

## SOLICITORS DISCIPLINARY TRIBUNAL

Please also see Obi v Solicitors Regulation Authority [2012] EWHC 3142 (Admin.) and the Tribunal's Judgment dated 1 December 2010. Further, the Respondent appealed to the High Court against the Tribunal's Order dated 28 January 2013 that his name be struck off the Roll of Solicitors and costs awarded against him (Tribunal Judgment dated 4 March 2013). His appeal was dismissed by Mr Justice Mostyn on 13 November 2013 with costs awarded against the Respondent. Please see Obi v Solicitors Regulation Authority [2013] EWHC 3578 (Admin.)

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 9340-2005

**BETWEEN:**

SOLICITORS REGULATION AUTHORITY

Applicant

and

ALOYSIUS IGWEBUIKE OBI

Respondent

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Before:

Mr I. R. Woolfe (in the chair)

Mr L. N. Gilford

Mr M. Palayiwa

Date of Hearing: 28th January 2013

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### **Appearances**

Mr Peter Cadman, solicitor of Russell-Cooke Solicitors, 8 Bedford Row, London WC1R 4BX for the Applicant.

The Respondent appeared and was represented by Mr Jacques M Rene of Counsel.

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## **JUDGMENT**

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## History

1. This matter came before the Tribunal on 28 and 29 September 2006. At that hearing the Tribunal had found a number of allegations proved against the Respondent and ordered he should be struck off the Roll of Solicitors. The Respondent successfully appealed that decision, and findings that two allegations had been proved were set aside. Owing to new evidence, the case was remitted back to the Tribunal for a re-hearing on 26 October 2010. At the re-hearing the Respondent had been represented by Mr Rene and had admitted the following allegations, which the Tribunal had found proved:
  - 1.1 The Respondent set up and/or had been involved in a solicitor's firm, Chris Dale & Co, in circumstances in which he had known or ought to have known had been improper and/or unprofessional.
  - 1.2 The Respondent falsely witnessed a mortgage deed on 13 January 2003 and had falsely stated that he had been a solicitor with a current practising certificate.
  - 1.3 The Respondent misrepresented to the Law Society his involvement in the practice of the solicitor's firm of Chris Dale & Co.
2. At the re-hearing on 26 October 2010, whilst giving his evidence, the Respondent admitted that some of the evidence he had given before the first Tribunal at the hearing on 29 September 2006 had not been true, and that he had said what he had because he had been under pressure and without legal representation. Having found the three allegations admitted and proved, the Tribunal on 26 October 2010, ordered the Respondent be struck off the Roll of Solicitors.
3. The Respondent appealed the Tribunal's decision of 26 October 2010 and the matter was heard by Mr Justice Foskett in the Administrative Court on 2 November 2012. Mr Justice Foskett stated in his judgment at paragraph 13:
 

“ ..... it does have to be noted that the Tribunal did not tell the Appellant's Counsel (a) that they did not regard the new evidence called by the Appellant as credible, (b) that they thought that his evidence had been “evasive and inconsistent”, (c) that they rejected his account of why he signed the mortgage deed and (d) that they were proposing to take into account his admission in his evidence before them that his evidence before the first SDT had, in one particular respect, been untrue ..... The Appellant's Counsel did not, therefore, have an opportunity to deal with these matters.”
4. Mr Justice Foskett went on to say at paragraph 26 of his judgment:
 

“There are three matters concerning the Tribunal's decision about which I am uneasy:

  - i) That the Tribunal did not indicate its thinking to the Appellant's Counsel about the matters I have referred to in paragraph 13 above. At the end of the day, to the extent that two of these were matters of impression for the Tribunal, it might be said that it would have made

no difference. However, Counsel might have had some submission that might have altered their minds, most particularly that, by whatever route they got to it, the Tribunal had acquitted the Appellant of allegations (iii) and (iv) and that they should put any reservations they had about the evidence concerning those allegations out of their minds. However, the Tribunal referred specifically to both these matters on the day of the announcement of their decision and in their written decision later, arguably suggesting that they may have been influenced by them.

