

IN THE MATTER OF PATRICIA NDIDI OHAKWE, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

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Mr. I. R. Woolfe (in the chair)  
Mrs J. Martineau  
Mr. S. Marquez

Date of Hearing: 18th December 2007

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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 Stephen John Battersby solicitor and partner in the firm of Jameson & Hill of 72-74 Fore Street, Hertford, Herts SG14 1BY on the 30<sup>th</sup> March 2007 that Patricia Ndidi Ohakwe a solicitor of Bowater Sterling at 362 Cranbrook Road, Gants Hill, Ilford, Essex IG2 6HY 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 unbecoming a solicitor in each of the following particulars:-

- (i) She has failed to keep her books of account properly written up contrary to Rule 32 Solicitors Accounts Rules 1998.
- (ii) She has failed to carry out proper and adequate five weekly reconciliations between liabilities to clients and the funds available to meet them contrary to Rule 32 Solicitors Accounts Rules 1998.

- (iii) She has permitted a client account to become overdrawn contrary to Rule 22 Solicitors Accounts Rules 1998.
- (iv) She has failed to remedy breaches of the Solicitors Accounts Rules promptly upon discovery contrary to Rule 7 Solicitors Accounts Rules 1998.
- (v) She has failed to provide proper information to conveyancing clients at the commencement of a retainer.
- (vi) She has failed to obtain proper proof of identity from clients in conveyancing transactions.
- (vii) She has failed to protect the interests of purchaser clients in conveyancing transactions.
- (viii) She has failed to follow the instructions of lender clients and to protect their interests in conveyancing transactions.
- (ix) She has made use of a letterhead which was inaccurate and misleading contrary to Section 1 (a) of the Solicitors Publicity Code 2001.

The application was heard at The Court Room, Third Floor, Gate House, 1 Farringdon Street, London EC4M 7NS when Stephen John Battersby appeared as the Applicant and the Respondent appeared in person.

The evidence before the Tribunal included the admissions of the Respondent save that she denied allegation (iii) on the basis that she did not permit client account to become overdrawn, allegation (iv) as it arose out of the same facts as allegation (iii) and allegation (v) and allegation (ix). The factual basis of allegation (ix) was not disputed.

**At the conclusion of the Hearing the Tribunal made the following Order:-**

The Tribunal Orders that the Respondent Patricia Ndidi Ohakwe of 8 The Tyburns, Hutton, Brentwood, Essex, CM13 2JD, formerly of 362 Cranbrook Road, Gants Hill, Ilford, Essex, solicitor, be suspended from practice as a solicitor for the period of 6 months to commence on the 18th day of December 2007 and it further Orders that she do pay the costs of and incidental to this application and enquiry to be subject to a detailed assessment unless agreed between the parties, to include the costs of the Investigation Accountant of The Law Society.

**The facts are set out in paragraphs 1 to 38 hereunder:-**

1. The Respondent, born in 1958, was admitted as a solicitor in 1997. At the material times she was a principal in the firm of Bowater Sterling at Ilford, Essex. During the relevant period there had been four other partners in the firm all of whose conduct had been dealt with otherwise than by referral to the Tribunal. At the date of the Hearing the Respondent was no longer in practice owing to conditions that had been placed on her practising certificate.
2. Investigation Officers of The Law Society (the IO's) carried out an inspection of the books of account of the Respondent's firm during the period 30<sup>th</sup> November 2004 to

the 27<sup>th</sup> September 2005. The IO's produced a written report dated the 4<sup>th</sup> November 2005 that was before the Tribunal.

