

IN THE MATTER OF KOJO ASARE, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

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Mr. L. N. Gilford (in the chair)  
Mr. D. Green  
Mr. M. C. Baughan

Date of Hearing: 12th February 2008

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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 David Elwyn Barton, solicitor of 13-17 Lower Stone Street, Maidstone, Kent ME15 6JX on the 16th July 2007 that Kojo Asare solicitor of Cuthberts & Co., 2 Burghley Road, London, E11 4QP 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.

The allegations were that the Respondent had been guilty of conduct unbefitting a solicitor in each of the following respects, namely:

- a) he had failed to respond to correspondence from The Society;
- b) he had failed to observe or had unreasonably delayed in the performance of an undertaking dated 31 August 2004 given by him in the course of his practice as a solicitor;
- c) he had held client money other than in a client account contrary to Rule 1 of the Solicitors Accounts Rules 1998;

- d) he had failed to account for and/or utilised client money in the sum of £19,000;
- e) he had abandoned his practice thereby compromising or impairing his duty to act in the best interests of his clients and both his good repute and that of the solicitors' profession in each case contrary to Rule 1 of the Solicitors Practice Rules 1990;
- f) he had failed to pay the fees of an expert instructed by him thereby compromising his integrity and good repute contrary to Rule 1 of the Solicitors Practice Rules 1990.

The application was heard at The Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London EC4M 7NS on 12th February 2008 when David Elwyn Barton appeared as the Applicant and the Respondent did not appear and was not represented.

**At the conclusion of the hearing the Tribunal made the following order;**

The Tribunal Orders that the Respondent KOJO ASARE of Falmouth Way, Walthamstow, London, E17, formerly of Cuthberts & Co, 2 Burghley Road, London, E11 4QP, solicitor, be STRUCK OFF the Roll of Solicitors and they further Order that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £4,000.00.

Preliminary Matter

The Applicant had lodged a number of documents with the Tribunal relating to service of the proceedings upon the Respondent. Evidence was produced that a process server had ascertained that the Respondent's residence was at 20 Falmouth Way, London E17 and documents had been served by leaving them at that address. The Tribunal ruled that the Applicant had achieved service of the proceedings upon the Respondent and he had been served with a Civil Evidence Act Notice and had been notified of the hearing date.

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

1. The Respondent, born in 1957, was admitted as a solicitor in 1995. At the material times he practised under the style of Cuthberts & Co at 2 Burghley Road, London E11 4QP.
2. In 2005 the Respondent acted for Ms O, a Respondent in divorce proceedings. The Petitioner was advised by Charles Allotey and Co. A court order was made on the 9 March 2005 which provided for a transfer of property to Ms O in return for a payment by her of £18,000.
3. On 31 August 2004 the Respondent gave a written undertaking in the course of his practice as a solicitor in the following terms:
 

“We are pleased to inform you that our client has secured funding to purchase client's (sic) interest in the property. We undertake to forward the amount of £18,000 to yourselves once you have completed the transfer of title.  
We await hearing from you soon”
4. On the 2 August 2005 the title to the property was registered in the sole name of Ms O.

5. On the 12, 19, and 26 August 2005 Charles Allotey and Co wrote to the Respondent requesting him to comply with the undertaking.
6. On the 7 November 2005 the Society wrote to the Respondent seeking his explanation. He did not provide one. He sent an e-mail on 5 December 2005 stating he would pay the sum of £18,000 for Ms O but had not done so.
7. Ms O paid £18,000 to the Respondent on 1st September 2004. The money had not been accounted for. It was paid into a Lloyds TSB account in the name of the Respondent. It was not a client account. At the time of The Law Society's intervention into the Respondent's practice the client account was in credit by 24 pence. The firm's office account had a nil balance.
8. On the 6 January 2006 The Law Society wrote to the Respondent seeking his explanation. He did not provide one.
9. On 19 October 2005 The Law Society's Head of Forensic Investigation visited the Respondent's office and found that the Respondent was not there and there were signs that the practice had been abandoned.
10. The intervention agent appointed by the Law Society visited the Respondent's premises on 9 and 13 June 2006 and found that the Respondent's offices appeared to have been abandoned.
11. On the 20 March 2006 a consultant psychiatrist instructed by the Respondent in a client matter obtained a default judgement against the Respondent in the Woolwich County Court for his unpaid fee of £720.00.

