

SOLICITORS DISCIPLINARY TRIBUNAL

SOLICITORS ACT 1974

IN THE MATTER OF GODFREY ARTHUR BREW solicitor (The Respondent)

Upon the application of Sara Dickerson  
on behalf of the Solicitors Regulation Authority

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Mr R. Nicholas (in the chair)  
Mr R. Prigg  
Mrs L. Barnett

Date of Hearing: 20 December 2010

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**FINDINGS & DECISION**

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**Appearances**

Ms Sara Dickerson, Barrister, of Victoria Court, 8 Dormer Place, Leamington Spa, Warwickshire CV32 5AE for the Applicant, the Solicitors Regulation Authority (“SRA”).

The Respondent did not appear and was not represented.

**Application Date**

The date of the Rule 5 Statement was 30 April 2010.

**Allegations**

The allegations against the Respondent were that:

1. He failed to deliver promptly, or at all, an accountant’s report for Brew Commercial for the period ending 31 March 2008 by the due date of 30 September 2008, in breach of Section 34(2) of the Solicitors Act 1974 (as amended).
2. He failed to deliver promptly, or at all, an accountant’s report for Brew Commercial for the period ending 31 March 2009 by the due date of 30 September 2009, in breach of Section 34(2) of the Solicitors Act 1974 (as amended).

3. As at 31 December 2009, the books of account were not in compliance with the Solicitors' Accounts Rules ("SAR") for the following reasons:
  - 3.1 The firm's accounting records had not been written up since August 2007;
  - 3.2 No client account reconciliations had been carried out since July 2007;
  - 3.3 A debit balance existed on at least one client matter;
  - 3.4 Interest on the firm's general client account was credited to the client account instead of the office account;
  - 3.5 No client ledgers had been maintained or created after August 2007;
  - 3.6 Office money was retained in client account;
  - 3.7 Total liability to clients as at 31 December 2009 could not be calculated.
4. As at 24 August 2009, four client matters examined showed a minimum client shortage of £15,033.41.
5. As at the date of the Rule 5 Statement, the Respondent had still failed to rectify the cash shortage on client account promptly.
6. Practised from 4 March 2010 until 6 April 2010 without a practising certificate.

### **Factual Background**

1. In the absence of the Respondent the Tribunal was satisfied that he had been properly served and given notice of the hearing.
2. The Respondent was born on 19 June 1940 and admitted as a solicitor on 30 July 1965. At all material times he practised as the sole practitioner at Brew Commercial, Lloran House, 42a High Street, Marlborough, Wiltshire, SN8 1HQ ("the Firm"). At the time of the hearing he remained on the Roll of Solicitors, but had not applied for a practising certificate for 2010/2011.
3. An accountant's report for the Firm for the period ending 31 March 2008 should have been delivered by the Respondent by 30 September 2008. At the time of the hearing the accountant's report had not been received.
4. An accountant's report for the Firm for the period ending 31 March 2009 should have been delivered by the Respondent by 30 September 2009. At the time of the hearing the accountant's report had not been received.
5. On 8 February 2010 the Applicant commenced an investigation of the Firm's books of account and other documents. A report dated 11 March 2010 with 26 exhibits by M. J. Calvert, the Applicant's Head of Forensic Investigation, was prepared. The report included details of an interview on 18 February 2010 between the Investigation

Officer, Mrs Sara Houchen, and the Respondent. It was sent by the Applicant to the Respondent on 31 March 2010. The Respondent wrote to the Applicant answering a number of questions raised by the report by letter dated 19 April 2010.

6. The Investigation Officer concluded in her report that the books of accounts were not in compliance with the SAR as detailed at allegation 3 above (allegations 2.3.1 to 2.3.7 of the Rule 5 Statement).
7. The books of account revealed that, as at 24 August 2009, four client matters examined showed a minimum client account cash shortage of £15,033.41. The Respondent agreed that figure during interview by the Investigation Officer on 18 February 2010. As at the date of the hearing the Applicant had not been notified that the cash shortage had been rectified.
8. The Respondent practised from 4 March 2010 until 6 April 2010 without a practising certificate. He was given notice by the Applicant on 26 January 2010 that his completed application forms for the year 1 November 2008 to 31 October 2009 had not been received, and that his current practising certificate would be revoked with effect from 2 March 2010, making him ineligible to practise. The Applicant wrote to the Respondent again on 30 April 2010 informing him that the forms had not been received and that his practising certificate had been revoked with effect from 2 March 2010. The completed forms were submitted on 6 April 2010. The Respondent had therefore practised uncertified during the intervening period.

