IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

No. QB-2022-000012

Royal Courts of Justice
Strand
London, WC2A 2LL

Wednesday, 9 March 2022

Before:

HIS HONOUR JUDGE SHANKS
(Sitting as a Judge of the High Court)

B E T W E E N:

SOLICITORS REGULATION AUTHORITY LIMITED — Applicant

- and -

MICHAEL OTOBO — Respondent

MR A. SOLOMON QC (instructed by Capsticks) appeared on behalf of the Applicant.

THE RESPONDENT did not attend and was not represented.

J U D G M E N T

JUDGE SHANKS:

Introduction

1 This is an application to commit Michael Otobo for contempt of court which was issued on 29 June 2021 by Solicitors Regulation Authority Limited which is now responsible for regulating solicitors on behalf of The Law Society.

2 SRA (as I shall refer to it) alleges that Mr Otobo has acted in breach of an order made by a Divisional Court (Irwin and Hickinbottom JJ) on 22 February 2012. That order required him to deliver up certain documents and to delete them if they were in electronic form and not to make any use of them notwithstanding that they had been referred to in proceedings in court. The order also required Mr Otobo to swear an affidavit to confirm compliance. It is said that the affidavit which he swore was deliberately false.

3 Permission to proceed with the latter application was given by Margaret Obi sitting as a Deputy High Court Judge on 18 August 2021. On that occasion, Ms Obi also made a civil restraint order *ex parte* in chambers preventing Mr Otobo from bringing any proceedings or applications in the Employment Tribunal, the Solicitors Disciplinary Tribunal, the County Court, or the High Court. There is some doubt about the status of that order since it appears never to have been sealed by the court but, in any event, Mr Otobo applied on 26 January 2022 to set it aside.

4 So far as service of the application for contempt is concerned, Cutts J ordered that the steps already taken by the SRA as at 10 February 2022 amounted to good service of the application on Mr Otobo. I am also quite satisfied that he was made aware that the application was to be heard yesterday, 8 March 2022, by virtue of an email which was sent to an email address which Mr Otobo habitually uses via Capsticks solicitors on 9 February 2022. I am satisfied of that not least because he applied for an adjournment of the hearing by email late on 7 March 2022.

5 I considered and rejected the application for an adjournment yesterday and decided to proceed to hear the committal application in Mr Otobo's absence for reasons which I gave in court at about 11.45 a.m. I should say that I omitted in those reasons to refer specifically to something Mr Otobo had mentioned, namely the side effects of certain medication, pictures of which he attached to his email applying for the adjournment. Insofar as the pictures show the side effects, in particular, of co-codamol, I can safely say that this aspect makes no difference whatever to my decision to proceed with the hearing in Mr Otobo's absence.

6 Mr Solomon QC for the SRA addressed me yesterday from about 12.15 to 3.30 p.m. with a break for lunch. At the very end of the hearing, I stated that I was satisfied that Mr Otobo had indeed acted in contempt of court broadly as alleged and that I would give reasons this morning and then possibly proceed to consider sanctions even if Mr Otobo was still not present. At about 4.00 p.m. I caused an email to be sent to Mr Otobo at that same email address which said as follows:

> **Hearing of the contempt application against you today –**
>
> **Your email seeking adjournment of today's hearing was considered by the judge listed to hear the application, HHJ Shanks sitting as a Deputy High Court, judge this morning. For reasons given in court at about 11.45, Judge Shanks refused your request for an adjournment and decided to proceed to hear the contempt application.**
>
> **The hearing of the application ended at about 3.30 pm. Judge Shanks indicated that he finds that subject to one or two minor points, you are in contempt of court as claimed by SRA Limited in their application. He proposes to give reasons for that finding tomorrow in court at 10.30. He will then proceed to consider the appropriate sanction for your contempt.**

Judge Shanks has asked me to give you notice that you are required to be in attendance at the hearing tomorrow. If you fail to attend Judge Shanks is minded to proceed with the question of the appropriate sanction in your absence. If you do attend, Judge Shanks will hear any points of mitigation you seek to make. He will also consider the terms of the existing CRO made by Ms Margaret Obi on 18 August 2021 and will hear you in relation to that matter if you attend.

