The Tribunal's decision dated 22 July 2020 is subject to appeal to the High Court (Administrative Court) by Mr Otobo. The Tribunal's decision remains in force pending the High Court's decision on the appeal.

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 — Case No. 9255-2005

BETWEEN:

MICHAEL AZUKA OTOBO — Applicant

and

SOLICITORS REGULATION AUTHORITY — Respondent

Before:

Mr B. Forde (in the chair)
Mr P. S. L. Housego
Dr S. Bown

Date of Hearing: 22 July 2020

Appearances

The Applicant participated in person.

Adam Solomon QC, barrister of Littleton Chambers 3 Kings Bench Walk, Temple, London EC4Y 7HR, instructed by Capsticks LLP for the Respondent.

MEMORANDUM OF DECISION ON AN APPLICATION FOR LEAVE TO APPLY FOR A RE-HEARING OUT OF TIME

This application proceeded under the Solicitors (Disciplinary Proceedings) Rules 2007 ("SDPR 2007") as it pertained to a matter originally determined under those Rules.

Background

1. On 11 November 2009 the Applicant had been struck-off the Roll at the conclusion of a three day hearing which he had not attended and at which he was not represented. The matters found proved against the Respondent were as follows:

   Allegation 1.3: 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.

   Allegation 1.4: 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.

   Allegation 1.5 (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.

   Allegation 1.6: That he failed to ensure compliance with Practice Rule 13 of the Solicitors Practice Rules 1990.

   Allegation 1.7: 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 31 March 2005, contrary to section 34 of the Solicitors Act 1974.

   Allegation 1.8: That he failed to deal promptly and substantively with correspondence from The Law Society.

   Allegation 1.9: 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).

   Allegation 1.10: That he failed to deal with the Solicitors Regulation Authority and its investigators in an open, prompt and co-operative way in breach of Rule 20.03 of the Solicitors Code of Conduct 2007.

   Allegation 1.11: 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.

2. The remaining Allegations were not proved.

3. On 11 February 2016 the Tribunal had considered an application for leave to apply for a re-hearing made by the Applicant. The Tribunal was not satisfied that it would be just to allow the Applicant's application for a rehearing to be considered beyond the 14 day period specified in Rule 19(1) of the SDPR 2007. The Tribunal had therefore refused the Applicant's application. The Applicant appealed against this decision. On

3 November 2016 his appeal was dismissed by HHJ Bidder QC, sitting as a Judge of the High Court.

4. On 4 December 2019 the Applicant lodged a further application for leave to apply for a re-hearing out of time. There had been a number of listings of this matter in the intervening months. The Applicant had made applications for disclosure during the months preceding this hearing and on 14 May 2020 the Respondent made disclosure of matters pursuant to the Tribunal's direction of 1 May 2020, made by a different Division of the Tribunal. The remaining matters were determined by that Division of the Tribunal on 13 July 2020, when it directed that the Respondent was not required to make any further disclosure to the Applicant.

Preliminary Issues

Applicant's use of CaseLines and video technology

5. In common with the vast majority of cases before the Tribunal, the papers in this matter were available on the CaseLines system, an electronic case management platform. Shortly before the hearing began the Applicant informed the clerk that he did not have access to CaseLines.

6. The hearing was taking place remotely, due to the closure of the Tribunal Courtrooms due to the Covid-19 pandemic. The hearing was therefore taking place using Zoom. The Applicant was able to join the meeting and see the other participants, but informed the clerk that he was having difficulty activating his camera so that he could be seen. There was no difficulty with the audio.

7. The clerk secured the attendance of a member of the Case Management Team who offered to assist the Applicant with both of these difficulties. The Applicant refused this assistance. He told the clerk, and subsequently the Tribunal, that he did not wish to be seen on the video and was content to proceed without being seen. He also stated that he did not wish to use CaseLines and would refer to his own paper copies. The Applicant confirmed that he wished to proceed on that basis.

Applicant's reliance on certain documents

8. The afternoon before the hearing the Applicant emailed the Tribunal with a large number of documents on which he intended to rely at the hearing. These were uploaded to CaseLines by the Case Management Team. No objection was taken to their admission by the Respondent.

9. At the hearing the Applicant began his submissions, having had an application to adjourn refused. During the course of his submissions he made reference to a number of documents that had been disclosed during separate civil proceedings.

