. Mr Lloyd was in breach of his own undertaking. Part of the undertaking was if unable to comply the Respondent would ring him on 22nd May 2003. The Respondent had telephoned to say he could not comply and that he was attending a client at Heathrow Police Station. Mr Lloyd then called the police on 27th May 2003 and told the police to recover papers.
69. On 27th May 2003 the Respondent received a call from Bishopsgate Police who told him that Mr Lloyd had reported that files had been stolen. The Respondent told them that he was on his way to Lloyd & Co and that he did not have all the files with him because he was busy and unable to carry all the files at once. The police told him to bring whatever he could and bring the rest later. The Respondent had arrived at Lloyd & Co at about 3.00 pm on 27th May 2003. Instead of Mr Lloyd meeting him, he had called the police.
70. The Respondent did not accept Mr Lloyd's contention that he continued to retain some of Lloyd & Co's files.

The Findings of the Tribunal

71. With regard to allegation (i) the Tribunal found as a matter of fact that the Respondent had entered into what appeared on its face to be an undertaking, as the Respondent himself appears to accept. The letter of undertaking said that the Respondent was to provide a comprehensive list of all Lloyd & Co files in his possession by Thursday, 22nd May 2003. It went on to say that in the event that the Respondent was unable to meet all of the deadlines contained in the undertaking, he would agree an extension with Mr Lloyd. It was clear from the form in which the undertaking had been written that 22nd May 2003 was not an absolute deadline. The Respondent provided the lists required on 25th May 2003 and had arranged to meet with Mr Lloyd on 27th May. The Respondent had been prevented from handing over the Lloyd & Co files that were in his possession because he had been arrested by the police while in Mr Lloyd's office. Mr Lloyd explained that six files were missing.

The client matters were recorded on his firm's register and had not been returned by the Respondent. The Respondent said he did not have them. Mr Lloyd had not indicated in advance the files which he expected to have returned and the Tribunal think it likely that when the police attended at the Respondent's premises they picked up all the files that he had, whether belonging to Lloyd & Co or not, and this was evidenced by the fact that the police had picked up and handed over to Mr Lloyd files that had nothing to do with Lloyd & Co.

72. Whilst the Tribunal accepted that the six files to which Mr Lloyd referred were recorded on his firm's register, and the Tribunal found Mr Lloyd to be a credible witness there was insufficient evidence before the Tribunal to determine that the Respondent did in fact have a further six files belonging to Lloyd & Co.
73. In all of the circumstances and the Tribunal's findings of fact, the Tribunal found allegation (i) not to have been substantiated.
74. With regard to allegation (ii) for the reasons set out above, the Tribunal was not satisfied that the Respondent had retained files belonging to Lloyd & Co after arranging to return them and found allegation (ii) not to have been substantiated.
75. The Tribunal found allegation (iii) to have been substantiated. It was clear that the Respondent was undertaking the work of a solicitor through the Mike Consultancy prior to his admission as a solicitor. The Respondent had written a letter indicating that he had been asked to take over a matrimonial case. The Respondent's letter had been dated 15th December 2000 when the Respondent had been admitted only in April 2001. With regard to certain immigration work the Respondent had indicated that he was authorised to undertake such work by the Office of the Immigration Services Commissioner but the Respondent had provided no evidence in support of that assertion. Since his admission as a solicitor the Respondent had also provided services that he could have provided whilst a solicitor and thereby was in breach of the Solicitors Separate Business Code which was in place to ensure that such a business could not be set up by a solicitor enabling him to undertake work as a solicitor outside the regulation of The Law Society. Such regulation was in place in order to protect the public. Mike & Associates could not have been a sole principal solicitor's practice as at the time the Respondent was corresponding through that business he had not been admitted for three years.
76. It was clear that the Respondent had failed to deal promptly and in particular substantively with letters addressed to him by The Law Society. His responses on a number of occasions amounted to a diatribe that did not address the substantive issues. The Tribunal found allegation (iv) to have been substantiated.
77. With regard the allegations relating to the Respondent's position at Collisons Makers Hayward, the Tribunal accepted that the Respondent found himself in a difficult position. He was however held out on that firm's letterhead as a solicitor in the practice. The Respondent told both The Law Society's IO and The Law Society that he had ceased to be a partner. The dates communicated were not the same but nevertheless at the time when Mr Otchere could not be a partner or employed at the practice, Mr Alcide (who was not qualified to supervise owing to the fact he was less than three years qualified) was no longer at the practice and the other solicitor in the

practice also was not yet three years qualified. The Respondent was ultimately the only solicitor qualified to have full responsibility for the firm. He did fail to ensure that there was a supervising partner or solicitor present at the firm at the time of his resignation from the partnership (whether such resignation was in January or February). In his opening the Applicant had indicated to the Tribunal that allegation (v) parts (a) and (b) were put in the alternative. The Tribunal concluded that in simply resigning the Respondent could not be said to have abandoned the practice but the Tribunal found that he had failed to ensure that there was a supervising partner or solicitor present at the firm at the time of his resignation from the partnership. The Tribunal therefore found allegation (v) (b) to have been substantiated.