3. The IO's report revealed that the firm's books of account did not comply with the Solicitors Accounts Rules as client account reconciliations indicated large discrepancies. The client account reconciliation provided to an IO as at the 31<sup>st</sup> October 2004 showed that liabilities to clients were £757,637.27 but cash available was £266,161.06 leaving a cash shortage of £491,476.21. That cash shortage was made up of debit balances totalling £370,345.35 unallocated payments totalling £158,557.30 and unallocated receipts of £37,426.44.
4. A client account reconciliation provided to an IO at the 30<sup>th</sup> April 2005 also revealed a cash shortage of £145,320.85 caused by debit balances totalling £73,295.73 and an unexplained difference of £72,025.12. The IO's had not been able to ascertain whether the cash shortages indicated represented the true position but there were four debit balances totalling £58,132.21 in existence at the 31<sup>st</sup> August 2005 which had been in existence at 31<sup>st</sup> October 2004 and 30<sup>th</sup> April 2005.
5. A client account reconciliation provided to an IO as at 31<sup>st</sup> August 2005 revealed a cash shortage of £65,884.48. This was caused by debit balances appearing on seven ledgers ranging from £34.78 to £38,311.00 which had arisen during the period April 2004 to July 2005. The largest debit balance had arisen in a client's conveyancing transaction in which the ledger account and the completion statement recorded different amounts. Both documents showed an amount of £39,000.00 received from "A" and during the course of discussing the matter with the IO the Respondent said that she thought there was a connected matter and she would review the file. At the relevant time Mr. A's account had a credit balance of £3.54.
6. The Respondent had taken action to correct the cash shortage as at 31<sup>st</sup> August 2005. She told the IO that she was investigating the debit balances and on the 1<sup>st</sup> November 2005 she said that she had lodged £10,958.02 in client bank account in October 2005 in respect of four of the debit balances. She indicated that she would lodge a further amount of £16,615.46 in respect of two of the other debit balances on the 7<sup>th</sup> November 2005. With regard to the largest debit balance the Respondent indicated that she had asked her bookkeeper to check the ledgers but on the 1<sup>st</sup> November 2005 she indicated to the IO that the bookkeeper was out of the country and not due back until the end of that month.
7. The Respondent's firm's Accountant's Report for the year ended 5<sup>th</sup> April 2004 was received by The Law Society some four months late. That Report was qualified and pointed out that reconciliations had not been carried out five-weekly or monthly.
8. The IO's report referred to concerns about certain property transactions in which Messrs Soods Solicitors had been involved.

#### Property Transactions Dealt with and Connected with Soods Solicitors

9. The IO's ascertained that between 19<sup>th</sup> May 2004 and 24<sup>th</sup> January 2005, at least thirty-eight payments were made to Soods, Solicitors of Goodmayes, Essex where the Respondent's firm received funds from lending institutions and remitted them to

Soods. The Respondent's firm acted for purchaser clients and the lending institutions in the majority of cases.

10. Following notices under Section 44b of the Solicitors Act 1974 (as amended) some 50 files were produced to the IO's.
11. The IO's made reference to 34 files where they were concerned about one or more of the following issues:
  - A. Initial Letters from Bowater Sterling to clients
  - B. Client care letters produced by Bowater Sterling
  - C. Soods acting for vendors
  - D. Deposits
  - E. Correspondence with lending institutions
  - F. Misleading correspondence
  - G. Funds received from third parties
  - H. Non-registration of title
  - I. Law Society guidelines
  - J. Firm's headed paper
  - K. Involvement by Mrs O

A. Initial Letters from Bowater Sterling to Clients

12. Eleven of the thirty four files contained letters written in identical terms from Bowater Sterling to their purchaser clients. The other twenty three files did not contain these initial letters to the purchaser clients.
13. The initial letters contained the following:-
 

"We are in receipt of an instruction from the estate agents advising us that you wish to purchase/sell (sic) the above property and want us to act on your behalf.

I enclose herewith in duplicate our client care letter setting out the Terms & Conditions for acting on your behalf. Could you please sign and return to us on (sic) copy of the letter to acknowledge and accept the Terms & Conditions therein.

Could you also arrange an appointment to come into our offices with your passport plus two utility bills each no more than 3 months old by way of identification.

