

IN THE MATTER OF ANDREW ELLIS,  
A person (not being a solicitor) employed or remunerated by a solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

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Mr R J C Potter (in the chair)  
Mr D Glass  
Mr S Howe

Date of Hearing: 31st July 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 Gerald Malcolm Lynch on 27<sup>th</sup> March 2008 for an Order under s. 43(1)(b) of the Solicitors Act 1974 (as amended) directing that from a date to be specified in the Order no solicitor, Recognised Body or Registered European Lawyer shall employ or remunerate Andrew Ellis who was employed or remunerated by Sawle & Co, Solicitors, of 4 Hough Lane, Leyland, PR25 2SD except in accordance with permission in writing granted by The Law Society or that such other Order might be made as the Tribunal should think right.

The allegations were that the Respondent, as an unadmitted solicitor's clerk, at all material times purported to act on behalf of Mr and Mrs OH in County Court proceedings in respect of which he deliberately and improperly misled Mr and Mrs OH with regard to the progress and outcome of the proceedings. Further that in so acting the Respondent acted on his own behalf without the authority or knowledge of Sawle & Co, utilising their office facilities and name and in using these facilities inferring and indicating in documentation that he was acting in the course of his employment with them. It was further alleged that in connection with the said documentation he held himself out to be a solicitor.

The application was heard at The Court Room, 3<sup>rd</sup> Floor, Gate House, 1 Farrington Street, London, EC4M 7NS on 31<sup>st</sup> July 2008 when Gerald Malcolm Lynch appeared on behalf of The Law Society. The Respondent did not appear and was not represented.

The evidence before the Tribunal included a letter dated 14<sup>th</sup> June 2006 from Messrs Sawle & Co to The Law Society, referring to the actions of the Respondent, together with copies of correspondence and emails and of court forms that had been prepared by or received by the Respondent in connection with the County Court matter of Mr and Mrs OH. It also included material (correspondence and attendance notes) between the Solicitors Regulation Authority's Conduct Assessment and Investigation Unit and the Respondent together with the decision of 15<sup>th</sup> November 2007 of the Adjudicator. The Respondent did not appear but the Tribunal had two letters written by him before them. One dated 18<sup>th</sup> February 2008 to the Solicitors Regulation Authority and one dated 5<sup>th</sup> June 2008 to the Tribunal.

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

The Tribunal Orders that as from 31st day of July 2008 no solicitor, Registered European Lawyer or incorporated solicitor's practice shall, except in accordance with permission in writing granted by the Law Society for such period and subject to such conditions as the Society may think fit to specify in the permission, employ or remunerate in connection with the practice as a solicitor, Registered European Lawyer or member, director or shareowner of an incorporated solicitor's practice Andrew Ellis of Wham Bar Drive, Heywood, a person who is or was a clerk to a solicitor and the Tribunal further Order that he do pay the costs of and incidental to this application and enquiry to be subject to a detailed assessment unless agreed between the parties.

**The facts are set out in paragraphs 1-4 hereunder:**

1. The Respondent was employed by Messrs Sawle & Co from 16<sup>th</sup> September 2005 to 20<sup>th</sup> January 2006 as a conveyancer/fee earner. His duties did not extend to any other areas of practice.
2. The Respondent offered to assist Mr OH who was encountering procedural difficulties with an action against a garage claiming the value of his vehicle where the garage had impounded the vehicle following a dispute over payment for repairs.
3. From about November 2005 the Respondent proceeded to purport to act for Mr and Mrs OH in County Court proceedings. He misled Mr and Mrs OH with regard to the progress and outcome of these proceedings. The Respondent held himself out to be a solicitor and utilised both the office facilities and the name of Sawle & Co by inferring and indicating in documentation, namely claim forms, that he was acting in the course of his employment with the firm. In the completed allocation questionnaire the Respondent confirmed that he was a solicitor and he provided the court with a Roll number. In the listing questionnaire the Respondent confirmed that he was presenting the case at trial and that Sawle & Co, solicitors, were the nominated solicitors.
4. On 8<sup>th</sup> December 2005 the Respondent reported to Mr OH on the outcome of his case advising him that the Defendant had dropped his defence, that the court had ruled in

Mr OH's favour and that compensation was likely to be in the region of £4,800. In fact the matter had not been considered by the court and no Order had been made.

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

5. Mr Lynch referred to his statement and to all the documentary evidence referred to in that statement and placed before the Tribunal. He noted that in neither of his two letters did the Respondent deny that he had held himself out as a solicitor or that he had utilised the facilities of his then employer, Sawle & Co. The Applicant stressed that it was clear from all the evidence before the Tribunal that the Respondent had represented himself to be a solicitor acting through his firm and taking steps for Mr and Mrs OH in relation to County Court proceedings. The Respondent had, during a period of time, kept Mr and Mrs OH at bay by telling them that he had obtained an Order and that enforcement activity was in progress.

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

6. The Respondent did not appear before the Tribunal. However, the Tribunal had the benefit of two letters written by the Respondent; one to the Solicitors Regulation Authority dated 18<sup>th</sup> February 2008 and one to the Tribunal dated 5<sup>th</sup> June 2008.
7. In his letter to the Solicitors Regulation Authority, the Respondent described the background of his dealings with Mr and Mrs OH, admitted lying to them, admitted using Sawle & Co's letterhead and explained that he had not received any costs from Mr and Mrs OH.
8. In his letter to the Tribunal, the Respondent intimated allegations against Mr OH and admitted that he was "guilty of fabricating some of the things that has gone on with the case whilst at Sawle & Co." The Respondent stressed however that he felt that the whole matter had been blown out of all proportion and that within 30 days he would produce a definitive resume of all the evidence. No such document had been received by the date of the hearing. The Respondent stated that he did not intend to attend any sort of Tribunal and would not recognise any punishment imposed.

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

9. Having considered all the evidence, the Tribunal found that the Respondent had held himself out to be a solicitor, had purported to act for Mr and Mrs OH in proceedings and in so doing had deliberately and improperly misled them with regard to the progress and outcome of those proceedings. Moreover, the Respondent had utilised the office facilities and the name and status of his employers without their knowledge or authority.
10. The Tribunal had carefully considered the representations of the Respondent in his letters of 18<sup>th</sup> February 2008 and 5<sup>th</sup> June 2008. However, in the light of his admissions, the Tribunal determined that in all the circumstances an Order under s.43(1)(b) of the Solicitors Act 1974 (as amended) was necessary for the protection of the public. The Tribunal noted that the purpose of the Order was not so much to punish the Respondent as to control any future employment of his within the legal profession.

**Submission as to costs**

11. The Applicant made an application for the costs of this application. He explained that he had a costs schedule but that the Respondent had not received a copy.

**The decision of the Tribunal as to costs**

12. The Tribunal noted from the letter of 5<sup>th</sup> June 2008 that the Respondent appeared to be in employment outside the legal profession. As no copy of the costs schedule had been sent to the Respondent, it was not prepared to make a costs Order for a specific sum. An Order was made for the Respondent to pay costs, subject to a detailed assessment, unless those costs were agreed between the parties.

Dated this 6<sup>th</sup> day of November 2008

On behalf of the Tribunal

R J C Potter  
Chairman