



IN THE JUDICIAL OFFICE
VISITORS APPEAL

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 3/04/2014

Before :

SIR ANTHONY MAY
DEBORAH SPRING AND PAUL LAWTON

Between :

Innocent Grandhomme Okorji
- and -
Bar Standards Board

Appellant

Respondent

Hearing dates: 27/3/2014

Determination

1. The parties to an appeal to the Visitors are entitled under the Hearing before the Visitors Rules 2011 to an oral hearing of their appeal. However, in this appeal by Mr Okorji against the determination of a Disciplinary Tribunal chaired by Julia Dias QC on 18th September 2013, the parties have each agreed in writing that the panel's determination may be made on the papers alone without an oral hearing. On 16th January 2014, Sir Anthony May gave directions to this effect, stating that the Panel's written determination would be sent to both parties, and directing that, to achieve formal compliance with Rule 14(3) and (4) of the Rules, the Visitors would then list a short public hearing at which the written determination would be handed down. The appellant need not attend that hearing, but attendance by a representative of the BSB is formally necessary.
2. This is the Panel's unanimous written determination of this appeal.
3. The short issue in the appeal is whether a barrister who does not have a practising certificate contravenes paragraph 202(c) of the Bar's Code of Conduct if he or she provides legal services at a time when there are available to the public website entries which assert or imply that the barrister is entitled to practise as such. This embraces the question whether the website entries constitute the barrister holding himself out as a barrister entitled to practise as such.
4. The charge which Mr Okorji faced alleged professional misconduct contrary to paragraph 202(c) and pursuant to paragraph 901.5 of the Code of Conduct of the Bar of England and Wales. The particulars of the offence were that he practised as a barrister from October 2004 until February 2013. It was alleged that he supplied, or offered to supply, legal services and, in connection with those services held himself out to be and/or he allowed himself to be held out as a barrister in correspondence and/or internet websites. He did so without a practising certificate issued by the Bar Council, such conduct being serious due to the nature and extent of the failure to comply with the Code of Conduct.
5. Paragraph 202 of the Code of Conduct provides:

“Subject to the provisions of this Code a barrister may practise as a barrister provided that:

...

(c) he has a practising certificate issued by the Bar Council (acting by the Bar Standards Board) pursuant to the Practising Certificate Rules.”
6. Paragraph 901.5 of the Code of Conduct provides that any serious failure to comply with the provisions of the Code referred to in paragraph 901.1 shall constitute professional mis-conduct. Paragraph 202(c) is one of the provisions referred to in paragraph 901.1. There was no issue before the Disciplinary Tribunal but that, if Mr Okorji had acted in breach of paragraph 202(c) as alleged, that would be a serious failure to comply.

7. There has been recent correspondence between the parties and the Clerk to the Visitors about the documents which should be available to the Panel for the determination of this appeal. There is no substance in any difference of view expressed in this correspondence. The Visitors will determine this appeal on the findings of the Disciplinary Tribunal and the documents relevant to those findings. There is no material question of the Visitors admitting fresh evidence.

Facts

8. Mr Okorji was called to the Bar by Lincoln's Inn in 2004. He accepted that he supplied legal services under the name "Civil Law" for which he used a letter head which did not describe him as a barrister. The BSB's case against him was that, during a period in around 2012 and 2013 when he was supplying legal services, he had held himself out or allowed himself to be held out as a barrister in connection with the supply of legal services by expressly referring to himself as "experienced legal Counsel (Barrister)" and a "Barrister-at-Law" and impliedly by referring to membership of an Inn of Court and the Bar Council. The BSB referred the Tribunal to:

(a) a web-page of "Trusted Lawyers" printed on 17th January 2013 constituting a profile of Mr Okorji indicating that he was a "Barrister" specialising in commercial law.

