

SOLICITORS DISCIPLINARY TRIBUNAL

SOLICITORS ACT 1974

IN THE MATTER OF JOHN HEATON ATCHLEY, solicitor, (The Respondent)

Upon the application of Suzanne Jackson  
on behalf of the Solicitors Regulation Authority

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Mr J C Chesterton (in the chair)  
Mrs J Martineau  
Mrs L McMahon-Hathway

Date of Hearing: 14th July 2010

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**FINDINGS & DECISION**

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**Appearances**

Ms Suzanne Elizabeth Jackson of 8 Dormer Place, Leamington Spa, Warwickshire CV32 5AE for the Applicant.

The Respondent did not appear and was not represented.

**Allegations**

The allegations were that the Respondent:-

1. Failed and/or delayed in delivery of an accountant's report for the 12 month period ending 31 March 2008 due to be delivered to the Solicitors Regulation Authority on or before 30 September 2008 contrary to Section 34 of the Solicitors Act 1974 (as amended) and the rules made thereunder.
2. Failed to comply with an expectation of an Adjudicator dated 4<sup>th</sup> August 2009 as to the filing of his accountants' report for period ending 31<sup>st</sup> March 2008 contrary to Rule 20.05 of the Solicitors Code of Conduct (SCC).

The Tribunal had before it a letter from the Respondent dated 7<sup>th</sup> July 2010 confirming he admitted the allegations.

### **Factual Background**

1. The Respondent, born in 1932, was admitted as a solicitor on 1<sup>st</sup> March 1962 and his name remained on the Roll of Solicitors.
2. At all relevant times the Respondent carried on practise as a sole practitioner under the style of John H Atchley from offices at 105 Sandy Park Road, Bristol, Avon, BS4 3PG. The Respondent retired and the firm closed on 11<sup>th</sup> January 2006.

### Allegation 1

3. The last accountant's report received for the firm, was for the 18 month period ending 31<sup>st</sup> March 2006, which was received on 9<sup>th</sup> November 2006. On 21<sup>st</sup> May 2008 an Adjudicator granted the Respondent a waiver from the requirement to deliver the accountant's report for the period ending 31<sup>st</sup> March 2007. As the Respondent continued to hold £2,901.45 in his former firm's client account he was advised that in the absence of further waivers he would be required to deliver accountant's reports for as long as he continued to hold client money. On 18<sup>th</sup> January 2008 the Respondent was sent information about the procedure to pay untraceable amounts remaining in client accounts to charity.
4. On 1<sup>st</sup> December 2008 the Respondent was advised that his accountant's report for the period 1<sup>st</sup> April 2007 to 31<sup>st</sup> March 2008, due to be delivered by 30<sup>th</sup> September 2008, was outstanding and asked for it to be delivered without delay. The Respondent, in a letter received 25<sup>th</sup> March 2009, explained that he had not delivered an accountant's report as his position was exactly the same as before, in that his client account had not altered over the year and remained at £2,901.45.
5. The Respondent telephoned the SRA on 30<sup>th</sup> April 2009 stating he intended to apply for a waiver and that the delay in him doing so was because he was unable to locate his client account bank statements for 2007/2008. No further communication was received from the Respondent.

### Allegation 2

6. The matter was considered by an Adjudicator on 4<sup>th</sup> August 2009 who found that the Respondent had breached Section 34 of the Solicitors Act 1974 (as amended). The Adjudicator resolved as follows:-

“I therefore expect Mr Atchley to deliver the accountants' report for the 12 month period ending 31<sup>st</sup> March 2008 to the SRA within 28 days from the date of the letter notifying him of this decision, failing which his conduct will be referred to the Solicitors Disciplinary Tribunal without further notice.”

The Respondent failed to reply or comply with the expectation of the Adjudicator.

7. The Tribunal reviewed all the documents submitted by the Applicant, which included:
  - (i) Rule 5 Statement, together with enclosures.
  - (ii) Schedule of Costs dated 24<sup>th</sup> June 2010.
8. The Tribunal reviewed all the documents submitted by the Respondent, which included:
  - (i) Letter dated 7<sup>th</sup> July 2010 from the Respondent, enclosing his statement.

### **Witnesses**

9. No witnesses gave oral evidence.

### **Findings as to Fact and Law**

10. The Tribunal found both allegations were proved, indeed they were admitted by the Respondent in his statement attached to his letter dated 7<sup>th</sup> July 2010.

### **Mitigation**

11. The Respondent had provided the Tribunal with details of his personal circumstances, and confirmed he had not carried out any work since his practising certificate was terminated in late 2006. His firm had been taken over in January 2006 and all the credit balances on his client account had been transferred to his successor firm, except for the sum of £2,941.45 which had remained in his client account since that date.
12. The Respondent accepted that he had delayed in dealing with matters, and should have applied for a waiver. He did not have a list of the people to whom any of the money belonged, and accepted the proceedings had to be taken due to his own stupidity.

### **Costs Application**

13. The Applicant provided the Tribunal with a Schedule of Costs, and requested an order for her costs in the sum of £1,655.50.

### **Previous Disciplinary Sanctions Before the Tribunal**

14. None.

### **Sanction and Reasons**

15. The Tribunal had listened carefully to the submissions of the Applicant and had considered all the documents in detail. The Tribunal noted the Applicant had made efforts to try and assist the Respondent to resolve matters by either obtaining a waiver or giving money to charity, and indeed, an officer from the Authority had visited the Respondent to advise him, and had contacted the local Law Society to see if they were able to assist the Respondent.

16. This was a very sad case and the Tribunal were pleased with the manner in which the SRA had tried to deal with this matter. They had gone beyond their regulatory function and into a pastoral one in order to try and avoid the Respondent having to appear before the Tribunal today. The Respondent clearly had very serious personal issues and no client had suffered. The Tribunal expected the Authority to approach the local Law Society and the firm of solicitors who had taken over the Respondent's firm to see if they would be able to assist with the resolution of these issues. Taking into account all the circumstances of the matter, the Tribunal ordered the Respondent be reprimanded.

#### **Decision as to Costs**

17. In the absence of any submissions from the Respondent regarding costs, the Tribunal ordered the Respondent pay the costs fixed in the sum of £1,655.50.

#### **Order**

18. The Tribunal Ordered that the Respondent John Heaton Atchley of Old Hinges, Main Road, Croxley, Somerset Wells, BA5 1QZ, solicitor, be REPRIMANDED and it further Ordered that he do pay the costs of an incidental to this application and enquiry fixed in the sum of £1,655.50.

Dated this 12<sup>th</sup> day of October 2010  
On behalf of the Tribunal

J C Chesterton  
Chairman