

SOLICITORS DISCIPLINARY TRIBUNAL

SOLICITORS ACT 1974

IN THE MATTER OF BRYAN WILLIAM BURTON, solicitor

Mr L Gilford (in the chair)  
Mr C Murray  
Mr J Jackson

DATE OF HEARING: 4<sup>th</sup> March 2010

Applicant: SOLICITORS REGULATION AUTHORITY  
Respondent: BRYAN WILLIAM BURTON

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**FINDINGS & DECISION**

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**Appearances**

James Moreton, solicitor and partner in the firm of Bankside Law Solicitors, Thames House, 58, Southwark Bridge Road, London, SE1 OAS appeared as the Applicant on behalf of the Solicitors' Regulation Authority (SRA).

The Respondent did not appear and was not represented.

The initial application to the Tribunal on behalf of the SRA was made on 17<sup>th</sup> June 2009 and a Supplementary Statement was made on 17<sup>th</sup> September 2009.

**Allegations**

The allegations against the Respondent were that he had:-

1. Failed to deliver promptly, or at all, an Accountant's Report for the six month period ending 31<sup>st</sup> March 2008, which report had been required by 31<sup>st</sup> May 2008, as required by s.34 of the Solicitors Act 1974 and the Rules made there-under.
2. Failed to comply promptly, or at all, with directions made by an Adjudicator of the Legal Complaints Service to pay compensation to a complainant;
3. Failed to deal with correspondence from the Solicitors Regulation Authority in an open, prompt and cooperative way, or at all.

## **Preliminary Matter**

The Applicant invited the Tribunal to deal with the matter before them in the absence of the Respondent. The Applicant indicated that the Respondent was aware of the proceedings and had been served with the usual Civil Evidence Act Notices. Being satisfied that the Respondent had been served with all the papers and was aware of the date and time of the hearing, the Tribunal agreed that the matter should proceed in his absence. In the light of the Respondent's failure to engage in the proceedings, the Tribunal treated the three allegations against him as denied for the reasons set out by him in his letters both to the Applicant and to the SRA.

## **Factual Background**

1. The Respondent, born in 1938, was admitted as a solicitor in 1962. Although the Respondent was not presently practising as a solicitor, his name remains on the Roll of Solicitors.
2. At all material times, the Respondent had carried on practice, on his own account, under the style of Jewill Hill & Bennett of 21 West Street, Liskeard, Cornwall, PL14 6BW. His firm had ceased to trade on 31<sup>st</sup> March 2007.
3. The Respondent had last held a practising certificate for the practice year 2006/2007, terminating on 1<sup>st</sup> November 2007, which had been subject to the condition that he deliver half yearly Accountant's Reports.
4. By letter dated 18<sup>th</sup> February 2008, the SRA had informed the Respondent that he had failed to supply an Accountant's Report for the six month period ending 30<sup>th</sup> September 2007, such report having been required by 30<sup>th</sup> November 2007 and the SRA had sought an explanation for the non-delivery of the report. The Respondent had been referred, inter alia, to the requirements of Rule 23 of the Solicitors' Accounts Rules 1998.
5. The Respondent had replied on 11<sup>th</sup> March 2008 expressing confusion regarding the condition attached to his practising certificate and the requirement that he provide further Accountant's Reports.
6. The SRA had responded by letter dated 10<sup>th</sup> April 2008 setting out the Respondent's obligations in respect of the delivery of Accountant's Reports for the six month period ending 30<sup>th</sup> September 2007 and for the six month period ending 31<sup>st</sup> March 2008.
7. In a letter to the SRA, dated 16<sup>th</sup> April 2008, the Respondent had expressed the view that the condition attached to his practising certificate, for the practice year 2006/2007, had been a stand alone condition and pointing out that his practising certificate had lapsed. Nevertheless, the Respondent had indicated that he would arrange for Accountant's Reports for the period ending 30<sup>th</sup> September 2007 and for the period ending 31<sup>st</sup> March 2008 to be submitted by 31<sup>st</sup> May 2008. The Respondent had confirmed that he had noted the operation of Rule 23(1) of the Accounts Rules.
8. Enclosed with the Respondent's letter had been a copy of a bank statement showing a

balance of £20,396.34 held on Jewill Hill & Bennett client's account as at 11<sup>th</sup> April 2008.

9. By letter dated 22<sup>nd</sup> April 2008, the SRA had requested details of the solicitor appointed to act as authorised signatory to the client account of the Respondent's firm.
10. In the absence of any response from the Respondent, the SRA had written to him again on 1<sup>st</sup> May 2008.
11. By letter dated 21<sup>st</sup> July 2008, the SRA had informed the Respondent that he had failed to supply an Accountant's Report for the six month period ending 31<sup>st</sup> March 2008, such report having been required by 31<sup>st</sup> May 2008. The SRA had sought an explanation for the non-delivery of the report.
12. In the absence of any response from the Respondent, the SRA had written again to him on 19<sup>th</sup> August 2008.
13. On 6<sup>th</sup> September 2008, the Respondent had informed the SRA that he had previously understood that the report for the period ending 31<sup>st</sup> March 2008 had been delivered. The Respondent had explained that his accountants had been taken over by another firm and they had thought that the report was for a 12 month period to the end of March 2008.
14. On 10<sup>th</sup> October 2008, an Adjudicator of the SRA, acting pursuant to delegated powers, had directed that the Respondent should, within 28 days of the letter notifying him of the decision, deliver:
  - (i) an Accountant's Report for Jewill Hill & Bennett for the six month period ending 30<sup>th</sup> September 2007, such report having been required by 30<sup>th</sup> November 2007; and
  - (ii) an Accountant's Report for Jewill Hill & Bennett for the six month period ending 31<sup>st</sup> March 2008, such report having been required on or before 31<sup>st</sup> May 2008.