(b) a web-page of LinkedIn, also printed on 17th January 2013 stating that his education included "Inns of Court School of Law" and describing him as "Experienced Legal Counsel (Barrister)" having skills including "Legal Advice" with "Bar Council of England and Wales" under a side heading "Groups and Associations".

(c) a Law Society international practice web-site stating that Mr Okorji was "qualified to practise in United Kingdom" in close conjunction with an entry relating to membership of the Bar Council of England and Wales and the Hon. Society of Lincoln's Inn and stating that he was a "Barrister at Law".

(d) a further LinkedIn web-page printed on 1st February 2013 in which he was described as "Experienced Legal (Barrister) and Tax Consultant".

(e) a Mendeley web-page printed on 17th January 2013 for him including as biographical information "Barrister (Hon. Society of Lincoln's Inn)."

9. BSB Guidance about holding oneself out as a barrister includes

"Barristers without practising certificates may describe themselves as a lawyer or as a graduate of the BVC/BPTC even when providing legal services

Barristers who do not hold practising certificates (including first six pupils) are permitted to provide free legal advice to clients of a legal advice centre, providing they do not hold themselves out as barristers and do not undertake or offer to undertake any reserved legal services.”

10. Mr Okorji’s case and evidence before the Disciplinary Tribunal included reference to BSB Guidance for Barristers without Pupillage, which provided that:

“You may describe yourself as a barrister on a cv or when applying for jobs through recruitment agencies but it is not acceptable for you to do so when providing legal services.”
11. Mr Okorji submitted that LinkedIn was a recruitment agency and that his use of that web-site was in order to seek for work and not in order to advertise or offer legal services. His understanding was that LinkedIn was a form of job agency and that his profile on it was simply a cv or resume. He said that the Law Society was not a client and that he had used it only for continuing professional development purposes. He did not use its web-site to advertise legal services. He accepted that in stating that he was “qualified to practise” in the UK, he may have overstated things but he made it clear that he was not a practising barrister and no one had ever raised an issue about it. He explained his view that Trusted Lawyers was also a form of job agency which he used to obtain work, for example, as an arbitrator. He did not himself compile or upload the entry which appeared on its web-site although he thought he must have sent them his cv. It was, he said, Trusted Lawyers who had chosen to categorise him as a barrister on the basis of that information. He was unable to change the profile.
12. Mr Okorji submitted that the Bar Council’s Guidance permitted him to describe himself as a barrister in a cv and that this was effectively all he had done. He explained that most job agencies now promote their clients through web-sites and that while his entries were obviously a form of advertising they were not in themselves offering legal services. He did provide legal services trading as Civic Law. Here he described himself simply as a lawyer. His clients often asked what kind of lawyer he was, to which it was his practice to reply that he had been called to the Bar but was not a practising barrister. He explained that he had himself approached the BSB because he thought it was possible to register as a non-practising barrister. In fact he was not eligible to do so because of his date of call, but he had made that approach voluntarily.
13. In their decision, the Tribunal observed that Mr Okorji had accepted that he offered legal services through Civil Law. There was no allegation that he had held himself out or allowed himself to be held out as a barrister when actually supplying legal services. The Tribunal noted that the crucial issue was therefore whether he had done so in connection with the supply of legal services. The prohibition in the Code applied to any form of advertising or publicity and included an implied representation that the individual was a barrister, such as claiming membership of an Inn of Court.
14. The Tribunal held that, even taking Mr Okorji’s submissions as to the nature and purpose of the various web-sites at their highest, it was an inescapable conclusion that there was a breach of Rule 202(c) in the circumstances of the case by using the

description “barrister”, particularly when combined with a reference to membership of the Bar Council and Lincoln’s Inn.