#### **Documents before the Tribunal**

9. The Tribunal reviewed all the documents submitted by the Applicant and the Respondent, which included:

##### Applicant

- Rule 5 Statement dated 30 April 2010 and accompanying bundle of documents marked Exhibit SD1;
- Bundle of documents handed to the Tribunal by Ms Dickerson from SP Book-keeping and Payroll Services commencing with a letter from SP Book-keeping and Payroll Services to the Applicant dated 1 November 2010 and supporting documents, namely the latest reports prepared by SP Book-keeping for the Firm, relating to client account for the period to 31 October 2010 and office account up to March 2009. The reports were incomplete because further information was awaited from the Respondent.

##### Respondent

- Letter from the Respondent to the Tribunal dated 9 December 2010.

#### **Witnesses**

10. The Applicant did not call any witness evidence.

## **The Tribunal's Findings as to Fact and Law**

Allegation 1 - that the Respondent failed to deliver promptly, or at all, an Accountant's Report for Brew Commercial for the period ending 31 March 2008 by the due date of 30 September 2008, in breach of Section 34(2) of the Solicitors Act 1974 (as amended).

11. At the time of the hearing the Respondent had not delivered promptly, or at all, an accountant's report for Brew Commercial for the period ending 31 March 2008 by the due date of 30 September 2008, in breach of Section 34(2) of the Solicitors Act 1974 (as amended). The Applicant had given the Respondent numerous opportunities to provide the report, commencing on 31 December 2008 with a letter to the Respondent. Further letters were sent and telephone calls made on a regular basis. On 14 January 2009 the Respondent said that he had been in touch with his accountants who were to carry out the audit in February 2009. Following two further chasing letters, the Respondent contacted the Applicant by letter dated 16 March 2009 explaining that the delay in providing the report was due to his ill health since June 2008. The Respondent was asked to provide an anticipated delivery date for the report, and he acknowledged the letter but did not provide a date. In April 2009 he was chased again, and said that he would deliver the report as soon as possible. He was chased again in June 2009. In due course he notified the Applicant that he was awaiting a further update from his auditors and that the audit would be completed by the end of July 2009. This information was confirmed by letter dated 22 June 2009. On 29 July 2009 the caseworker spoke to the Respondent. The audit had been delayed and the report was expected by 20 August 2009. The Respondent was chased again in September 2009. On 14 September 2009 he was informed that the matter had been referred to the Adjudicator for formal adjudication. On 26 October 2009 the Adjudicator gave him a further 28 days from the date of notification of the decision to comply, failing which his conduct was to be referred to the Tribunal. The Respondent did not reply to the Adjudication.
12. In his letter to the Tribunal dated 9 December 2010 the Respondent acknowledged the accounting deficiencies in his practice since his book-keeper had ceased to work for him at the end of August 2007. The Respondent had informed the Investigation Officer during interview that he had found it difficult to replace the book-keeper for a number of reasons. Shortly after he had become unwell, which had resulted in a further delay.
13. The Respondent admitted the allegation and the Tribunal found it to have been substantiated on the facts.

Allegation 2 - that the Respondent failed to deliver promptly, or at all, an accountant's report for Brew Commercial for the period ending 31 March 2009 by the due date of 30 September 2009, in breach of Section 34(2) of the Solicitors Act 1974 (as amended).

14. At the time of the hearing the Respondent had not delivered an accountant's report for Brew Commercial for the period ending 31 March 2009 by the due date of 30 September 2009 or at all, in breach of Section 34(2) of the Solicitors Act 1974 (as amended). The Respondent had been given a number of opportunities in which to provide the report, commencing with a letter from the Applicant to the Respondent dated 4 November 2009. He was notified that an investigation would commence by

letter dated 25 November 2009. The Respondent replied by letter dated 8 December 2009 stating that he was in the course of arranging for an audit to be carried out. The Respondent explained that the delay was due to his extended period of ill health, from which he had recovered, and he was able to give the matter his urgent attention.

