

IN THE MATTER OF GEORGE GODFRIED OTCHERE (Former Solicitor)

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Miss T Cullen (in the chair)
Mr M Sibley
Mrs L McMahon-Hathway

Date of Hearing: 8th October 2010

**APPLICATION FOR
RESTORATION TO THE ROLL**

by the Solicitors Disciplinary Tribunal
constituted under the Solicitors Act 1974

Appearances

Ashitey Ollenu, Counsel, instructed by the Applicant.

Sara Dickerson, in-house Counsel, instructed by the Respondent, the Solicitors Regulation Authority (“SRA”).

The application to the Tribunal on behalf of the Applicant, George Godfried Otchere, was made on 29th April 2010.

The Application

George Godfried Otchere of 1 Oldfield Close, Little Chalfont, Buckinghamshire HP6 6SU was admitted as a solicitor on 1st September 1999. By an order of the Solicitors Disciplinary Tribunal dated 6th July 2006 he was struck off the Roll of Solicitors. He applied to have his name restored to the Roll and undertook to advertise the application in accordance with the Rules.

Factual Background and Submissions of the Applicant

1. The Applicant was struck off the Roll of Solicitors on 6th July 2006, following a hearing before the Solicitors Disciplinary Tribunal (“SDT”) of applications dated 2004 and 2005 containing 29 allegations against the Applicant. There were no allegations of dishonesty. The SDT found all the allegations to have been substantiated. The SDT was in no doubt that the Applicant had been “inept”. He had “practised without proper knowledge of the important duties he had as a solicitor” and “in a manner that was both incompetent and reckless”. The SDT took into account that the Law Society had seen fit to allow the Applicant to practise with conditions on his Practising Certificate and had agreed to his being employed by a firm, that firm having given him a written reference. The SDT noted that “in connection with his practice as an assistant solicitor, the public was protected as he was supervised by his employer”. However the SDT found that, “taking the Applicant’s failures and conduct as a whole, he was not fit to practise as a solicitor”. He had accordingly been struck off the Roll of Solicitors.
2. The Applicant appealed against the SDT’s decision. The appeal was heard by the Divisional Court on 15th July 2008. The appeal in respect of the finding of the SDT in relation to the matter described in the Judgment of the Divisional Court under the heading “Halifax plc” (paragraphs 20 – 24) was allowed. The balance of the appeal was dismissed, including the appeal against sanction. The Divisional Court held that the “penalty imposed [by the Tribunal] on the Applicant was necessary to reflect the seriousness of the case and, above all, to protect the public.”
3. In his application for restoration to the Roll of Solicitors dated 29th April 2010, the Applicant states that he has (i) no intention to practise as a conveyancer and that he has (ii) no intention to be a principal/partner and to be concerned with any firm’s client account. It is his stated intention to apply for a Practising Certificate. He wishes to return to the profession to practise as a Criminal and Civil Litigation Solicitor and to qualify at the Ghana Bar, where he eventually wishes to live and practise. The Applicant’s present employers, Shores Anchor Solicitors, have indicated that they are willing to employ him in connection with their practice. There are also other solicitors who are willing to employ him as an Assistant Solicitor. The Applicant has worked for Messrs Shores Anchor as a Solicitors’ Clerk and Police Station Representative since 1st November 2008. It is his stated intention to practise as a Criminal Duty Solicitor in the event of his restoration to the Roll.
4. In support of the application the Applicant submitted a number of documents, including 10 references provided by members of the legal profession, including partners at his current law firm, former colleagues and counsel, all with experience of his legal work. The Applicant also provided 6 references from individuals for whom he had carried out legal work in the past. The Applicant had made those concerned aware of his circumstances, including that he had been struck off the Roll of Solicitors.
5. The Applicant gave evidence to the Tribunal on oath. He had trained with a City firm, primarily in civil litigation. When he moved to his High Street practice he undertook conveyancing. He found this new area of work, coupled with management

of his practice, very difficult. With hindsight, poor practice management had been the cause of his difficulties. The Applicant had no intention of becoming involved in the management of a practice now or in the future.