There has been no response to that email and there is no sign of Mr Otobo this morning.

Factual background

7 The order of the Divisional Court which we are concerned with is at pp.210 – 216 of the bundle. It was itself made in the context of an application for committal for contempt which related to a series of documents. Those documents had been disclosed to Mr Otobo in the context of County Court proceedings which he brought against The Law Society in 2006 under case number 6SL00553. In those proceedings, Mr Otobo had alleged race discrimination against The Law Society. The background to the claim is described in the judgment of HHJ Collins given on 23 February 2009 when he dismissed the claim on its merits notwithstanding the absence from the court of Mr Otobo. I will briefly quote from Judge Collins's judgment, which is at p.66 in the bundle:

> 1. **I have before me today an action which is estimated to last ten days which was fixed for trial, I believe, last September. It is a claim by Mr Otobo, who is a solicitor, against The Law Society under the Race Relations Act.**
>
> 2. **Basically, what Mr Otobo claims is that he was employed by or in partnership with another solicitor called [YD]. Mr Otobo is black and [YD] is white. Mr Otobo asserts that a number of complaints were**

made against him by [YD] which subsequently resulted in action being taken against Mr Otobo by The Law Society. However, Mr Otobo in his turn made complaints against [YD]. The principal complaint, if not the only complaint (it is not entirely clear) was that [YD] had taken cash from a client who had been accused of money laundering.

3. Mr Otobo claims that The Law Society discriminated against him on the grounds of race in comparison with the way they dealt with [YD] by processing [YD]'s complaint expeditiously and processing the Claimant's complaints tardily and without keeping the claimant informed about their progress. By an amendment, he sought to claim The Law Society had victimised him because of his original claim by refusing a Practising Certificate.

8 The five documents we are concerned with all relate to the complaints made against [YD] and formed part of the Law Society's disclosure in the 2006 case. They are listed at para.1 of the order made by the Divisional Court on 22 February 2012 as follows:

(1) A document headed "Forensic investigation report" dated 2 August 2008 (this is clearly an error for 2005);

(2) A document headed "Conduct issues";

(3) A document containing "Draft Recommendations" in respect of [YD];

(4) A document headed "Adjudicator Supplemental First Instance Decision"; and

(5) A document headed "Attendance note" bearing the date 27 May 2002.

All those documents were in the hearing bundle before the Divisional Court and the page references were given.

9 Because Mr Otobo had made improper use of those documents by supplying them, in particular, to two third parties - a Mr Otah and a Ms Agim - who brought similar discrimination claims against The Law Society, The Law Society brought contempt proceedings in the Divisional Court. Apart from the general implied undertaking that documents which are disclosed will not be used for extraneous purposes, there had been a specific order of HHJ Corrie to prevent Mr Otobo making improper use of the documents made on 10 June 2008.

10 The contempt case was listed in the Divisional Court on 16 February 2012 but Mr Otobo did not appear. A warrant was issued for his arrest. He was arrested and spent the night in HMP Pentonville. There was a hearing on 22 February 2012 at which he was represented by Mr Challenger of counsel. He admitted his contempt of court in relation to supplying the documents to Mr Otah and Ms Agim and the injunction that I am concerned with was made by the court. Sentence was adjourned to 9 March 2012 and he was granted bail in the meantime.

11 The order made on 22 February 2012 required first that he deliver up by 1 March 2012 all copies of those five documents in his possession and control and any other documents disclosed by The Law Society in the 2006 proceedings. By para.2 it was required that if any of the disclosed documents existed in electronic form in Mr Otobo's possession or control he should inform The Law Society of that and irretrievably delete them from any electronic medium. By para.3 he was obliged by no later than 4.00 p.m. on 2 March 2012 to swear an affidavit confirming his compliance with the orders of paras.1 and 2. In para.5 it was ordered that he should not make any use, including disclosure to third parties, of any of the disclosed documents notwithstanding that they had been read to or by the court or referred to in those or any other proceedings.