- ii) The Tribunal made no reference at all (even if only to dismiss it as irrelevant) to the fact that the Appellant had already been barred from practice for four years (partly, at any rate, because of adverse findings on allegations (iii) and (iv) which had now been set aside) and to Counsel's argument that, for that reason, no further "suspension" should be imposed.
- iii) The Tribunal made no specific reference to having excluded suspension as an inadequate sanction in the circumstances."

5. Mr Justice Foskett ordered the case should be remitted to a differently constituted panel of the Tribunal for reconsideration of the issue of sanction. The matter was therefore before the Tribunal to consider the appropriate penalty following the findings on 26 October 2010 that the three allegations were proved.

### **Documents**

6. The Tribunal reviewed all the documents submitted by the Applicant and the Respondent which included:

#### **Applicant:**

- Applicant's Bundle of Documents
- Consent Order between the Respondent and the Law Society dated 14 October 2008
- Schedule of Applicant's Costs

#### **Respondent:**

- Respondent's Bundle of Documents
- Skeleton Argument dated 27 January 2013
- A character reference dated 24 January 2013

### **Witnesses**

7. No witnesses gave evidence.

### **The Submissions of the Applicant**

8. Mr Cadman, on behalf of the Applicant, submitted that today's hearing could not be used as an application for restoration to the Roll hearing, although he accepted that the Tribunal could take into account both the passage of time as a relevant factor, and up to date mitigation as at 2013. This was a balancing exercise. Mr Cadman further submitted that the Tribunal could take into account, when considering sanction, the Respondent's admission at the Tribunal hearing on 26 October 2010 that he had given false testimony before the Tribunal at the earlier hearing on 29 September 2006. This was a matter that arose during the course of cross examination and Mr Cadman submitted it could, and should, be taken into account as it was very serious for a solicitor to give false testimony to the Tribunal on oath. This was a factor which was relevant to the issue of whether the Respondent was a fit and proper person to be a solicitor, and was effectively a continuation of the type of behaviour referred to in allegation 1.3.
9. The Respondent had effectively been struck off the Roll of Solicitors since 29 September 2006 and if the Tribunal were to decide the appropriate penalty was indeed that the Respondent should continue to be struck off, then the period of time at which that sanction would commence would be the date of the first Tribunal hearing on 29 September 2006. This would be relevant to any future application for restoration to the Roll.

### **The Submissions of the Respondent**

10. Mr Rene, on behalf of the Respondent, confirmed that he did not intend to make any submissions in relation to points (a), (b) and (c) referred to in paragraph 13 of Mr Justice Foskett's judgment. He would address the Tribunal only on point (d). Mr Rene submitted that where a matter was remitted back to a new panel of the Tribunal, this was on the basis that it would be considered afresh. The findings of the first Tribunal hearing on 28 and 29 September 2006 had been set aside and therefore the Tribunal at the second hearing on 26 October 2010 should have assessed matters without being misdirected by any of the first Tribunal's findings.
11. Mr Rene accepted that a solicitor was expected to tell the truth when giving evidence on oath. At the first hearing in September 2006 the Respondent had not been legally represented and had expected the substantive hearing to be adjourned. His application for an adjournment had been refused. Accordingly, he was not prepared for that hearing, having found that he was representing himself and giving evidence as well as cross examining other witnesses. Mr Rene submitted that it had not been easy for the Respondent to look objectively at the case before him, and that had been part of his difficulty at the first Tribunal hearing.
12. By the time the matter came back to be heard by the second Tribunal in October 2010, the Respondent had the benefit of legal advice and had subsequently admitted three allegations. Mr Rene submitted that the Tribunal should give due weight to the admissions made by the Respondent at the second Tribunal hearing and less weight to the evidence he had given at the first Tribunal hearing when he had not been legally represented.