I will also require a banker's draft or building society cheque in the sum of £350 on account of costs in order that I can commence work on your file."
14. The IO's observed that none of the eleven files contained "instructions" from an estate agent nor did the other twenty three files.
15. None of the files contained a signed duplicate client care letter indicating acceptance of the firm's terms & conditions.
16. Seven of the eleven files contained copies of passports. Three of the eleven files contained copies of driving licences. One file contained no identification details at

all. Of the other twenty three files, 12 contained copies of passports and 10, driving licences. None of the thirty four files contained more than one utility bill and six contained no utility bills. The copies of the passports/driving licences were generally of a very poor quality. In some cases the picture was unrecognisable.

17. None of the eleven client ledgers showed that £350.00 had been received by the firm. One ledger showed that £180.00 had been received. Ten ledgers did not record the receipt of any money.
18. The IO's pointed out that the dates appearing on ten of the eleven initial letters addressed to the clients were within seven days of the completion dates shown on the certificates of title forms submitted by the firm to their lender clients to request funds.

#### B. Client Care Letters produced by Bowater Sterling

19. The eleven files contained client care letters. Ten of them were written in identical terms and included the following:-
 

"..... The property is a freehold/leasehold (sic).....  
 We will charge you a fixed fee of £440. We will add VAT to our charge.....  
 Expenses  
 You will also have to pay the following expenses:  
 Office Disbursement £150  
 Stamp Duty: Exempt or 1%-5% dependant on value location [sic] of property  
 Land Registry Fee: £150-£250 dependant on value of property  
 Lender's registration Fee: £175  
 Indemnity Insurance: £65"
20. The completion statements on ten files recorded costs charged of £400 with no VAT. Neither the office disbursement of £150 nor the lender's registration fee nor the indemnity insurance fee appeared on any of them. Nine of the ten completion statements showed broker's fees of £95 which had not been mentioned in the client care letters.

#### C. Soods acting for Vendors

21. Soods acted for the Vendors in all thirty-four transactions. A review of the files showed that in thirty three of the matters Soods had written to the Respondent's firm indicating that they were acting for the vendors in the transactions.
22. In six of the agreements for sale and purchase the vendor named therein differed from the vendor named in the letter from Soods.
23. In twenty three cases the agreements for sale and purchase contained the following special conditions:-
 

"The parties acknowledge that the Seller will not be registered as Proprietor of the Property on completion and the Seller shall on completion pay the Stamp duty and Land Registry fees payable on the Lease to the Seller [sic] and register as same at HM Land Registry;

The Buyer confirms having previously represented to the Seller that the Buyer will not make a request or raise a requisition pursuant to Section 110(5) Land Registration Act 1925 or otherwise decline to complete the transaction hereby agreed because the Seller is not registered at HM Land Registry as Proprietor of the Property and further acknowledges that the Seller has relied on such representation in entering into this agreement;

The Buyer will pay the balance of the purchase monies to the Seller on the Completion date and the Seller's solicitors will use these funds to complete the purchase of the property from the registered proprietors.

24. At an interview with the IO on 27<sup>th</sup> September 2005, the Respondent said that the special conditions had been included in the agreements by Soods.
25. In fourteen of the transactions office copy entries contained in the files showed that the registered proprietors of the properties were not the contracting vendors.

#### D. Deposits

26. Deposits had apparently been paid in all 34 cases directly from the purchaser to the vendor. In sixteen cases the deposit actually paid differed from that shown in the agreements for sale and purchase.
27. There was confusion as to whether there had been an allowance or discount (as stated in letters from Soods). In seven cases the following picture emerged:-

<u>Matter No.</u>	<u>Deposit per Completion Statement</u>	<u>Discount/Allowance per Soods</u>	<u>Amount of Deposit indicated to Lender</u>
4	£9,880	£10,400	No amount
9	-	10,250	No amount
20	10,350	10,350	No letter
27	-	10,300	No amount
28	9,750	12,500	No amount
29	23,000	1,317	No letter
34	10,000	10,000	No amount