12 Mr Otobo swore an affidavit in compliance (or purported compliance) with para.3 of the order. The affidavit (which is at p.283 in the bundle) stated:

> **I, Michael Otobo, formerly a solicitor and now unemployed … say as follows:**
>
> **1. I make this affidavit in compliance with the order this court made on 22 February 2012 …**
>
> **2. I confirm that I have gathered together all copies of the documents listed at para.1 of the order and I have delivered them to my solicitors.**
>
> **3. The documents that I have gathered together are all those that I had at home. I kept none in any other place …**
>
> **4. I confirm that I had only paper copies of these documents. If the [Law Society] wishes to confirm that there is no electronic copy on the only device I have which is capable of storing the same which is my computer at home then I would be content to permit an inspection of that computer at any reasonable time by a suitable person nominated by the [Law Society's] solicitor.**

There are two further relevant passages. At para.10 he said this:

> **10. In about March 2011, I provided copies of the documents to Joyce Agim. This was in the first instance to obtain legal advice but I accept that I did not forbid her from making other use of them …**

Then at the end of the affidavit at para.18:

> **18. I understand my obligation to be full and frank in this affidavit and also understand that if I have not been, this may constitute further contempt. I also confirm that due to my ill health including my memory loss and the pressure of the current proceedings, if it comes into my mind of any**

other person and/or organisations to whom I might have disclosed the documents, I undertake I will retrieve them and deliver them to the Applicant's solicitors without any delay.

19. I fully appreciate that my breaches of the order of HHJ Corrie are a serious matter and I apologise both to the Court and to the Applicant for these contempts. I ask the Court to take account of the fact that I accepted my responsibility for them although I agree that I was slow to do so.

13 On 9 March 2012, Mr Otobo appeared before the Divisional Court, again represented by Mr Challenger. The Divisional Court made an order for his imprisonment for six months, suspended for two years. Irwin J said this in the course of his judgment:

14. Since the order of 22 February, which set obligations on Mr Otobo to deliver up any copies of the relevant documentation, to indicate compendiously who had received them from him in the past, and to do everything in his power to purge this contempt, it is fair to say that in my view he has made a reasonable attempt to comply with those obligations. We have been told by Mr Challenger that the 'penny has dropped'. There is a real concern as to whether that is so, derived from a letter which carries the date of 22 December 2011 and which, it may be, is not a genuine document created on that date, despite the fact that it was disclosed over the last two weeks by the solicitors now acting for Mr Otobo on the grounds that it was relevant for these proceedings and was a genuine document. We make today no finding in relation to that letter as to whether it is genuine or not. The point from that letter was the claim by Mr Otobo that these documents were provided by him to the two individuals, in respect of whom he has conceded contempt, not

to assist them with their litigation but in the course of seeking legal advice from them as lawyers.

15. Speaking for myself, I think that was a contention that could never have been accepted by anyone taking a reasonable view of all the facts in this case, and I reject that contention. It is clear that the documents were supplied in order to stimulate further spurious, poorly-founded litigation against The Law Society based on the false suggestion, at least insofar as that documentation was relevant, of racial discrimination. There is a particular wickedness in accusing any group of individuals of race discrimination, because of the severe impact it may have and because such an accusation tends to feed future accusations of the same kind. A further wickedness of production of such material for wrongful purposes is that it may tend to undermine or cheapen genuine claims of race discrimination, when they arise, in the eyes of the public.

16. For all those reasons, I regard this contempt, on the part of someone who has been a solicitor, as serious and necessitating a prison sentence. We have been asked to bear in mind, amongst all of the other factors carefully pointed out by Mr Challenger both in writing and in oral submissions, that Mr Otobo has accepted his obligations; that he is sorry; that he will continue his efforts to put right what he has done wrong; that he has a history of psychiatric problems, including anxiety and depression, as evidenced by a consultant psychiatrist's report which has been produced; and that, for all those reasons, he is not to be regarded as someone who requires immediate committal to prison.