The Adjudicator had further directed that the Respondent's conduct was to be referred to the Tribunal, without further notice, should he fail to comply.

15. The Respondent had been notified of the Adjudicator's decision by letter from the SRA dated 14<sup>th</sup> October 2008.
16. A qualified Accountant's Report for the period from 1<sup>st</sup> April 2007 to 31<sup>st</sup> October 2007 had been delivered to the SRA on 3<sup>rd</sup> October 2008. That report had shown a sum of £24,976.89 held on client account.
17. The report had covered the period 1<sup>st</sup> April 2007 to 31<sup>st</sup> October 2007, rather than to 30<sup>th</sup> September 2007, and that had been raised with the Respondent's accountants. In January 2009 the accountants had confirmed to the SRA that the report should be taken as being for the period 1<sup>st</sup> April 2007 to 30<sup>th</sup> September 2007. That had been accepted by the SRA.

18. To date the Respondent had not filed an Accountant's Report for the six month period ending 31<sup>st</sup> March 2008.
19. On 31<sup>st</sup> July 2008, an Adjudicator of the Legal Complaints Service ("LCS") acting pursuant to delegated powers, had directed:
  - (i) that the Respondent pay to the estate of the late DMB ("the Estate") compensation in the sum of £93.85 in respect of replacing the locks to a property;
  - (ii) that Jewill Hill & Bennett limit their fees in the matter of the Estate and to refund to the Estate the sum of £531.83 plus VAT;
  - (iii) that the Respondent do complete an application for a Remuneration Certificate by lodging the necessary forms with the Legal Complaints Service.

The Adjudicator had required his directions to be carried within seven days, failing which the matter was to be referred, without further notice, to the Solicitors Regulation Authority for referral to the Tribunal. The Respondent had failed to comply with the Adjudicator's directions.

20. The Respondent had been notified of the Adjudicator's decision by letter from the LCS dated 6<sup>th</sup> August 2008 sent to the Respondent's home address. He had been informed again of the decision by letter sent to his home address, dated 21<sup>st</sup> August 2008. A further letter, dated 16<sup>th</sup> September 2008, had been sent to the Respondent's practice address and to his home address. The Respondent had failed to reply to any of that correspondence.
21. On 12<sup>th</sup> November 2008, the SRA had written to the Respondent at his home address requesting an explanation of his failure to comply with the decision of the Adjudicator. The SRA, having received no response, had written again on 12<sup>th</sup> December 2008.
22. As a result of the Respondent's failure to comply with the directions, or to respond to correspondence from the LCS and from the SRA, the matter had been further considered by an Adjudicator of the SRA on 19<sup>th</sup> January 2009. A direction had been made that the Respondent's conduct be referred to the Tribunal.
23. The Respondent had been notified of the Adjudicator's decision by letter from the SRA dated, in error, 29<sup>th</sup> January 2008, which had been sent to the Respondent's home address.
24. During a telephone conversation on 18<sup>th</sup> May 2009, the Respondent had advised an SRA caseworker that he had no idea whether he had received the SRA's correspondence of 12<sup>th</sup> November and 12<sup>th</sup> December 2008. Later in the conversation the Respondent had informed the caseworker of his tendency to summarily dispose of any correspondence received from the SRA.
25. In light of that conversation, the SRA had written to the Respondent, both at his home

address and at his practice address, enclosing copies of the relevant documentation. The Respondent had replied by letter dated 17<sup>th</sup> June 2009.

### **Documentary Evidence before the Tribunal**

26. The Tribunal reviewed both the Rule 5 Statement dated 17<sup>th</sup> June 2009 and the Supplementary Statement dated 17<sup>th</sup> September 2009 together with their accompanying bundles. The Tribunal also considered two letters from the Respondent to the Applicant dated 18<sup>th</sup> June 2009 and 25<sup>th</sup> July 2009 and two letters dated 17<sup>th</sup> June 2009 and 6<sup>th</sup> October 2009 from the Respondent to the SRA.