28. A review of all files revealed no third party confirmation to validate the payment of any direct deposits.

#### E. Correspondence with Lending Institutions

29. In twenty three matters Bowater Sterling had written to lender clients informing them that deposits had been paid direct but the letters were vague. No deposit figure was mentioned. Three files contained letters to lenders indicating that deposits had passed directly where the completion statement and sale agreements showed no deposits had been paid.
30. In four matters copy letters to lender clients to indicate the undernoted direct deposits, which were all in excess of 5% of the purchase price, were not filed:-

<u>Matter</u>	<u>Deposit per Completion Statement</u>
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8	£60,000
15	10,000
20	10,350
29	23,000

31. In five matters there were no written indications to the lending institutions indicating that the vendors had not owned the properties for more than six months.

#### F. Misleading Correspondence

32. In four matters certificates of title and requests for mortgage funds had been sent to lender clients where the price stated in the transfer differed from that appearing in the agreements for sale and purchase. The details were:-

<u>Matter No.</u>	<u>Price in Agreement for Sale &amp; Purchase</u>	<u>Price notified to Lender</u>	<u>Signed by</u>
3	£175,000	£220,000	DR
12	199,950	200,000	The Respondent
26	206,000	195,000	The Respondent
29	195,000	183,000	The Respondent

#### G. Funds Received from Third Parties

33. In four cases the completion statements indicated that funds were due from the purchaser clients to complete. The following amounts were received from third parties:-

<u>Matter</u>	<u>Amount due</u>	<u>From</u>
3	£11,530.00	Soods
5	12,740.49	K (a mortgage broker)
22	13,546.00	K (a mortgage broker)
30	39,000.00	Soods

#### H. Non-Registration of Title

34. One matter still awaited registration as Soods Solicitors had not dealt with the registration of the original lease. Legal charges in favour of lenders remained unregistered for long periods. The IO's report contained the following list:-

<u>Matter</u>	<u>Completion date</u>	<u>Date registered</u>
5	16.12.04	03.03.05
6	15.12.04	16.03.05
9	05.11.04	28.02.05
10	12.11.04	04.05.05

14	28.07.04	25.10.04
15	08.07.04	23.12.04
16	29.07.04	12.01.05
17	31.08.04	24.11.04
18	20.10.04	25.01.05
23	28.10.04	08.02.05
25	12.10.04	18.02.05
26	02.12.04	15.04.05
27	06.12.04	05.04.05
29	26.11.04	08.04.05
30	21.10.04	07.02.05
32	13.10.04	08.04.05

### I. Law Society Guidelines

35. The Respondent had confirmed at a meeting with an IO on 30<sup>th</sup> November 2004 that she was familiar with The Law Society's warning cards relating to property fraud, undertakings and money laundering.

### J. Firm's Headed Paper

36. Fourteen matter files contained letters to lending institution clients which showed the partners of the firm to be the Respondent and Mrs O. Mrs O had left the partnership on 25<sup>th</sup> November 2004.
37. The Respondent told the IO on 27<sup>th</sup> September 2005 that she had failed to amend her firm's headed paper, which she maintained on computer. She had not sought to mislead the lending institution. There was another partner at the time the letters were sent.

### K. Involvement by Mrs O

38. At a meeting on 5<sup>th</sup> January 2005 with an IO, Mrs O confirmed that she had received notification of the IO's inspection. She had resigned from the practice upon talking with the Respondent and being told that the accounts of the firm had not been maintained on a month to month basis.

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

39. The Applicant pointed out that the nine allegations could be divided into three categories namely breaches of the Solicitors Accounts Rules, breaches in connection with conveyancing transactions and breaches relating to the use of an inaccurate letterhead.
40. The Applicant acknowledged that the Respondent had given a very full response and documents in support. At the material times the Respondent had been the principal in the practice although she had enjoyed short periods in partnership.