6. The Applicant submitted written and oral evidence concerning his employment history since leaving his firm, Otchere Collisions, in July 2004. With the agreement of the Law Society he had worked in approved employment as a Duty Solicitor in 2005 and 2006. Following the hearing of his appeal he had applied to the SRA for permission to work with Messrs Shores Anchor, which he had done since 1st November 2008 as described in paragraph 3 above. The Applicant's evidence, which was not contested by the Respondent, was that he had encountered no regulatory problems during this employment.
7. The Applicant's evidence was, if restored to the Roll he intended to continue to work as a criminal practitioner. Messrs Shores Anchor currently did not employ a Duty Solicitor. The Applicant wished to be eligible for employment in that position so that he could fill the gap and deal with such work on behalf of the practice, under the supervision of the partners. He also intended to take two examinations enabling him to train to become a solicitor/barrister in Ghana, where he wished to settle. It was necessary for him to be restored to the Roll before he could sit those examinations and the notary examinations.
8. The Applicant admitted in evidence that it was just over 4 years since he had been struck off the Roll. He had not waited 6 years before making his application for restoration in accordance with the guidance given to Applicants on the SDT website. The Applicant stated that his application was being made at this time because of the exceptional hardship sustained as a result of his striking off. Examples of his exceptional hardship included family difficulties, his age, and financial hardship. Restoration to the Roll would help him to support himself and his family.
9. The Applicant submitted documentary evidence of courses that he said he had attended in order to update his professional knowledge, including a number of criminal law courses, most recently in September 2010. He was scheduled to attend a further course on 18th October 2010.
10. The Applicant's evidence was that he had learned from his mistakes and would not repeat them. He recognized his shortcomings as a practice manager. He solely wanted to be a fee earner.
11. It was submitted by Counsel for the Applicant that there was nothing precluding an application for restoration to the Roll before the expiry of six years after the date of striking off. The protection of the public from danger and the good name of the profession must override consideration of personal problems, but this Tribunal was entitled to take the personal factors into account. Counsel referred to the Human Rights Act 1998 in support of this limb of his submission. The Tribunal was entitled to ask what progress the Applicant had made towards rehabilitation. The Applicant had demonstrated that he had made substantial progress. No regulatory problems had arisen whilst the Applicant had been working as a solicitor in an approved practice prior to the proceedings coming before the Tribunal in July 2006, and this was an

important point. Counsel invited the Tribunal to ask itself whether the public and the good name of the profession would now be at danger if the Applicant was restored to the Roll. The Tribunal was entitled to take into account not only the period of time before the 2006 SDT hearing, but also the Applicant's employment since he had been struck off. Counsel submitted that, if a person has demonstrated that they have paid the price for their disastrous act and learned from it, that person could become a useful member of the profession; useful both to the public and his firm. That was the case here.

12. Counsel submitted that the Applicant would in any event have to apply for a Practising Certificate. Any fears could be dealt with by the imposition of conditions on that certificate by the Respondent. For example, one such condition could be that he was only permitted to work as an employed solicitor in an approved organisation.
13. The Tribunal was referred by Counsel for the Applicant to the Judgment of Mitting J in the case of *Fawzia Amtul-Habib Shuttari v The Law Society* [2007] EWHC 1484 (Admin), and in particular paragraph 18 of that Judgment.
14. The Applicant also relied upon the case of *Gurmit Singh Nahal v The Law Society* [2003] EWHC 2186 (Admin).
15. No objections to the Applicant's application for restoration to the Roll had been received. The necessary advertisements had been published in accordance with the Rules.

Submissions on behalf of the Respondent

16. The application was opposed. There was no witness evidence on behalf of the Respondent.
17. Counsel for the Respondent relied upon the written submissions of the Respondent dated 6th September 2010. She also referred the Tribunal to the leading judgment of Sir Thomas Bingham, Master of the Rolls, in *Bolton v The Law Society* [1994] 1 WLR 512 and the decision of Sir John Donaldson, Master of the Rolls, in the matter of Application No. 5 of 1983 decided on 4th November 1983.
18. Counsel referred to the Divisional Court's dismissal of the Applicant's appeal against the July 2006 decision of the SDT, save in respect of one allegation. The Respondent accepted that there had been no allegation of dishonesty against the Applicant. If there had been such an allegation the Applicant would not have been permitted to work as a solicitor, under supervision or otherwise, prior to the 2006 hearing. The principles established by *Bolton v The Law Society* remained good law even though that case was decided before the coming into force of the Human Rights Act 1998. Rights under Article 8 of the Human Rights Act are in any event qualified rights.
19. Counsel drew the Tribunal's attention to paragraph 5 of the Respondent's written submissions, and emphasised the seriousness of the matters for which the Applicant was struck off the Roll. She relied too on the guidance to Applicants set out on the SDT's website, namely that: "an application for restoration to the Roll should not be premature having regard to the time which has elapsed since the original order

striking the solicitor's name off the Roll was made. An Applicant cannot expect to have his name restored to the Roll within six years of the original order striking off save in the most exceptional circumstances." Counsel submitted that exceptional circumstances did not arise on the facts of this case and that the application was premature.

20. There was no evidence before the Tribunal in relation to the Applicant's ability and fitness to practise as a solicitor in the eyes of the public. Counsel submitted that it is sometimes necessary to be hard on the individual for the good of the public and the profession as a whole, relying on the test in Bolton. By praying his age in aid, the Applicant was attempting to have it both ways. He claimed that he did not have many years to practise as a solicitor, but intends to take additional examinations to enable him to work for years to come and to increase the variety of jobs available to him. The Applicant had not provided any evidence of attempts to find work other than as a solicitor. He has expressed a wish to hone his trade at a firm where he can be employed as a Duty Solicitor but accepts that this would have to be under supervision.
21. If restored to the Roll, conditions on the Applicant's Practising Certificate will be required in order to protect the public and the reputation of the profession.