### **Findings as to fact and law**

#### **Allegation 1 – That the Respondent had failed to deliver promptly, or at all, an Accountant's Report for the six month period ending 31<sup>st</sup> March 2008, which report had been required by 31<sup>st</sup> May 2008, as required by s.34 of the Solicitors Act 1974 and the Rules made there-under.**

27. In his letter of 25<sup>th</sup> July 2009 the Respondent had said that the Solicitors Accounts Rules applied only to practising solicitors and that his last practising certificate had expired in October 2007. Accordingly, he had arranged for an Accountant's Report to 31<sup>st</sup> October 2007 to be delivered. The Respondent had said that he had asked the SRA to remove his name from the Roll in 2007 and that, not hearing anything more from them, he had assumed that they had done so.
28. In his letter of 6<sup>th</sup> October 2009, the Respondent had said that he did not agree that he had been required to deliver a further Accountant's Report because his firm had ceased to exist, on his retirement, in March 2007. Moreover, his practising certificate had expired on 31<sup>st</sup> October 2007 and he had delivered an Accountant's Report to that date and had asked the SRA to remove his name from the Roll. The Respondent had insisted, in his letter, that the SRA had been in breach of its statutory obligations and because of that he was no longer responsible for any outstanding matters. Moreover, he had insisted that a request to deliver an Accountant's Report applied only to a solicitor with a practising certificate and that any condition on his practising certificate could only have applied had he been practising.
29. The Tribunal had seen evidence that the Respondent had failed to deliver the Accountant's Reports that had been due and found the allegation to have been substantiated on the facts presented to it.

#### **Allegation 2 – That the Respondent had failed to comply promptly, or at all, with directions made by an Adjudicator of the Legal Complaints Service to pay compensation to a complainant.**

30. The Tribunal noted that while Jewill Hill & Bennett's professional indemnity insurers had paid the sum of £93.85, they had rejected the claim of £531.83 as not being covered by the firm's insurance and that sum remained outstanding. The Tribunal also noted that in his letter of 18<sup>th</sup> June 2009 the Respondent had complained that the SRA had been at fault for not removing his name from the Roll. Moreover, that the

Adjudicator's directions had been made as a consequence of a misdirection as to the facts.

31. The Tribunal found the allegation to have been substantiated on the facts before it.

**Allegation 3 - That the Respondent had failed to deal with correspondence from the Solicitors' Regulation Authority in an open, prompt and cooperative way, or at all.**

32. The Tribunal took particular note of the Respondent's letters of 17<sup>th</sup> and 18<sup>th</sup> June 2009, 25<sup>th</sup> July 2009 and 6<sup>th</sup> October 2009 as well as the details of a telephone call on 18<sup>th</sup> May 2009 between the Respondent and a caseworker in the Legal Directorate, Miss Trench. The Tribunal found the allegation to have been substantiated on the facts.

**Costs Application**

33. The Applicant requested fixed costs in the sum of £3,924.23 as detailed in his schedule.

**Sanction and Reasons**

34. The Tribunal had found all of the allegations proved on the evidence presented to it. It noted that there were matters outstanding relating both to the delivery of an Accountant's Report and to compliance with directions made by an Adjudicator. Moreover, there still appeared to be monies in the firm's client account, namely a balance of some £20,000.
34. The Tribunal was extremely concerned that the Respondent appeared to be dismissive of his obligations both to his clients and to his regulatory body. The Tribunal stressed that it was essential for the protection of the public and in order to uphold the reputation of the profession that all solicitors dealt with correspondence from the SRA in an open, prompt and co-operative way. Had the Respondent done so, the Tribunal considered that the matters could have been dealt with without the need for proceedings.
35. After the telephone call in May 2009, the Tribunal noted that the SRA had sent copies of all the letters which the Respondent had said that he had discarded. The Tribunal was satisfied that from that date, at the latest, the Respondent had been fully aware of the outstanding matters that he needed to deal with. The Tribunal stressed that it was important and essential that the Respondent now dealt with those matters.
36. The Tribunal therefore concluded that a penalty of £1,500 was appropriate and that the Respondent should file with the SRA, his outstanding Accountant's Report for the six month period ending 31<sup>st</sup> March 2008 by 4<sup>th</sup> June 2010, in default of which he was to be suspended indefinitely.

**Decision as to costs**

37. The Tribunal determined that a costs order should be made in the fixed sum of £3,924.23

**The Order of the Tribunal**

38. The Tribunal Ordered that the Direction made by the Adjudicator of the Legal Complaints Services dated 31<sup>st</sup> July 2008 for the repayment of money pursuant to Paragraph 2(1)(d) of Schedule 1A of the Solicitors Act 1974 in the sum of £531.83 plus VAT to the Estate of DMB be treated for the purposes as if it were contained in an Order of the High Court pursuant to Paragraph 5(2) of Schedule 1A of the Solicitors Act 1974.
39. In addition the Tribunal Ordered that the Respondent, Bryan William Burton of Mudgeon Cot, St Martin, Helston, Cornwall, TR12 6BX, solicitor, do pay a fine of £1,500.00, such penalty to be forfeit to Her Majesty the Queen, and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £3,924.23.
40. The Tribunal further Ordered that unless the Respondent do file with the Solicitors Regulation Authority the outstanding Accountants Report for the six month period ending 31<sup>st</sup> March 2008 by 4<sup>th</sup> June 2010, he shall be suspended indefinitely.

Dated this 3rd day of June 2010

On behalf of the Tribunal

L Gilford  
Chairman