17. After some hesitation, for my part I am prepared to accept the submissions thus far. Were this matter not to have been admitted in the first place, it seems to me that the appropriate sentence would have been

> **9 months' imprisonment with immediate effect. Allowing for the admissions made, albeit late in the day, and for the other personal circumstances which arise, it seems to me that the appropriate sentence is 6 months' imprisonment, but that the warrant for the committal to prison for 6 months will be suspended for a period of 2 years. I make it explicit in reaching that conclusion, that if Mr Otobo, by commission or omission, continued in any breach of his duty to the court and that were the basis of a contempt application, then it would be inevitable that this sentence would be made immediate and inevitable that he would face a further immediate custodial sentence. He has been on a knife-edge of going to prison today.**

Hickinbottom J concurred and expressed the hope that Mr Otobo understood how well he had been served by counsel and how close he had come to being the subject of an immediate substantial custodial sentence. Irwin J at [21] then said that Mr Otobo must understand he has continuing obligations and went on:

> **He is at perilous risk of a further application for contempt, not merely by reference to those continuing obligations but by reference to whether The Law Society chooses to seek committal on the basis of any evidence surrounding the recent letter... [ie the letter dated 22 December 2011]. It will be inevitable that serious consequences would follow, as we have said, and it is essential that he is represented in any future application.**

14 Following the decision on 9 March 2012, Mr Otobo sought to appeal, as was his right. When he was refused an adjournment by the Court of Appeal, he withdrew the appeal. Sir John Thomas, then President of the Queen's Bench Division, expressed the view that the appeal was wholly without merit, that there was no evidence to justify an adjournment, that

the sentence was merciful, and that another court may well have given him an immediate custodial sentence.

15 It is plain from that history that Mr Otobo was fully aware of the terms of the order that I am concerned with today and with the consequences of non-compliance.

This application

16 The application that I am concerned with was issued on 21 June 2021 as an application in the proceedings heard by the Divisional Court which resulted in the injunction and suspended sentence. It was supported by an affidavit made by John Tippett-Cooper who is a solicitor for Capsticks who now act for the SRA.

17 Mr Otobo has also put material before the court, either sent direct to the court or via Capsticks, by email from the familiar email address. At pp.888 - 1000 in my bundle is material sent on 21 February 2022 relating to his application to set aside the civil restraint order made by Ms Obi. On 28 February 2022, he served a witness statement dated 25 February 2022 which is at pp.1001 - 1011 which is said to relate to the SRA allegations. On 4 March 2022, he sent what he described as "the second part of my witness statement". This appears to be a document at pp.1014 - 1032 in the bundle. There is further material some of it by way of duplication at pp.1033 - 1156. My understanding is that Capsticks converted documents attached to emails from Mr Otobo into PDF form and numbered them through without considering whether they amounted to duplication. There is then a further bundle of documents sent very recently electronically which amounted to 304 pages which I have glanced at. There was also an authorities bundle sent electronically by Mr Otobo.

Further litigation brought by Mr Otobo

18 Until 19 April 2013, Mr Otobo was subject to an earlier civil restraint order which expired on that date. Since then he has brought the following proceedings against The Law Society

or SRA or in the Solicitors Disciplinary Tribunal as described by Mr Tippett-Cooper in his affidavit:

(1) He was struck off the roll of solicitors in 2009 partially but not entirely because of matters relating to YD. In 2015, he applied for a rehearing of the Solicitors Disciplinary Tribunal decision to strike him off. That was refused. He then applied to the Administrative Court for a review of that decision and later to the Court of Appeal, all unsuccessfully;

(2) In 2018, he brought proceedings in the Employment Tribunal, again based on allegations of race discrimination on the basis of alleged differential treatment as between him and YD. That claim was struck out on his failure to attend the hearing. On 24 November 2020, he sent Capsticks an application to restore those proceedings on the basis of alleged fraud;

(3) On 4 December 2019, he again applied to the Solicitors Disciplinary Tribunal for a rehearing of the case. The hearing of the application took place on 22 July 2020. The SDT refused the application on 4 August 2020 stating as recorded at para 20(6) in the affidavit:

> **The Applicant's application for leave to apply for a rehearing was entirely without merit, based as it was on nothing more than outlandish allegations and assertions which were not supported by any evidence whatsoever.**

(4) On 31 July 2020, he lodged an appeal against that decision in the Administrative Court which he then applied to withdraw;

(5) In March 2021, he wrote to the Employment Tribunal seeking to restore the 2019 proceedings in some way. He alleged racism in not listing the matter and referred to

Black Lives Matter. The Regional Employment Judge refused to deal with the matter further;

(6) On 11 June 2021, Mr Otobo wrote to Capsticks inviting them to apply to set aside the Employment Tribunal decision and threatening a further application to court.