13. Mr Rene referred the Tribunal to his Skeleton Argument dated 27 January 2013 and the character reference provided dated 24 January 2013. He reminded the Tribunal that there was no allegation of dishonesty. The Respondent had sought to start a legal practice and had been the victim of his own ambition. It had now been almost 6 ½ years since the Respondent had been struck off the Roll and this was a matter that Mr Justice Foskett had stated should be taken into account, together with any up to date mitigation and any other information about the Respondent. There was an issue of proportionality. The Respondent had not practised for almost 6 ½ years and it was submitted that it would not be proportionate to maintain the decision to strike the Respondent off the Roll. Any application to be restored to the Roll of Solicitors was unlikely to be granted earlier than six years from the date of being struck off unless there were exceptional circumstances. Mr Rene submitted that the penalty in 2010 had been harsh and that the three proved allegations did not warrant removal from the Roll. A further period of suspension would not be proportionate, nor serve any purpose, given the length of time that the Respondent had been barred from practising.
14. In assessing the seriousness of the Respondent's conduct, the Tribunal should take into account the fact that the Respondent was culpable, he had admitted the allegations at an early stage at the second Tribunal hearing, and he was relatively inexperienced compared to Mr Ijomanta, the other Respondent at the first Tribunal hearing, who had been on the Roll for a longer period than the Respondent. The Respondent's conduct related to a single episode of brief duration in a previously unblemished career and there had been no financial loss to the public. Furthermore, the Respondent had continued to keep abreast of the current law by attending courses. Mr Rene submitted a Restriction Order would be a proportionate sanction which would safeguard the needs of the public.

### **The Tribunal's Decision on Sanction**

15. The Tribunal had carefully considered all the documents provided and the submissions of both parties. 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. The Tribunal referred to its Guidance Note on Sanctions when considering Sanction.
16. On 26 October 2010 the Respondent had admitted, and the Tribunal had found proved, three allegations which were:
  - 16.1 **Allegation 1.1: The Respondent set up and/or had been involved in a solicitor's firm, Chris Dale & Co, in circumstances in which he had known or ought to have known had been improper and/or unprofessional;**
  - 16.2 **Allegation 1.2: The Respondent falsely witnessed a mortgage deed on 13 January 2003 and had falsely stated that he had been a solicitor with a current practising certificate;**
  - 16.3 **Allegation 1.3: The Respondent misrepresented to the Law Society his involvement in the practice of the solicitor's firm of Chris Dale & Co.**

17. The Tribunal was of the view that these allegations were very serious allegations indeed. The Tribunal on 26 October 2010 had stated that it had not been impressed with the Respondent's evidence, which it considered to have been evasive and inconsistent. That Tribunal had been satisfied the Respondent had been involved in setting up a solicitor's firm and had represented himself as a qualified solicitor and partner in that practice. Furthermore, he had signed a letter dated 15 October 2002 which had been sent to The Law Society, stating he was a partner and Practice Manager in that firm. The Tribunal on 26 October 2010 had been unable to accept the Respondent's explanation that he had witnessed the signature on a mortgage deed as a member of ILEX as the document clearly stated the witness signing the document was "a solicitor holding a current practising certificate". This Tribunal accepted those findings of the second Tribunal and based any decision on sanction only on the three allegations which had been admitted and proved.
18. The Tribunal had heard argument on the matter of whether account should be taken of the Respondent's admission to giving false evidence at the first Tribunal hearing in September 2006. However the Tribunal attached little weight to this issue as it was not directly relevant to the allegations which the Respondent had admitted and which were found proved. Accordingly, the Tribunal focused only on the proved allegations when considering sanction. The Tribunal also stressed that today was not an application for restoration to the Roll.
19. The Tribunal particularly noted Mr Rene had chosen not to address the Tribunal at all in relation to points (a), (b) and (c) in paragraph 13 of the judgment of Mr Justice Foskett, despite it being clear from the judgment that the Respondent should have been given an opportunity to deal with these matters. That opportunity had been available today and Mr Rene had decided not to pursue it and instead had addressed the Tribunal only on point (d) which related to the Respondent's admission in his evidence on 26 October 2010 that his evidence before the first Tribunal hearing had, in one respect, been untrue.
20. The Tribunal took into account the judgment of Sir Thomas Bingham MR in the case of Bolton v The Law Society [1994] CA which stated:

