

# SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 10851-2011

## **BETWEEN:**

SOLICITORS REGULATION AUTHORITY

Applicant

and

GAIL WATKINS

Respondent

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Before:

Mr D. Glass (in the chair)

Mr M. Sibley

Mrs S. Gordon

Date of Hearing: 19th July 2012

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## **Appearances**

Andrew Bullock, Barrister of Solicitors Regulation Authority, Ipsley Court, Berrington Close, Redditch, Worcestershire B98 0TD for the Applicant.

The Respondent, Gail Watkins, attended and represented herself. The Respondent was accompanied by her daughter.

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## **JUDGMENT**

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**Allegations**

1. The allegations against the Respondent were that:
  - 1.1 She failed to deliver promptly, or at all, an accountant's report for Gail Watkins & Co., for the period 1 April 2007 to 31 March 2008 in breach of Rule 35(1) of the Solicitors Accounts Rules 1998 (as amended);
  - 1.2 She failed to deliver promptly, or at all, an accountant's report for Gail Watkins & Co., for the period ending 1 April 2008 to 31 March 2009 in breach of Rule 35(1) of the Solicitors Accounts Rules 1998 (as amended);

**Documents**

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

Applicant:

- Application dated 7 October 2011
- Rule 5 Statement with exhibits dated 7 October 2011
- Schedule of costs 17 July 2012

Respondent:

- None

**Factual Background**

3. The Respondent was born in 1950 and was admitted as a solicitor in 1977.
4. At all material times the Respondent worked on her own account as Gail Watkins & Co., 1 Bull Street, Harborne, Birmingham B17 OHH, which closed on 30 September 2008.
5. An accountant's report for the period ending 31 March 2008 should have been received by the Applicant from the Respondent by 30 September 2008 ("the first accountant's report"). An Adjudicator made a decision dated 21 May 2009 to allow the Respondent a further extension of time; notice of that decision was sent by letter dated 22 May 2009. A further Adjudication decision was made on 17 June 2009 and sent to the Respondent on 18 June 2009. A letter dated 4 August 2009 was sent to the Respondent by the Caseworking and Applications Unit of the Applicant, making a further request for the accountant's report and informing the Respondent of the consequences of not providing it.
6. An accountant's report for the period ending 31 March 2009 should have been received by the Applicant from the Respondent by 30 September 2009 ("the second accountant's report").

7. A letter dated 28 October 2009 was sent to the Respondent regarding the first and second accountant's reports. No reply was received.
8. A letter dated 22 January 2010 was sent to the Respondent by the Regulatory Investigations section of the Applicant. A response was received dated 6 February 2010 outlining the Respondent's ill-health. On 15 March 2011 the Regulatory Investigations section sent to the Respondent a letter enclosing a report which was to be sent for formal adjudication.
9. On 26 April 2010 the Adjudicator directed the Respondent to provide certain information within 56 days and a copy of this decision was sent to the Respondent under cover of a letter dated 28 April 2010. No response was received. Another Adjudicator on 12 July 2010 gave the Respondent a further 56 days to deliver the outstanding accountant's reports and this decision was conveyed to the Respondent by letter dated 16 July 2010.
10. The Respondent was informed by letter dated 24 September 2010 that the file in this matter had been passed to the Legal Department of the Applicant. Following a telephone discussion between the Respondent and a member of the Legal Department, the Applicant wrote to the Respondent on 12 October 2010 giving information concerning a firm, Richard Nelson Solicitors, which was willing to assist the Respondent to close her practice and deal with the accounts. The Respondent provided an update on her medical condition on 9 November 2010 and the Applicant wrote to the Respondent on 10 November 2010. In late February 2011 the Applicant was informed by Richard Nelson Solicitors that there was a delay in dealing with matters because of the Respondent's ill health.
11. There was further correspondence from the Applicant to the Respondent. On 17 June 2011 Richard Nelson Solicitors informed the Applicant the firm was unable to continue to act for the Respondent. The Respondent provided a medical letter from a consultant psychiatrist, Dr Brownell (dated 5 January 2011) under cover of a letter dated 24 August 2011. Thereafter, the Applicant informed the Respondent that the matter would be submitted to the Tribunal. In a telephone conversation on 30 September 2011 the Respondent informed the Applicant's representative that she intended to settle the outstanding reports before a hearing date at the Tribunal.
12. As at the date of the hearing, neither the first nor second accountant's reports had been received by the Applicant.