19 It is plain from this account that Mr Otobo has continued with hopeless litigation against The Law Society and the SRA. The SRA says that in the course of this litigation he has used the disclosed documents in breach of the Divisional Court injunction and that, furthermore, the evidence indicates that he did not deliver up or destroy them as required by the injunction and that his affidavit therefore contained lies.

The SDT hearing on 22 July 2020

20 Mr Solomon QC pointed me first to the hearing before the SDT on 22 July 2020 at which he represented the SRA where Mr Otobo was seeking leave to apply for a rehearing out of time of the decision to strike him off the roll of solicitors (which had happened in 2009 following a three-day hearing which he had not attended). The SDT decision is at p.682 of the bundle and at paras. 8 - 10 there is reference to the documents that I am concerned with:

Applicant's reliance on certain documents

8. The afternoon before the hearing the Applicant [Mr Otobo] emailed the tribunal with a large number of documents on which he intended to rely at the hearing. These were uploaded to CaseLines by the case management team. No objection was taken to their admission by the respondent.

9. At the hearing the Applicant began his submissions, having had an application to adjourn refused. During the course of his submissions, he

made reference to a number of documents that had been disclosed during separate civil proceedings.

10. Mr Solomon then commenced his submissions and informed the tribunal that some of the documents referred to by Applicant had been disclosed in the civil proceedings and were the subject of an injunction issued by the High Court on 22 February 2012. They should not, therefore, have been relied on in these proceedings.

21 Those documents are at pp.666 - 681 of the bundle before me. They clearly come within the description in para.1 of the Divisional Court's injunction of 22 February 2012. As Mr Tippett-Cooper states at 24(d) of his affidavit, it is also clear that they are the very same documents as were disclosed by The Law Society in the County Court proceedings in 2006 since they bear the redactions and handwritten pagination placed on them by Mr Sakrouge who was The Law Society's solicitor in relation to those proceedings. As Mr Solomon QC points out, it was in a sense fortuitous that he had acted for The Law Society in 2012 before the Divisional Court and then also acted for the SRA before the Solicitors Disciplinary Tribunal in 2020 and was therefore aware of the earlier contempt proceedings and the injunction that had been granted by the Divisional Court; had another counsel been acting, the point may well have been overlooked.

22 Following that hearing, Capsticks wrote to Mr Otobo on 22 October 2020 in a letter at p.726 in the bundle. They said this:

> **At the hearing on 22 July 2020 of the SDT, you relied upon and provided copies of documents to the SDT that were subject of the injunction dated 22 February 2012. We attach an unsealed copy of the injunction dated 22 February 2012 which sets out various documents you are required to deliver up hard copies to the SRA. The injunction required that you delete all electronic copies. In accordance with the injunction, we request that you**

return all documents in your possession that are subject to the injunction within fourteen days from the date of this letter.

Then in the final paragraph it says:

Should you fail to return and/or delete any documents within your possession, the SRA reserves their right to file:

(1) An application for a further Civil Restraint Order against you; and

(2) An application that you be committed to prison for breach of the order …

23 Mr Otobo's answer was a letter dated 24 October 2020 which is at p.728 in the bundle. It says:

I came across some documents in the course of my search for Collisons Makers Heyward Insurers disclosed to me by the Solicitors Regulation Authority. Both the SRA and the Tribunal are aware of this. I found the enclosed hard copy and one on my system in the course of searching for Collisons Makers Heyward Insurers which I needed for funding. I have now deleted the one on my system. I have had to move accommodation from where I was leaving and my things are scattered. If I come across any document, I will alert the Court and yourself. (sic)

24 I have to say that letter does not make a lot of sense to me but it does involve an admission that he still had possession of the relevant documents in 2020 and that at least one of them was held electronically. With the letter, he sent some documents to the SRA but not documents listed under items (3) to (5) in para.1 of the injunction.