41. The Respondent had denied allegation (iii) and had not liked the term used namely that she had "permitted" the client account to become overdrawn. The Applicant in framing the allegation in that way did not indicate that the Respondent had been either dishonest or aware of the overdrawn at the time. The Applicant's case was that the overdrawn should not have happened. The Applicant accepted that the Respondent had not been aware of the overdrawn at the time but she was liable for that serious breach of the Solicitors Accounts Rules as principal.
42. It was accepted that allegation (iv) arose from the same state of affairs and it was accepted that the Respondent had not been in a position to deal promptly with breaches when she had not been aware of them.
43. With regard to the Respondent's denial of allegation (v) it was her case that she believed that the information provided to clients was sufficient and was in order. The Applicant did not put the allegation as one where the Respondent had been dishonest or that the failures to comply with requirements had any sinister intent. There were, nevertheless, failures.
44. With regard to the Respondent's denial of allegation (ix) the factual basis was not disputed. The fact was that the Respondent had carried on using letterhead showing a partner's name after that partner had left. It was the Respondent's case that she had not changed the letterhead sufficiently quickly and the Applicant did not dispute that. Again the Applicant said that he believed there was nothing sinister in the use of inaccurate letterhead but it was nevertheless inaccurate and the Respondent as principal was strictly liable for that.
45. The Respondent had failed to take due heed of The Law Society's written guidelines put in place in order to protect solicitors from unwittingly becoming involved in money laundering or mortgage fraud and she had not acted in accordance with the Council of Mortgage Lenders Handbook which set out the requirements of institutional lenders in order to protect their interests and again to avoid any unwitting involvement on the part of a solicitor in mortgage or other fraud.

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

46. With regard to allegation (iii), the Respondent did not admit it in the sense that she knew that the client account was overdrawn. She had not known the state of the books when the IO's commenced their investigation. She had successfully submitted two previous Annual Accountant's Reports and had done so on time. She accepted that she had responsibility for making sure that everything was in order but unfortunately she had not been able to do everything.
47. The Respondent denied allegation (iv). When the breaches had been drawn to her attention she did seek to remedy them in time. It was not clear what "promptly" meant. She had put matters right to the best of her ability. The client account balances had been reconciled.
48. With regard to allegation (v) the Respondent's firm had started with a partner and one conveyancing assistant. They had used information gleaned from other firms of solicitors to put their systems and their conveyancing package together. The

Respondent had followed the practice which she had seen other firms following. The Law Society had not indicated what information they would have wished to see on the files which they inspected. The Law Society had not provided any clear guidelines to young firms. The Respondent believed she had complied with all requirements but the situation had been somewhat confusing. There was no file that did not contain either a copy of a passport or of a driving licence and of a utility bill. The Respondent had not known that the documents obtained and filed by her were considered to be inadequate. A member of the Respondent's staff had taken photographs out of the files and had put them elsewhere, that was to say into a separate identity check file. The Respondent accepted that if the system had been properly thought through then copies of the photographs would also have been kept on the main client files. All the clients had, however, been asked to provide documents to prove their identities.

49. The Respondent had relied on assurances by a member of staff that Mr. A had funds of £39,000.00 to be transferred. Mr. A had agreed to the transfer of those funds to another client. The transfer would not have taken place if there had not been sufficient monies. The two clients knew each other and the firm did have the written authority of both for the transfer. That sort of inter client transfer was not the norm.
50. The Respondent accepted that there were some time lags when it came to dealing with registration at H M Land Registry. That had been because Soods had not provided title documents as quickly as they should have done. They had been under an obligation to do so and the Respondent's firm had pressed them.
51. With regard to the use of inaccurate letterhead, such letterhead was not printed but produced on the firm's computer. Staff had been told that they must use appropriate letterhead. The Respondent would not have endorsed letters being sent out on inaccurate letterhead.

### **The Tribunal's Findings**

#### The Disputed Allegations

52. The Tribunal found all of the allegations denied by the Respondent to have been substantiated. The Tribunal gave due consideration to the arguments put forward by the Respondent but, in reality, she did admit that the breaches had occurred and even though she was either unaware of them at the material time or had not personally instigated the breaches, as principal in the firm she could not escape liability. The Tribunal did, of course, note the way in which the Applicant put those allegations in particular that he did not allege dishonesty or that there was any underlying sinister intent.