#### **Witnesses**

13. None.

#### **Findings of Fact and Law**

14. **Allegation 1.1: She failed to deliver promptly, or at all, an accountant's report for Gail Watkins & Co, for the period 1 April 2007 to 31 March 2008 in breach of Rule 35(1) of the Solicitors Accounts Rules 1998 (as amended).**

- 14.1 This allegation was admitted by the Respondent in the course of the hearing and the Tribunal was satisfied on the documents presented that the allegation had been proved.
15. **Allegation 1.2: She failed to deliver promptly, or at all, an accountant's report for Gail Watkins & Co., for the period ending 1 April 2008 to 31 March 2009 in breach of Rule 35(1) of the Solicitors Accounts Rules 1998 (as amended)**
- 15.1 This allegation was admitted by the Respondent in the course of the hearing and the Tribunal was satisfied on the documents presented that the allegation had been proved.

### **Previous Disciplinary Matters**

16. There were no previous disciplinary matters recorded against the Respondent.

### **Mitigation**

17. The Respondent told the Tribunal that she had not filed her accountant's reports for the accounting years ended 31 March 2008 and 31 March 2009. She understood the requirement to file such reports and now understood that failure to do so was a strict liability breach of the Solicitors Accounts Rules 1998.
18. The Respondent told the Tribunal that she had become ill early in 2007 and had been treated by Dr Brownell, a consultant psychiatrist until about October 2011. At that point the psychiatrist had advised that provided the Respondent continued with her medication it was not necessary to continue seeing her regularly, but if there was any relapse an immediate referral could be made. Dr Brownell's written report in January 2011 stated that the Respondent suffered from depression and harmful use of alcohol. Her mental health difficulties meant that her memory and concentration were affected as well as her motivation and confidence: the view was expressed that she was unlikely to be able to return to work as a solicitor in the near future.
19. The Respondent told the Tribunal that her failure to file the accountant's reports was solely due to her mental health problems. After being discharged from Dr Brownell's care, the Respondent had felt more able to deal with the outstanding accounts and had intended to do so in early 2012. However, the Respondent had fallen and fractured her hip on 31 December 2011 as a result of which she was in hospital for three weeks from 10 January 2012. It was as a result of this that the previously listed hearing of the case, in January 2012, was adjourned. The Respondent acknowledged that her request for an adjournment had been late, for which she apologised, but she had not been able to make the application any earlier because she was in hospital.
20. The Respondent told the Tribunal that she had worked in the NHS for about 10 years after admission as a solicitor and had worked in a variety of private practices until she set up her own firm in January 2000. The Respondent had sometimes had a trainee solicitor, but generally had worked alone. The Respondent did not attribute her ill health to the pressures of practice and told the Tribunal that she had suffered with these problems at times since her late teens.

21. The Respondent told the Tribunal that there is approximately £800 of clients' money still to be dealt with, which she was holding. The Respondent told the Tribunal that the firm's bank, Lloyds TSB, had closed the client account without notice. As the firm no longer exists the remaining money had been placed by the Respondent in a separate Post Office account, which did not have a cheque book and the money would be retained there.
22. The Respondent told the Tribunal that she had not worked since September 2008. Her only income was from her state pension and three small private pensions. Her income from the private pensions was about £260 per month net and the state pension was £147 per month net, as she had paid additional contributions. The Respondent told the Tribunal that her daughter, who was present, helped with mortgage payments. In response to questions from the Tribunal the Respondent told the Tribunal that she owned a house which had been valued in 2010 at about £270,000 and the interest-only mortgage on it secured £233,000. There were various business and other unsecured loans outstanding which amounted to over £40,000
23. The Respondent told the Tribunal that she would like to work again. The legal profession was all that she knew so any work would have to be in that or a similar field. Her main area of practice had been commercial and residential property, but much of that work had ceased from about 2007 when the economic situation deteriorated.