15. The Tribunal took into account a list of strong mitigating circumstances and noted that there were no aggravating circumstances. They were of the view that Mr Okorji should be provided with advice as to future conduct and suggested changes to his profiles on the web-site. They strongly advised him to provide a copy of any amended profile or web-site content to the BSB for their approval in order to avoid any difficulties in the future.
16. Mr Okorji’s grounds of appeal essentially are that a breach of Rule 202(c) may only occur where publicity or advertising is for the supply of legal services. The Tribunal did not find any evidence that he published or advertised himself for the proscribed supply of legal services. There was no evidence suggesting that he was practising as a barrister and the Disciplinary Tribunal did not find any such evidence. He maintains that Rule 202(c) of the Code does not contain a prohibition against advertising or publicity including an implied representation that the individual was a barrister. He himself had been called to the Bar as a barrister of Lincoln’s Inn. Accordingly nobody had been misled and there was no breach of the Code of Conduct.
17. Mr Okorji has a further ground of appeal with reference to Rule 901.1, which provides in certain circumstances for the Bar Standards Board to issue a written warning for various failures including a failure to comply with the provisions of paragraph 202(c). He submits that the Disciplinary Tribunal failed to take into account that a written warning was not issued by the BSB. In our view, this ground of appeal is of no substance. The charge before the Disciplinary Tribunal proceeded under Rule 901.5, not Rule 901.1. As we have indicated, Rule 901.5 applies to any *serious* failure to comply with provisions of the Code, and there was no issue but that this would be a serious failure if the charge was established.
18. Mr Holdcroft, representing the BSB, refers to Paragraph 201 of the Code of Conduct to the effect that:

“For the purposes of this Code a barrister practices as a barrister if:

(a) he supplies legal services and in connection with the supply of such services

(i) he holds himself out or allows himself to be held out as a barrister ...

(b) ...

(c) and any reference to the supply of legal services includes an offer to supply such services.”

It was not in dispute that Mr Okorji had supplied legal services. Mr Holdcroft points out that Bar Standards Board Guidance explains that the restriction on holding out prevents barristers who do not have a practising certificate but who are offering to supply legal services through using the title “barrister” or otherwise conveying the

impression that they are practising as a barrister. An example of what might amount to “holding out” is given as:

“Describing oneself as a barrister in any printed material used in connection with the provision of legal services in particular in advertising or publicity.”

19. Mr Holdcroft draws attention to the various web-site pages referred to earlier in this determination and submits that the Disciplinary Tribunal’s “inescapable conclusion” that there was a breach of Rule 202(c) was plainly correct.
20. As we stated at the outset, the short issue in this appeal embraces the question whether the web-site entries constituted Mr Okorji holding himself out as a barrister entitled to practise as such. If they did, there is then the subsidiary question whether the holding out in the web-site was “in connection with the supply of legal services” within the terms of Paragraph 201(a) of the Code of Conduct. In less formal terms, the subsidiary question is whether the web-sites had a sufficient implicit connection with the legal services which Mr Okorji accepts he supplied. If there was sufficient connection and if there was a relevant holding out, Mr Okorji’s point that there was no evidence that he was practising as a barrister necessarily fails by virtue of the definition in Paragraph 201(a).
21. The two questions identified in the previous paragraph both turn on whether the web-site entries are to be regarded objectively as no more than a vehicle to promulgate Mr Okorji’s cv for job seeking purposes; or whether they were or sufficiently embraced Mr Okorji holding himself out as a barrister entitled to practise as such. It is a short point and our clear unanimous conclusion coincides with that of the Disciplinary Tribunal. The web pages do not read as a job seeker looking to be employed, but as a barrister offering to supply legal services as such. This is clearest perhaps with the “Trusted Lawyer” page with the obvious implication to be derived from that heading. But the same, in our judgment, applies to the other pages. Mr Okorji may not have had control of the envelope in which his material was placed. But he must have supplied his details and at the very least allowed himself to be held out as a barrister within the terms of Paragraph 201(a) of the Code in the way in which, in our view, these pages hold him out. In these circumstances, he did supply legal services and there is, in our judgment, a sufficient connection between the holding out and the services. He did not have a practising certificate.
22. For these reasons, the appeal is dismissed.