"It is required of lawyers practising in this country that they should discharge their professional duties with integrity, probity and complete trustworthiness... Any solicitor who is shown to have discharged his professional duties with anything less than complete integrity, probity and trustworthiness must expect severe sanctions to be imposed upon him by the Solicitors Disciplinary Tribunal... If a solicitor is not shown to have acted dishonestly, but is shown to have fallen below the required standards of integrity, probity and trustworthiness, his lapse is less serious but it remains very serious indeed in a member of a profession whose reputation depends upon trust. A striking off order will not necessarily follow in such a case but it may well."
21. The Tribunal was of the view that the Respondent's conduct had fallen well below the required standards of integrity, probity and trustworthiness, and indeed was a very serious departure from the standards expected of a solicitor. The Tribunal also noted that Mr Justice Foskett in his judgment of 2 November 2012, had agreed, as he stated:

“There can, in my judgment, be no doubt that the Tribunal were amply justified in treating the Appellant’s conduct as falling within the category that fell “below the required standards of integrity, probity and trustworthiness”: it involved setting up what Mr Williams described in argument as a “bogus” firm for the period until the Appellant was admitted as a solicitor and, even leaving to one side the witnessing of the mortgage deed (which, of itself, was arguably not as serious as other matters and simply represented one instance of what the Appellant was doing at the time) actively misrepresented the situation to the Law Society over a period of time. All that, without more, was sufficient to bring the circumstances within the category I have identified.”

22. The Tribunal gave consideration as to whether a suspension was an appropriate sanction in this case. It was very serious misconduct for a solicitor to be involved in setting up an improper solicitor’s firm, to then misrepresent his involvement in that firm to his regulator, and to falsely witness a mortgage deed by stating he was a solicitor when he clearly was not. These were matters that had caused serious damage to the reputation of the profession and the trust that the public placed in members of that profession.
23. The Tribunal had taken into account that the Respondent had effectively been struck off the Roll since 2006 and had not practised for almost 6 ½ years now. Whilst it was unfortunate that the penalty imposed in 2006 was in respect partly of allegations subsequently found not proved, and that it took two years for an appeal to be resolved, and then a further two years for a re-hearing, the Tribunal noted the Respondent had remained struck off by consent under the terms of a Consent Order dated 14 October 2008. These were matters which would be relevant to any application for restoration to the Roll at the appropriate time. In view of the seriousness of the conduct found proved, the Tribunal was of the view that a suspension would not be the appropriate sanction.
24. Having taken all matters into account and carefully considered the nature and seriousness of the three allegations which were proved, the Tribunal was satisfied that the appropriate sanction was still that the Respondent should be struck off the Roll of Solicitors.

### **Costs**

25. Mr Cadman, on behalf of the Applicant, requested an Order for his costs in the total sum of £4,863.60 and provided the Tribunal with a Schedule of Costs. Mr Cadman accepted the estimate was a little high as he had expected the Respondent to represent himself. He also confirmed that there was already an order in place stating that any order for costs was not to be enforced without leave of the Tribunal. As the Tribunal had confirmed the Respondent would remain struck off the Roll of Solicitors, the position would not change, particularly in view of the Respondent’s means.
26. Mr Rene, on behalf of the Respondent, confirmed he had no comment to make in relation to the Schedule of Costs. He confirmed he would request any order for costs should not be enforced without leave of the Tribunal and further confirmed the Respondent was not in a position to make any payment towards costs.

27. The Tribunal had considered carefully the matter of costs. In view of the fact that Mr Cadman had accepted the costs were a little high, the Tribunal reduced the costs and assessed them at £4,000 in total. The Respondent was Ordered to pay this amount.
28. In relation to enforcement of those costs, the Tribunal noted the Respondent had provided a statement dated 23 January 2013 which contained details of his financial circumstances. The Tribunal was mindful of the cases of William Arthur Merrick v The Law Society [2007] EWHC 2997 (Admin) and Frank Emilian D'Souza v The Law Society [2009] EWHC 2193 (Admin) in relation to the Respondent's ability to pay those costs. The Respondent had been deprived of his livelihood and had effectively not been in gainful employment for almost 6½ years. In the circumstances, the Tribunal Ordered that the order for costs was not to be enforced without leave of the Tribunal.

### **Statement of Full Order**

29. The Tribunal Ordered that the Respondent, Aloysius Igwebuike Obi, 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 £4,000.00, such costs not to be enforced without leave of the Tribunal.

Dated this 4<sup>th</sup> day of March 2013

On behalf of the Tribunal

I. R. Woolfe  
Chairman