### **Sanction**

24. The Tribunal considered carefully the facts of the case, the allegations made and what the Respondent had told the Tribunal about her circumstances.
25. It was very sad that at this stage in her career the Respondent had to be brought to the Tribunal. The Tribunal accepted that the Respondent's significant health problems had contributed substantially to the breaches. The Tribunal had doubts as to whether these problems had been overcome. In determining sanction, the Tribunal had regard to the medical evidence which had been submitted. That report had also caused the Tribunal to consider of its own accord if the Respondent was properly able to deal with the hearing today. The Tribunal was satisfied from its observation of the Respondent during the hearing that she was capable of dealing with the proceedings. Indeed, the Tribunal had asked the Respondent if she was able to deal with the hearing and she had confirmed that she was. The Tribunal noted that any further delay in the proceedings would not be of benefit to the Respondent or the public. There had been no need to postpone the hearing because of her health problems.
26. Whilst aware of the Respondent's health difficulties, the Tribunal was conscious of the regulatory need to close the Respondent's firm properly, with the provision of accountant's reports so that it could be confirmed that all client money had been dealt with appropriately. The Respondent had told the Tribunal that the amount held was a little over £800, but it was not certain that this was the amount which should be held or to whom it belonged until all of the accounts had been checked and finalised.

27. The Tribunal was concerned that the Respondent's practice should be wound up as soon as possible. It would encourage the Applicant to do what it could to assist the Respondent in this process, as otherwise the client funds held could remain in limbo. Mr Bullock told the Tribunal that he would make enquiries to see if anything, short of intervention, could be done in this situation: the costs of intervention could wipe out any potential benefits to former clients. The Tribunal noted that the obligation to finalise the accounts and distribute funds appropriately rested with the Respondent, but it was unclear if she was capable of doing so.
28. The Tribunal had considered the full range of sanctions open to it in the light of the Respondent's breach of the filing requirements. Although filing accountant's reports could appear to be a technical or minor regulatory breach, it was a serious matter. Accountant's reports were a major part of assuring the public that client money was correctly held and handled by solicitors. Neither a reprimand nor a fine was appropriate in this case, particularly in the light of the Respondent's ongoing ill health which meant that she was not currently able to work as a solicitor. In all of the circumstances, the appropriate and proportionate sanction to protect the public and protect the reputation of the profession was to suspend the Respondent from practice for an indefinite period.
29. The Tribunal could not bind any Tribunal which might consider a future application by the Respondent to terminate the indefinite suspension. However, such a Tribunal would no doubt be concerned to see:
  - (a) medical evidence indicating that the Respondent was fit to resume practice; and
  - (b) that the necessary steps had been taken to close down the Respondent's practice and deal with client monies, including any necessary actions such as filing accountant's reports.

The Applicant would be able to make representations to the Tribunal if the Respondent applied to terminate the suspension.

### **Costs**

30. The Applicant sought an order for costs against the Respondent in accordance with a schedule of costs dated 17 July 2012, which amounted to £3,234.48. Mr Bullock drew to the attention of the Tribunal that the schedule included the costs of the adjournment on 24 January 2012. The adjournment had been required as the Respondent had been unable to attend as she was in hospital. However, the application to adjourn had been made at short notice and the case had been prepared as if it would be heard. No information had been provided by the Respondent concerning her capital and income until this hearing.
31. The Respondent had no comments on the costs schedule, which she had seen but not considered in detail. The Respondent told the Tribunal that the need for the adjournment and the fact the application had been made at short notice were for reasons beyond her control.

32. The Tribunal considered carefully the costs schedule submitted by the Applicant. It was satisfied that the costs claimed were reasonable and had been properly incurred. The costs included those of the adjournment in January 2012. Whilst the need for the adjournment had not been the Respondent's fault, the costs in connection with that hearing had been part of the overall costs of the case and should be payable by the Respondent. Whilst the Tribunal was satisfied that the appropriate amount of costs to order was £3,234.48 it had taken into account the Respondent's financial circumstances and determined that it was appropriate that the costs should not be enforced without further permission of the Tribunal.

### **Statement of Full Order**

33. The Tribunal Ordered that the Respondent, Gail Watkins, solicitor, be suspended from practice as a solicitor for an indefinite period to commence on the 19th day of July 2012 and it further Ordered that she do pay the costs of and incidental to this application and enquiry fixed in the sum of £3,234.48, such costs not to be enforced without permission of the Tribunal.

Dated this 14<sup>th</sup> day of August 2012  
On behalf of the Tribunal

D. Glass  
Chairman