25 Capsticks wrote to him again on 16 November 2020 and that letter is at p.744. They said:

> **The documents you have returned do not include items (iii) to (v) under the injunction. Please confirm in writing by 30 November 2020 that:**
>
> **(1) You have now returned all hard copies that have been retained and the various documents listed at (i) to (v) that you are required to deliver up (hard copies) to the SRA under the injunction dated 22 February 2012; and**
>
> **(2) You have deleted all electronic copies of these documents.**
>
> **Should you fail to return or delete all documents within your possession, the SRA reserves their right to file … an application for a Civil Restraint Order [and committal].**

26 That letter has never, I am told, been answered by Mr Otobo. In due course, although it took some time, the threat of seeking committal and a further CRO has materialised in these contempt proceedings. The delay is unfortunate but, for obvious reasons, understandable.

Other use of disclosed documents

27 As well as this episode, Mr Solomon QC has raised a number of other examples of the use of the disclosed documents by Mr Otobo in the period 2015 to 2021.

28 The first example is in a document headed "Grounds" which starts at p.624 in the bundle. It is clear from the surrounding circumstances that this document was used as part of Mr Otobo's application to the Administrative Court in response to the SDT's refusal to rehear his case in 2015. There are in the document numerous references to the report on YD which is document (1). At para.1 there is this statement:

> **There was a forensic investigation carried out by the respondent on the firm of [YD]. The investigation was due to complaints made by the Appellant [Mr Otobo]. The forensic report showed very serious breaches of money**

laundering rules and breaches of solicitors' accounts rules for which other solicitors have been struck off. [YD] was found in breach of money laundering …

At p.628, there is a reference to an attendance note created by [YD] which is document (5). At p.629, there is a further reference to the report on [YD], and also at pp.630, 631, and 635.

29 I should say that in the papers, Mr Otobo appears to question the notion that reference to documents in this way could amount to "use" as prohibited by the injunction. There is a particular reference to this point at para.54 of the statement at p.1028. I have no doubt that referring to documents and seeking to deploy them in a document put before a court or tribunal amounts to "use" of the documents. It is hard to see any other relevant way in which documents could be used. Mr Otobo is a solicitor and must be well aware of that.

30 The second example of use of the documents which Mr Solomon QC drew to my attention was in a letter to the SRA of 15 December 2017 which is at pp.565 - 566. At p.566, Mr Otobo says:

I am also asking you to refer both Robert Roscoe and Anthony Sakrouge to the Solicitors Disciplinary Tribunal. Robert Roscoe misled the tribunal by stating that the forensic report on [YD] had nothing to do with the credibility of [YD] at the hearing for disclosure on 10/1/2006 and he continues to maintain that. The report does affect the credibility of [YD] and continues to affect the credibility of [YD] (sic).

31 The third example arises from the Employment Tribunal proceedings brought in 2018 against the SRA. That was for race discrimination on the same basis as the 2006 County Court case. The ET1 in that case refers to the report on YD at p.418 in the bundle, on two occasions in paras.3 and 5; and then in the particulars of claim which go with the ET1 dated

27 March 2018 at p.645, there are a number of references which amount to use; I need only refer to pp. 651, 654, and 660.

32 The fourth example relied on is that after the hearing before the Solicitors Disciplinary Tribunal on 22 July 2020, at which Mr Solomon raised the Divisional Court injunction, Mr Otobo made an application to the Administrative Court to challenge the SDT's decision. The grounds for that application are at p.705. There is reference to the report on YD at para.2 which says:

> **Following the application notice in the County Court in a race discrimination case, the County Court ordered the disclosure of the forensic report. The report contains more than 600 pages. The report shows deception; fraud; perjury; perverting the course of justice; obstruction of justice; abuse of process; false alibi; malicious prosecution; discrimination, fabrication of documents and untrue statements on the part of the Solicitors Regulation Authority and their witness [YD].**

Para 3 says:

> **The forensic report shows [YD] was a convicted criminal having been found in breach of money laundering rules; providing false alibi … ; breach of solicitors' accounts rules and falsification of documents ...**

Then at para.11 of that document at p711, he says:

> **The forensic report and other documents disclosed at the county court reveal fraud, forgery, fabrication, false alibis, discrimination and perverting the course of justice.**

33 There was a further example relied on by the SRA which related to a document apparently dated 24 November 2020 whereby Mr Otobo sought to reopen the 2018 Employment

Tribunal proceedings. That document is at p.371 and Mr Solomon QC referred me to p.385. I pointed out that at p.385 there was no reference to any document and he said that the SRA no longer relied on this particular point.