10. Mr Solomon then commenced his submissions and informed the Tribunal that some of the documents referred to by Applicant had been disclosed in the civil proceedings and were the subject of an injunction issued by the High Court on 22 February 2012. They should not, therefore, have been relied on in these proceedings.

11. The Tribunal retired at the conclusion of Mr Solomon's submissions, and before the Applicant had responded. The Tribunal made the following directions in order to prevent any further breaches of the injunction;

    11.1 The remainder of the hearing to take place in private.

    11.2 The audio recording of the hearing not to be released without leave of the Tribunal.

    11.3 No documents in this case, to be disclosed without leave of the Tribunal.

    11.4 The Applicant not to make any further reference to the documents that were the subject of the injunction.

    11.5 The Applicant to be given a warning against self-incrimination.

12. The hearing resumed in private. In view of the fact that the documents should not have been sent to the Tribunal due to the injunction, the Tribunal put those documents out of its mind when determining the application. The submissions made by the Applicant that referred to those documents are not rehearsed in this Memorandum for the same reasons.

Application for adjournment – Applicant's Submissions

13. The day before the hearing the Applicant had emailed the Tribunal seeking an adjournment in the following terms:-

> "I am asking that matter listed for tomorrow be adjourned because;
>
> 1. I am unwell and my doctor has made it clear that I am unfit to represent myself (see attached doctor's letter and sicknote)
>
> 2. I have judicial review pending in relation to Tribunal refusal to order further disclosure
>
> 3. My solicitors need more time to prepare my case and get funding from the insurance company, It is their view that this is case of carefully managed fraud and deception on the Tribunal and QC is needed as the Respondents are now relying on the services of a QC.
>
> 4. My solicitors have said that I need full detailed medical report on my state of health and the effect of the conduct of the SRA on my health and other aspects of my life. A Consultant report will be needed and the Consultant would have to be paid from insurance funding.
>
> 5. Some of my medications make me sleepy and I take them on a daily basis.
>
> 6. This matter is of public interest because of the nature of those involved (SRA staff and their legal representatives).

7. This is an example of Black Lives Matter (BLM).

There is no prejudice to Respondents"

14. The Applicant attached a Fitness for Work certificate dated 14 July 2020 and letter from his GP dated 21 July 2020.

15. The Applicant submitted that he needed the matter adjourned so that:

- He could secure funding for his representation from the insurers of his former firm;
- He could instruct a QC to represent him;
- There could be more time for preparation of his case due to "destruction of evidence, lack of disclosure and fabrications" on the part of the Respondent and due to staff shortages at his solicitors, Suttari Paul;

16. The Applicant told the Tribunal that he only got the details of the insurers on 14 May 2020. He also told the Tribunal that he had lodged an application for Judicial Review in respect of the Respondent's failure to disclose materials to him.

Application for adjournment – Respondent's Submissions

17. Mr Solomon opposed the application to adjourn. He submitted that the adjournment should be refused for the following reasons:-

- The application had been made at the last minute;
- The Applicant had clearly been well enough to see his doctor last week, write the emails and appear at this hearing;
- There was no medical report that was in accordance with the Tribunal's policy on adjournments;
- The medical documents that the Applicant had produced were wholly inadequate as they contained no evidence of the impact of his ill-health on his ability to participate. They made no reference to this hearing and contained no discussion of possible reasonable adjustments;
- The reference in the GP letter to the Applicant benefiting from legal representation was not a medical opinion but a submission;
- The disclosure points had been deemed irrelevant by the Tribunal;
- The case was old and had been the subject of many adjournments already;

- This case had nothing to do with Black Lives Matter. The Applicant had consistently made baseless allegations of discrimination which the High Court had described as "wicked".

- There was prejudice to the Respondent if matter was adjourned. Significant costs had been incurred and the Applicant had never paid any of the many costs orders made against him.

18. Mr Solomon referred the Tribunal to GMC v Hayat [2018] EWCA Civ 2796 in support of his submissions.

The Tribunal's Decision

19. The Tribunal considered the application to adjourn with reference to the Policy/Practice Note on Adjournments 2002 ("the Policy"). This stated that reasons not to grant an adjournment included:-

> "b) Lack of Readiness
> The lack of readiness on the part of either Applicant or Respondent or any claimed inconvenience or clash of engagements whether professional or personal.
>
> c) Ill-health
> The claimed medical condition of the Applicant or Respondent unless this is supported by a reasoned opinion of an appropriate medical adviser. A doctor's certificate issued for social security and statutory sick pay purposes only or other certificate merely indicating that the person is unable to attend for work is unlikely to be sufficient.
>
> d) Inability to Secure Representation The inability of the Respondent for financial or other reasons to secure the services of a representative at the hearing or financial reasons for the non-attendance of the Respondent."