The Decision of the Tribunal and its Reasons

22. The Tribunal had carefully considered the written submissions and had heard evidence on oath from the Applicant and oral submissions on behalf of both parties. The Tribunal thanked the parties' representatives for those helpful and concise submissions. The Tribunal had also considered the guidance provided on the SDT's website in relation to the approach to be adopted to applications for restoration to the Roll.
23. Taking the principles set out in Bolton v The Law Society as a starting point, the Tribunal had to satisfy itself that restoration of an individual to the Roll would not be a danger to the public as a whole or adversely affect the good name, reputation and public confidence in the solicitors' profession. The Tribunal will not be swayed by arguments that a decision to refuse an application to restore is hard on the individual concerned. That will almost always be the case.
24. In the 2006 proceedings the SDT found that the Applicant was "incompetent and reckless", "inept" and that the manner in which he practised was "chaotic" and caused him to be a "danger to his clients and to the public". It found that the Applicant was not fit to practise as a solicitor and he was struck off the Roll. The Divisional Court confirmed that the SDT's decision to strike off was correct. An application for restoration to the Roll is not to be regarded as a further avenue of appeal against the original decision to strike off.
25. What the Tribunal considering this application had to determine was whether the Applicant had established that he was now a fit and proper person to have his name restored to the Roll. Of paramount concern was the need to protect the public, the reputation of the solicitors' profession and the confidence of the general public in that reputation.

26. When considering its decision the Tribunal had taken certain factors into account. These factors included the number of years since the order striking off the Applicant, evidence of rehabilitation, evidence of employment and future intentions including offers of employment.
27. The Tribunal found that it was not necessary for the protection of the public that the Applicant's application for restoration to the Roll should be dismissed. Further it was not necessary for the protection of the reputation of the solicitors' profession, and the confidence of the general public in that reputation, that the application should be dismissed.
28. The Applicant was struck off the Roll on 6th July 2006. The Tribunal was mindful that the application for restoration had been filed three years and eight months after that order. This is well within six years of the original order to which reference is made in the guidance on the SDT's website. The Tribunal therefore had to be satisfied that there were exceptional circumstances for restoring the Applicant's name to the Roll in this case. The Tribunal found that those exceptional circumstances had been made out as set out below.
29. The Applicant had advertised his application as required by the Rules and no objections to his restoration to the Roll had been received from members of the general public or the profession. The Applicant had provided 16 individual and persuasive references, describing his rehabilitation in glowing terms, from partners at his current employers Shores Anchor Solicitors, current and former professional colleagues, and members of the public. It was clearly stated that the individuals providing the references were aware of the Applicant's previous appearance before the SDT and that he had been struck off. Those references were impressive in all the circumstances.
30. The Tribunal accepted the Applicant's evidence that he had worked within legal practices since 2005. He had been employed as a solicitors' clerk and Police Station Representative for Shores Anchor since 2008. There was no evidence that he had encountered any regulatory difficulties during this period of supervised employment. The references, together with the employment history since 2004, supported the Applicant's submission that he had been rehabilitated.
31. The Tribunal found that the Applicant had no intention of practising as a sole practitioner or in partnership, and that he would not be undertaking any conveyancing work, which had been the source of his previous difficulties. Indeed his practice was to be limited to criminal law as a Duty Solicitor, he had attended continuing professional development courses in criminal law, and his references related to practice within criminal law.
32. The Applicant gave compelling evidence in the witness box. He presented well, recognizing his past shortcomings and readily identifying the root causes of his difficulties. The Applicant impressed with his commitment to the legal profession and his desire to be of future useful service to his current employer and the general public. The Tribunal was satisfied that the Applicant had learned important lessons from his mistakes and would endeavour not to repeat them.

33. The Tribunal therefore found that it was appropriate and proportionate to take the unusual step of granting the application to restore the Applicant's name to the Roll of Solicitors. However the Tribunal recommended that conditions be imposed on the Applicant's Practising Certificate, to include a specific recommendation that he should be permitted to practice in approved employment in the field of criminal law only.

Costs

34. An application for costs was made by the Respondent. After hearing submissions on behalf of the Applicant, including information concerning his means, the Tribunal ordered costs to be paid by the Applicant to the Respondent in the sum claimed, namely £1,030.00. The opposition to the application by the Respondent had been well founded even though the Tribunal had found in the Applicant's favour. The costs were reasonable in view of the work undertaken.

Order

35. The Tribunal ordered that the application of George Godfried Otchere of 1 Oldfield Close, Little Chalfont, Buckinghamshire HP6 6SU for restoration to the Roll of Solicitors be granted and it further ordered that he do pay the costs of the response of the Solicitors Regulation Authority to this application fixed in the sum of £1,030.00

Dated this 5th day of November 2010

On behalf of the Tribunal

T Cullen
Chairman