34 That is the evidence relied on by the SRA.

Mr Otobo's case

35 I refer to the material submitted by Mr Otobo. I do not pretend to have read it all. It is long, diffuse, repetitive, and difficult to follow. The basic theme is that Mr Otobo makes multiple allegations of fraud against the SRA and seeks to rely on the case of *Takhar v Gracefield Developments Ltd & Ors* [2019] UKSC 13 which I have re-read. There are also repeated allegations of race discrimination and references to George Floyd and Black Lives Matter.

36 As far as I can see, and Mr Solomon QC has confirmed again this morning, there is nothing specifically relating to the alleged breaches of the order or any explanation for them. Mr Solomon QC did refer me to para.13 of a statement made by Mr Otobo at p1072 where he attacks the injunction in terms. Mr Otobo says:

> **Fraud. Paragraphs 8 - 18 of the affidavit of John Tippett-Cooper dated 18th June 2021. It is also misleading and lacks factual disclosure. The narrative of contempt of court has been deliberately selective and craftily avoiding disclosure of the Respondents criminal conduct. I believe that if all the facts had been made known to Judge Irwin, the Judge would not have made the order made and the comments would not have been made [that is presumably a reference to the comments by Irwin J, which I have read]. The fact of the matter is that I was kept in detention by Judge Irwin and my defence team did not have the materials they should have had to prepare my case properly.**

That, Mr Solomon said, was the most nearly relevant statement relating to these proceedings themselves. He also pointed out that it was simply not true to say that Mr Otobo had been kept in detention by Irwin J - he was, in fact, arrested on a warrant and held for one night - or that his lawyers were in any way prevented from representing him fully at the Divisional Court in 2012. There was no suggestion that that was the case in any of the papers.

37 I agree with Mr Solomon that the allegations of fraud made by Mr Otobo and his references to George Floyd and Black Lives Matter throughout the material he has put before the court are disgraceful. As I pointed out in my decision to proceed with the hearing, if the 2012 injunction was indeed obtained by fraud, the way to deal with that was by an application to set it aside on those grounds. No such application has ever been made and the order stands and must be obeyed as long as it stands.

My findings and conclusions

38 I have reminded myself that before finding Mr Otobo guilty of any contempt, I must be satisfied of it to the criminal standard; ie I must be sure that he is guilty of the contempt. I also remind myself that although there is no need to prove an intention to breach the order, any actual omission relied on must be intentional and that to find him guilty of contempt by making a false affidavit, I must be sure that Mr Otobo knew that what he said in the affidavit was false at the time he made it.

39 So far as use of the documents in breach of para.5 of the order is concerned, I have already referred to my understanding of the concept of "use" of the documents. I have no doubt that Mr Otobo used the documents in the ways alleged by the SRA in allegations 1 to 5 in the application which is at p.6 in the bundle. Allegation 6 was, as I have described, abandoned.

40 I have hesitated a little in relation to the allegation of failure to deliver up and/or delete the documents and the allegation of making a false affidavit, which are allegations 7 and 8.

They really go together. It is clear that Mr Otobo did, in fact, retain the documents in 2012. No other explanation for his possession of them in 2020 is put forward or can be thought of. The question is whether he knew that he had retained them rather than delivering them up as required by the order.