20. Although the guidance at d) referred to Respondents, the Tribunal was satisfied that it equally applied to Applicants.

21. The Tribunal referred to the guidance in Hayat which set out the requirements of medical evidence relied upon in support of adjournment applications.

22. The Tribunal reviewed the medical documents provided by the Applicant and considered his submissions and those of Mr Solomon. There was no particularity in the medical evidence provided by the Applicant. It did not contain more than the briefest diagnosis, it contained no detail of medication prescribed (if any), it did not describe the severity of the ill-health or the prognosis. It did not state that the Applicant was unfit to attend or unfit to present his own case. The recommendation of legal representation was outside the GP's area of expertise and carried no weight in the absence of any other information. The letter from the GP was not addressed to the Tribunal and did not contain a declaration of his duties to the Tribunal or a statement of truth. It was therefore not a reasoned opinion of an appropriate medical examiner. The Applicant had presented his application coherently and there was nothing to

suggest to the Tribunal that he was unable to make his substantive application at this hearing.

23. The Applicant's submissions as to needing to instruct a QC and for his solicitors to have more time to prepare were without merit. Even if the instruction of solicitors had been dependent on disclosure of the insurers' details, and there was no evidence that it was, this information had been disclosed on 14 May 2020. There was no evidence that the Applicant had approached either the insurers or any solicitors since then or at all.

24. There was no purpose in an adjournment in these circumstances. The consequences of an adjournment would be further delay and expense incurred by the Respondent. The Tribunal saw no basis to adjourn and therefore refused the adjournment application for the reasons set out above and in the interests of justice.

25. The hearing of the application for leave therefore proceeded after the Tribunal allowed the Applicant some time to prepare his submissions.

Applicant's Submissions

26. The Applicant told the Tribunal that he should be allowed to apply for a re-hearing following the Supreme Court decision in Takhar v Gracefield Developments Ltd & Ors [2019] UKSC 13. He submitted that the effect of this case was that where there was evidence of fraud there had to be a re-hearing. He submitted that the issue of fraud had not been determined in either the original hearing in 2009 or the subsequent applications. The Applicant submitted that "fraud unravels all". The Applicant submitted that the fraud in his case was perpetrated by NL, a former business partner. He submitted that the 2009 Tribunal Judgment was obtained by fraud, deception and perversion of the course of justice with the connivance of the Respondent. He described NL as the "prime witness" and his lack of credibility undermined the entire case against the Applicant.

27. It was the Applicant's case that the Respondent had not brought proceedings against NL due to their wish to rely on him as a witness against the Applicant and because NL was white and the Applicant was not.

28. In response to a query from the Tribunal, the Applicant confirmed that his claims for race discrimination had been unsuccessful. The Applicant told the Tribunal that these judgments had also been obtained by fraud and the Tribunal should disregard them.

29. The Applicant took the Tribunal through a number of previous decisions of the Tribunal in other cases where he submitted that solicitors had been sanctioned for conduct similar to that of NL.

30. The Applicant made various submissions about matters relating to disclosure. He referred to previous decisions of the Tribunal in these proceedings and he invited the Tribunal to listen to the audio recording of the hearing of 1 May 2020. The Tribunal did not listen to this is as the disclosure issue had been resolved. The submissions on disclosure are not recorded here as that had been determined on 13 July 2020.

31. The Applicant told the Tribunal that a former employee of those who instructed Mr Solomon had been struck-off for dishonesty recently. It was unclear to the Tribunal what the relevance of this was to the Applicant's case beyond his overarching allegations of dishonesty against the Respondent.

32. The Applicant submitted that Mr Solomon had not addressed Thakar in his skeleton argument and he reminded the Tribunal that the 2016 decisions were before the Thakar decision.

33. At one point in his submissions the Applicant sought to compare his complaints about the SRA and others to the circumstances of the recent death of George Floyd in the United States of America. The Chairman intervened at this point to require the Applicant to show some reticence and demonstrate some respect for the fact that an individual had died.

Respondent's Submissions

34. Mr Solomon told the Tribunal that the Applicant had not addressed the issue of timing. This application was 10 years out of time. He submitted that the Applicant was simply re-running arguments that he had been doing for years in Courts and Tribunals without success.