15. The Respondent admitted this allegation, citing his ill health as the reason for the failure to deliver the report. The Tribunal found the allegation to have been substantiated on the facts.

Allegation 3 - as at 31 December 2009 the books of account were not in compliance with the Solicitors' Accounts Rules

16. This allegation related to the inspection by the Investigation Officer of the books of account, which were not in compliance with the SAR for the following reasons:
- The firm's accounting records had not been written up since August 2007;
  - No client account reconciliations had been carried out since July 2007;
  - A debit balance existed on at least one client matter;
  - Interest on the firm's general client account was credited to the client account instead of the office account;
  - No client ledgers had been maintained or created after August 2007;
  - Office money was retained in client account;
  - Total liability to clients as at 31 December 2009 could not be calculated.
17. During the course of his interview with the Investigation Officer the Respondent admitted that the accounting records were last updated in August 2007 by the then book-keeper. The Respondent also admitted that he did not have a record of all office money coming in and out on client matters in compliance with Rule 32(4) of the SAR. He also accepted that he did not have a current balance on each client ledger account readily ascertainable from records in accordance with Rule 32(5) of the SAR. He admitted that the last client account reconciliation had been carried out in July or August 2007, later confirming that the correct date was July 2007. He confirmed that no client ledgers had been maintained or created after August 2007. The Investigation Officer had noted that interest earned on the general client account was being credited to the client account despite it being office money. The Respondent said that he was not aware that this interest should be credited to the office account and agreed to contact his bank. During interview on 18 February 2010 he confirmed that he had indeed contacted the bank and had arranged for interest to be credited to the office account in future. The Investigation Officer was unable to calculate the Respondent's total liability to clients as at 31 December 2009 because the books of account were not up to date and in compliance with the SAR.
18. In his letter dated 9 December 2010 to the Tribunal the Respondent acknowledged the deficiencies in his accounting since his book-keeper had ceased to work for him and

referred to the difficulties in finding a replacement. He said this problem was exacerbated by his ill health over recent years. That ill health had made it difficult for him to keep his practice “on line”, although his clients had remained extremely faithful to him throughout.

19. The Respondent admitted the allegation and the Tribunal found it to have been substantiated on the facts.

Allegation 4 - as at 24 August 2009, four client matters examined showed a minimum client shortage of £15,033.41

20. This allegation related to the agreed minimum client cash shortage of £15,033.41 identified by the Investigation Officer as at 24 August 2009. The Respondent accepted that figure during his interview with the Investigation Officer on 18 February 2010. In his letter to the Applicant dated 19 April 2010 he stated that he was investigating how the shortage had come about and hoped to have the information very shortly and upon having that information the shortage could be made good. At the time of the hearing the explanation for the shortage had not been provided to the Applicant.

21. In his letter dated 9 December 2010 to the Tribunal the Respondent admitted the deficiencies in his accounting practice as described in relation to the previous allegations. The Tribunal found the allegation substantiated on the facts.

Allegation 5 - as at the date of the Rule 5 statement, the Respondent had still failed to rectify the cash shortage on client account promptly.

22. To the best of the Applicant’s knowledge and belief, as at the time of the hearing the cash shortage on client account had not been rectified.
23. The Respondent admitted this allegation in his letter to the Tribunal dated 9 December 2010 and the Tribunal found it substantiated on the facts presented to it.

Allegation 6 - the Respondent practised from 4 March 2010 until 6 April 2010 without a practising certificate.

24. The Tribunal accepted the documentary evidence placed before it by the Applicant and found that the Respondent did practise as a solicitor during the period 4 March 2010 to 6 April 2010 without a practising certificate, following its revocation on 2 March 2010. Notice of revocation would have been received by the Respondent by 4 March 2010. He did not submit his application for renewal until 6 April 2010.
25. The Tribunal found the allegation substantiated on the facts and documents before it.