41 The only thing close to an explanation offered by Mr Otobo is in the letter of 24 October 2020 at p.728. As I have already said, it does not make much sense and it does not say expressly that he had been unaware that the documents were in his possession before 2020. I can also take account of the fact that he is a former solicitor, that he clearly knew what the order required of him, and of his behaviour on his apparent discovery that he did have documents, i.e. that he immediately used them rather than immediately returning them as was his clear obligation and as he clearly knew. I am also invited by Mr Solomon to find that para.10 of the affidavit relating to Ms Agim is a clear lie which goes to undermine his credibility in relation to the whole affidavit. I have already read para.10 which is at p.286 in the bundle. It is suggested there that Mr Otobo sent the documents to Ms Agim in order to get legal advice rather than to enable her to bring any spurious claim of race discrimination. I agree from the whole context that that is plainly untrue given the circumstances in which Ms Agim made use of the documents and, indeed, it is plain that Irwin J took that view as stated in para.15 of his judgment at p.331 which I have already read.

42 Putting all that together, I have come to the view that I am sure that Mr Otobo knew when he swore his affidavit that he had not returned and/or deleted all the documents but that he had, in fact, retained a set of them which he later sought to deploy before the SDT in 2020. Whether he thought he would get away with it because of the time that had passed or somehow overlooked the fact that by deploying those documents he was clearly exposing himself to contempt proceedings does not really matter and I do not need to decide. In those circumstances, I am sure that allegations 7 and 8 are also proved to the criminal standard.

L A T E R

Sentence

43 I will now proceed to sentence in relation to Mr Otobo's contempt of court. There are no guidelines as such. The maximum sentence is two years. Mr Solomon QC has very helpfully drawn my attention to a case before HHJ Cawson QC called *The Law Society of England and Wales v Pawlak* [2021] EWHC 3537 (Ch) and the guidance which seems to bring everything together neatly at [18] - [26] of the judgment.

44 I have recited the history of this case in my judgment on whether Mr Otobo was in contempt and I do not really need to say a great deal more. It is relevant that he was formerly a solicitor and therefore must be taken to be aware of the consequences of everything that he has done. He obtained the documents relating to YD by way of disclosure in the course of litigation and he has not abided by the implied undertaking or the injunctions of the court in relation to use of those documents ever since. He did not comply with the order of the Divisional Court in 2012 when he was required to return and/or delete the documents. He lied on oath when he said that he had gathered them up and supplied them to his solicitors and that he did not have any on any computer, and he has then used the documents in litigation over a substantial period. Of course, he may have been able to use them without retaining them but in 2020, as I have described, he actually sent copies of the documents to the Solicitors Disciplinary Tribunal thereby revealing that he had retained them.

45 He was given warnings by the Divisional Court in the clearest possible terms. I have read all that out. The consequence of what was said to him by Irwin J is that as far as I am concerned, he will definitely receive a custodial sentence and it will definitely not be suspended. I do not think I need to say more about his culpability.

46 So far as harm is concerned, that conduct in continuing to use the documents has put SRA to enormous trouble and expense and exposed them to further baseless claims. There is also the position of YD to be considered. Although his career may have had a chequered history, I am told that at the moment he is a practising solicitor. Mr Otobo's continued wrongful use of confidential documents clearly has the potential to damage his career and reputation.

47 So far as mitigation is concerned, Mr Otobo has failed to appear, has waived his right to appear and has therefore put nothing before the court but it may be relevant to at least consider the possible heads of mitigation set out at para.23(v) of the decision of Judge Cawson to which I have referred. There is no admission of breach; on the contrary, there does not seem to be any appreciation for the seriousness of the breach. There was no cooperation: I have referred to the exchanges in 2020 between the SRA and Mr Otobo after the hearing at the Solicitors Disciplinary Tribunal. There is certainly nothing like an expression of remorse or apology; quite the contrary: as Mr Solomon QC has put it, he has simply "doubled down" on his accusations of race discrimination and fraud against the SRA and others.

48 I note what is said about the two-year maximum term being comparatively short in the passage quoted at [24] of Judge Cawson's decision and that there is therefore a comparatively broad range of conduct which can fairly be regarded as falling within the serious category for justifying a sentence at or near the maximum. It seems to me absolutely clear that we are in that territory in this case.

49 Taking all this into account, I sentence Mr Otobo to a term of imprisonment of 18 months, of which he will serve half.

CERTIFICATE

Opus 2 International Limited hereby certifies that the above is an accurate and complete record of the Judgment or part thereof.

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