35. Mr Solomon submitted that NL's role in the matters was irrelevant as the Applicant had been properly struck off in 2009. He had applied for leave to apply for a re-hearing in 2016 unsuccessfully and nothing had changed since then.

36. Mr Solomon invited the Tribunal to dismiss the application.

The Tribunal's Decision

37. The Tribunal considered all the documents placed before it, with the exception of the documents referred to earlier in this Judgment, and listened carefully to the submissions of both parties.

38. Rule 19 of the SDPR 2007 was as follows:-

> "Re-hearing where respondent neither appears nor is represented
>
> 19.—(1) At any time before the filing of the Tribunal's Order with the Law Society under rule 17 or before the expiry of the period of 14 days beginning with the date of the filing of the order, the respondent may apply to the Tribunal for a re-hearing of an application if— (a) he neither attended in person nor was represented at the hearing of the application in question; and (b) the Tribunal determined the application in his absence.
>
> (2) An application for a re-hearing under this Rule shall be made in the form of Form 7 in the Schedule to these Rules and shall be supported by a Statement setting out the facts upon which the applicant wishes to rely.

> (3) If satisfied that it is just so to do, the Tribunal may grant the application upon such terms, including as to costs, as it thinks fit. The re-hearing shall be held before a Division of the Tribunal comprised of different members from those who heard the original application."

39. The Applicant was clearly outside the 14-day period, that having expired on 25 November 2009.

40. Rule 21(1) and (2) of the SDPR 2007 was as follows:-

> "21.—(1) Subject to the provisions of these Rules, the Tribunal may regulate its own procedure. (2) The Tribunal may dispense with any requirements of these Rules in respect of notices, Statements, witnesses, service or time in any case where it appears to the Tribunal to be just so to do."

41. The test for the Tribunal was therefore whether it was just to allow the Applicant to make an application for a re-hearing.

42. In his written application the Applicant had addressed the issue of delay as follows:-

> "The Applicant hereby offers explanation for the delay in this application for rehearing:
> I Health condition
> II The supreme court decision as one of the authorities relied upon has only been decided this year
> III There is no statute bar to fraud
> IV High Court case of Farooq Zol v The Law Society HC02C01694"

43. The Applicant had provided no evidence of any health condition that could explain a delay of 10 years in lodging an application for a re-hearing. He had made an application after almost 7 years and that had been refused. There was nothing before the Tribunal to explain why it should now be granted.

44. The Applicant had placed much reliance on the case of Thakar. However he had failed to demonstrate that there had been any fraud by anyone involved in the 2009 proceedings or that, even if there had been misconduct by NL, that the Tribunal's decision in 2009 was undermined by that or that it had any relevance to the allegations that had been proved. Thakar therefore had no applicability to this case. Similarly, the other cases that the Applicant had taken the Tribunal to were of no relevance to the question of whether it was just to allow an application for a re-hearing. The Applicant had not addressed the Tribunal on Zol.

45. The Applicant had made a number of serious allegations of fraud, deception, conspiracy to pervert the course of justice and contempt of Court against a range of individuals and organisations. He had provided no evidence for any of these allegations and the Tribunal rejected all of them in their entirety. The Applicant's gratuitous reference to the death of George Floyd was grossly offensive and disrespectful and his attempt to link that incident and Black Lives Matter with issues of the Applicant's regulatory history was a disgrace.

46. The Applicant's application for leave to apply for a re-hearing was entirely without merit, based as it was on nothing more than outlandish allegations and assertions which were not supported by any evidence whatsoever.

47. The Tribunal concluded that it would not be just to allow him to apply for a re-hearing. The application was therefore refused.

Costs

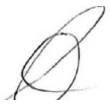
48. Mr Solomon sought the Respondent's costs in the sum of £13,196.00. He submitted that the costs were reasonable. He submitted that the application had always been hopeless and should never have been made.

49. The Applicant told the Tribunal that he had no comment to make on the issue of costs.

50. The Tribunal reviewed the cost schedule and was satisfied that the costs incurred were reasonable and proportionate in the circumstances of this case.

51. The Tribunal had no hesitation in concluding that the Applicant should pay the Respondent's costs of defending this completely meritless application and ordered that he pay those costs fixed in the sum of £13,196.00.

Dated this 4th day of August 2020
On behalf of the Tribunal



B. Forde
Chair