### **Mitigation**

26. The Respondent’s mitigation was contained within his letter to the Tribunal dated 9 December 2010. It could be summarised as follows:

- The departure of his book-keeper in August 2007 and difficulties in finding a replacement.
  - The exacerbation of his accounting difficulties and the recruitment of a replacement book-keeper caused by a sequence of physical ill health which beset the Respondent frequently and necessitated hospital treatment on a number of occasions.
  - Practical difficulties arising from his ill health.
27. The Respondent informed the Tribunal that he had been a practising solicitor for 45 years without any previous problems. He had closed his practice, having reached the age of 70. He had been invited to become a consultant with another practice, and was giving consideration to that invitation.

### **Costs Application**

28. The Applicant claimed costs of £954. Ms Dickerson confirmed that costs had been kept to a minimum due to the Respondent's prompt admissions. The schedule had been sent to the Respondent in advance of the hearing.

### **Previous Disciplinary Sanctions by the Tribunal**

29. None

### **Sanction and Reasons**

30. The Respondent had admitted five allegations relating to breaches of the Solicitors Act 1974 (as amended), and the Solicitors' Accounts Rules 1998, together with an admission of having practised without a practising certificate for the period from 4 March 2010 until 6 April 2010. The Tribunal noted the Respondent's long-standing ill health, which must have made it very difficult for him to manage his practice as a sole practitioner. The Tribunal also noted that the Respondent had admitted his shortcomings promptly.
31. The Tribunal was concerned by the Respondent's failure to address accounting deficiencies promptly or at all. The breaches had taken place over a period of two to three years. He had been given numerous opportunities by the Applicant to provide an accountant's report for the periods ending 31 March 2008 and 2009. The filing of an accountant's report is fundamental to the regulation of the solicitors' profession. It provides the SRA with a snapshot picture of the financial state of health of a practice. The underlying principles of the accounts rules are straightforward and should be well known to all solicitors. What concerned the Tribunal in particular was that, having been given numerous opportunities to obtain accountant's reports, the Respondent had failed to do so, and indeed had still not remedied the breaches at the time of the hearing. The Tribunal recognised that the Respondent had not enjoyed good health and that he had been hospitalised for some of the time when his accounting difficulties arose. He nevertheless had a responsibility which had to be taken very seriously to put procedures in place to ensure compliance with matters affecting client money.

32. The Tribunal was very concerned by the Respondent's apparently negligent and cavalier attitude towards observance of the Solicitors' Accounts Rules. The Tribunal reminded itself that it had an overriding duty to protect the public and the reputation of the solicitors' profession. The Respondent recognised that it was imperative that he maintain accurate accounts, but had not done so. The Investigation Officer had been unable to identify the precise amount of the minimum client account cash shortage as at 24 August 2009, and at the time of the hearing it apparently remained outstanding at £15,033.41. The Respondent had had ample time since the departure of his book-keeper in August 2007 to find a replacement. In the event he had decided to close his practice, in spite of the fact that his books were still not in order.
33. The Tribunal carefully considered the range of sanctions open to it. It did not consider that a financial penalty was an appropriate sanction in this case. Such a penalty would not be sufficient in view of the seriousness of the allegations which the Respondent had admitted.
34. In all the circumstances the Tribunal had decided that the appropriate order in this case was that the Respondent be suspended from practice as a solicitor for an indefinite period.
35. The Tribunal had no wish to fetter the discretion of any future Tribunal. However it recommended that an application by the Respondent for the termination of the indefinite period of suspension should not be granted until the Respondent had:-
- (i) Filed the outstanding accountant's reports for the periods ending 31 March 2008 and 2009;
  - (ii) Undertaken not to practise on his own account as a sole practitioner.

### **Decision on Costs**

36. The Tribunal considered that the costs claimed by the Applicant were reasonable. It ordered that the Respondent should pay those costs in the sum claimed of £954.

### **Order**

37. The Tribunal Ordered that the Respondent, Godfrey Arthur Brew, solicitor, be suspended from practice as a solicitor for an indefinite period to commence on the 20th day of December 2010 and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £954.00

Dated this 2<sup>nd</sup> day of February 2011  
On behalf of the Tribunal

R Nicholas  
Chairman