78. With regard to allegation (vi) the Tribunal found in all the circumstances that the Respondent had failed to ensure compliance with Practice Rule 13 at the practice of Collisons Makers Hayward.
79. The Tribunal found allegation (vii) to have been substantiated. The Respondent as a partner in the firm was liable for the delivery of an Accountant's Report and such Report had not been delivered.
80. With regard to allegation (viii) here again the Respondent did not deal substantively or at all with letters addressed to him by The Law Society. He therefore had not dealt promptly with such correspondence. Allegation (viii) was found to have been substantiated.
81. The Tribunal found that the Respondent had held himself out as practising as a solicitor whilst at Cardinals Solicitors when he did not have a practising certificate in force. Allegation (ix) was therefore substantiated.
82. The Tribunal found allegation (x), namely that the Respondent had failed to deal with the SRA and its investigators in an open, prompt and cooperative way, to have been substantiated in particular when he did not meet with or discuss matters with the IO despite the IO's numerous attempts to telephone him.
83. With regard to allegation (xi), namely that the Respondent attempted to mislead the Asylum and Immigration Tribunal, the Tribunal found that allegation to have been substantiated as the Respondent had said in a statement before the Tribunal

" How could a solicitor be practising and not exercising treaty rights....?"

That could only be construed that the Respondent had at the material times been practising as a solicitor. He had given no indication of the fact that he had been struck off the Roll of Solicitors during the period, had been restored to the Roll but had not held a practising certificate for a period ending on 28th November 2008. He had not been open and frank with the Asylum and Immigration Tribunal and had attempted to mislead it.

84. The Tribunal recognised that the Respondent had, with some justification, been very upset by the police involvement in the matter of the return of files to Lloyd & Co.

85. The Tribunal had been concerned to see that the Respondent had not responded speedily and substantively to enquiries made of him by his own professional regulator. He had either ignored correspondence or when he had written he addressed a number of points which were not germane to the matters under investigation. That was not an open, prompt and cooperative way to deal with a professional regulator.
86. The Respondent appeared to consider that he can shape things to suit himself without due regard to the Rules relating to a solicitor's practice and without having a proper regard for complete accuracy. He appeared to accept a partnership at Collisons Makers Hayward without accepting any of the liabilities or responsibilities that such a position incurred.
87. The Respondent had held himself out as practising as a solicitor when he did not hold a practising certificate. He had described himself as a solicitor at Cardinals some time before a practising certificate was granted to him.
88. The Tribunal regarded it as particularly serious that the Respondent was not open and frank when representing himself and his wife in the Asylum and Immigration Tribunal. He clearly had sought to give the impression that he had enjoyed uninterrupted practice as a solicitor from the date of his admission when that was quite simply untrue.
89. Whilst the Tribunal recognised that the Respondent had an unfortunate history and the Tribunal had some sympathy for him, the Tribunal found a wide-ranging number of allegations to have been substantiated against the Respondent all of which give a very clear indication that he is oblivious to the great responsibilities that a member of the solicitors' profession has to shoulder. The Tribunal accepted that the Asylum and Immigration Tribunal was not actually misled by the Respondent as the judge did not believe him. He did however attempt to mislead that Tribunal and that was a particularly serious matter for a solicitor who is an officer of the court and who is required to act at all times with the utmost probity, integrity and trustworthiness.
90. The Respondent had attempted at the last minute to have the disciplinary proceedings adjourned and despite the Tribunal adjourning for a day to give him a further opportunity to attend the substantive hearing, the Respondent did not do so. The Tribunal considered that the Respondent's behaviour was another symptom of his inability to recognise his professional responsibility and the Tribunal concluded that the Respondent was not fit to be a solicitor.
91. In the light of the catalogue of unprofessional conduct exhibited by the Respondent and in particular because of his attempt to mislead the Asylum and Immigration Tribunal, the Tribunal concluded that in order to fulfil its primary duty to protect the public and its secondary duty to maintain the good reputation of the solicitors' profession, it was both appropriate and proportionate to order that the Respondent be struck off the Roll of Solicitors.
92. The Applicant sought the costs of and incidental to the application and enquiry. The Tribunal took into account that the Applicant had not succeeded in having allegations (i) and (ii) substantiated. The Tribunal considered, however, that those allegations

were properly brought. The Tribunal recognised that the Respondent by his behaviour had served to make matters worse. The Tribunal considered that the SRA had conducted itself well in difficult circumstances. The Tribunal had no details of the Respondent's financial circumstances but considered in the light of all that had happened to him that he was unlikely to be in a sound financial position. The Tribunal considered the figure sought by the Applicant and decided that it would summarily fix the costs in the sum of £20,000 and Ordered the Respondent to pay the costs of and incidental to the application and enquiry in that sum but further Ordered that its costs order should not be enforced without having first sought and obtained the consent of the Tribunal.

Dated this 15th day of January 2010
On behalf of the Tribunal

J C Chesterton
Chairman