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

12. The Respondent was obliged to perform his undertaking in Ms O's matter when the title to the property became registered. It was, of course, his obligation to perform the undertaking within a reasonable period of time. The £18,000 paid by Ms O to the Respondent had been paid into an account in the name of the Respondent that was not a client account. The money had not been accounted for.
13. The Respondent appeared to have abandoned his practice and The Law Society had intervened into it.
14. A consultant psychiatrist instructed by the Respondent had not been paid his fee. The Respondent had a professional obligation to pay that fee. When he did not the consultant psychiatrist was obliged to seek to enforce payment through the court.
15. The Respondent had in all of these respects been guilty of serious conduct unbecoming a solicitor.

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

16. The Respondent took no part in the proceedings.

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

17. The Tribunal found all of the allegations to have been substantiated.

### **Previous Matter**

18. Following a hearing on the 10th June 2003 the Tribunal found the following allegations to have been substantiated against the Respondent:-

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

- (i) [Withdrawn with the consent of the Tribunal];
  - (ii) Provided information which he knew to be false or misleading or which he ought reasonably to have known was false or misleading to the Assigned Risks Pool;
  - (iii) Failed to take out professional indemnity insurance with a qualifying insurer with effect from 1st September 2000 contrary to Rule 1 of the Solicitors Indemnity Insurance Rules 2000;
  - (iv) Failed to apply to join the Assigned Risks Pool before the start of the relevant indemnity period contrary to Rule 8 of the Solicitors Indemnity Insurance Rules 2000.
19. In its findings dated 14th July 2003 the Tribunal said, “no dishonesty had been alleged against the Respondent nor was it now alleged that he had knowingly supplied an incorrect figure to ARP. Counsel had put forward in mitigation the pressure to which the Respondent had been subject at the relevant time. The Tribunal considered, however, that the Respondent had been unacceptably careless both in missing the deadline for arranging insurance and in then providing a misleading figure for his gross fees to ARP. It was accepted that the Respondent was only without insurance cover, other than the default cover provided as a result of arrangements made by The Law Society, for a short period. Nevertheless there was a responsibility on solicitors to ensure that they had appropriate insurance at all times. It was also incumbent upon them to ensure that they provided the correct information in arranging that insurance. The Tribunal had heard that the Respondent had subsequently improved his systems and that there was unlikely to be a repetition of these events. The Tribunal had also noted the references put forward in support of the Respondent. The appropriate penalty in this case was a fine.

The Tribunal ordered that the Respondent Kojo Asare of 208 High Road, Leytonstone, London, E11 3HU solicitor do pay a fine of £3,500, such penalty to be forfeit to Her Majesty the Queen, and they further ordered him to pay the agreed costs of and incidental to the application and enquiry fixed in the sum of £3,277.84.”

### **The Tribunal's Sanction and its Reasons**

20. The Tribunal noted that on his previous appearance before the Tribunal the Respondent had been fined and no dishonesty had been alleged against him. On this occasion no formal allegation of dishonesty had been made against the Respondent but the Tribunal found that he had utilised Ms O's money for his own purposes. The money had been paid into an account that was not a client account. He had not discharged the undertaking that he had given to Charles Allotey & Co. No explanation had been offered by the Respondent.
21. Client money had been found to be missing, and the Respondent had failed to have due regard for the sanctity of client money and had not exercised a proper stewardship over it. He had been in breach of an undertaking given during the course of his practice as a solicitor. Those to whom undertakings are given by solicitors are entitled to be sure that such undertaking will be met and met within a reasonable time. A failure by a solicitor in this respect is a serious matter.
22. The Respondent appeared to have learned nothing from his earlier appearance before the Tribunal.
23. It was clear that he had abandoned his practice thereby demonstrating little regard for the best interests of his clients.
24. Further the Respondent had not paid the fee of an expert instructed by him.
25. In all of the circumstances the Tribunal concluded that the Respondent had not demonstrated the probity, integrity and trustworthiness required of a solicitor and it was both appropriate and proportionate that he be struck off the Roll of Solicitors. The Tribunal made that order and further ordered the Respondent to pay the costs of and incidental to the application and enquiry. The Applicant sought his costs. The Applicant indicated the level of his costs which the Tribunal considered to be reasonable and the Tribunal fixed those costs in the sum of £4,000.00. It was appropriate and proportionate that the Respondent pay these costs. By his behaviour he had caused the expenditure of time and cost by The Law Society in ensuring that it was properly fulfilling its duty as regulated by the solicitors' profession.

Dated this 19th day of March 2008

On behalf of the Tribunal

L N Gilford  
Chairman