#### The Admitted Allegations

53. The balance of the allegations were found to have been substantiated by the Tribunal, indeed they were not contested.

### **The Respondent's Mitigation**

54. The Respondent apologised for what had happened. She had been admitted as a solicitor for some ten years having previously qualified as a barrister in 1987. She had begun to practise as a barrister but had had to stop because of her financial situation. Subsequently she had worked for a not for profit organisation dealing with immigration matters.
55. Subsequently it had been her intention to start an immigration law based practice and she did so in 2002. After some 6-7 months her landlord who was a property dealer led her to decide to undertake conveyancing as she felt that it was a good opportunity to obtain referred work. She had worked hard to build up her firm. Had the Respondent known what conveyancing entailed, she would have taken rather more care before deciding to undertake such work.
56. At the time when The Law Society's investigation officer came to the firm she had a solicitor working for her. That solicitor had been aggrieved and had written to The Law Society claiming that all was not well at the firm. The Respondent believed that The Law Society had been led to believe that matters were rather worse than in fact they were. The Respondent set up her firm when she was fairly young and relatively inexperienced in running a firm. She had not received the usual training as a solicitor having transferred from the bar. She had not been familiar with the rules and regulations relating to the handling of conveyancing transactions. She was in effect "learning on the job."
57. The Respondent fully understood that compliance was very important. Had she taken more care of that side of things she would not have found herself before the Tribunal. She had concentrated on client work and building up the practice. She accepted that she should have expended more effort in complying with the Solicitors Accounts Rules and the rules and regulations relating to conveyancing.
58. Not only was the Respondent fairly inexperienced but her staff similarly were inexperienced. They did their best in a growing firm. The Respondent had come to recognise that all of them should have had more training in conveyancing.
59. The Respondent had not deliberately ignored the requirements of practice. She had not intended deliberately to mislead any client.
60. The Respondent had come to recognise that she had over relied on a bookkeeper who had provided to be less satisfactory than she had believed.
61. The Respondent would have welcomed the opportunity to undertake training courses but her financial situation would not permit her to do so.
62. The Respondent believed that she was a good solicitor and she regretted that she had not stuck to areas of law with which she was familiar.
63. No client had made any complaint about the Respondent.

**The Tribunal's Decision and its Reasons**

64. The Tribunal, having found all of the allegations to have been substantiated against the Respondent and having taken into account her explanations and her mitigation, considered that the situation in which the Respondent found herself was a matter for serious concern. She had set up a practice at a time when she was inexperienced. The Respondent was irresponsible to set up in practice in areas of law where she had no experience, particularly in the field of conveyancing. The Tribunal recognised that the Respondent had concentrated on expanding her business and had concentrated rather less on compliance with the requirements of practice. It had to be said that the rules and regulations relating to practice as a solicitor, the advice given in connection with conveyancing transactions and the detailed requirements of the Mortgage Lenders Handbook were in place both to protect the public and also to protect solicitors themselves. Those matters had been ignored to a considerable extent. The Tribunal recognised, however, that the Respondent had not been dishonest and there was nothing sinister underlying the Respondent's breaches. Nevertheless the aggregation of the breaches demonstrated a serious state of affairs. The Tribunal concluded that it would be both appropriate and proportionate to order that the Respondent be suspended from practice as a solicitor for the period of six months.
65. The Applicant had sought the costs of and incidental to the application and enquiry and the Respondent had very properly indicated that she could not resist that application. The Respondent made representations about her lack of ability to pay. In all of the circumstances the Tribunal concluded that it would be right that the Respondent bear the Applicant's costs, to include the costs of The Law Society's investigation accountant, and ordered that such costs should be subject to a detailed assessment unless agreed between the parties.

Dated this 13<sup>th</sup> day of February 2008  
Signed on behalf of the Tribunal

I R Woolfe  
Chairman