

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 11885-2018

BETWEEN:

SOLICITORS REGULATION AUTHORITY

Applicant

and

YVONNE PATTERSON

Respondent

Before:

Miss J. Devonish (in the chair)

Mr B. Forde

Mr S. Howe

Date of Hearing: 21 January 2019

Appearances

Stephen Wade, solicitor of Monro Wright & Wasbrough LLP, 7-8 Great James Street, London, WC1N 3DF, for the Applicant.

The Respondent did not appear and was not represented.

**MEMORANDUM OF
APPLICATION FOR LEAVE TO ENFORCE A COSTS
ORDER**

Background

1. On 17 January 2013, the Tribunal had ordered that the Respondent pay the costs of and incidental to that application and enquiry fixed in the sum of £8,000 inclusive of VAT and disbursements, such costs not to be enforced without leave of the Tribunal.
2. On 30 October 2018, Mr Wade, on behalf of the Applicant, had lodged an application for leave to enforce those costs.

Application to proceed in absence

3. The Respondent had applied to adjourn the hearing by way of an application dated 16 January 2019. The basis of the application had been that the Respondent's failing eyesight meant that she had not been able to complete her statement and she therefore sought an adjournment until mid-March.
4. The Tribunal had refused that application.
5. The Tribunal could make reasonable adjustment for her progressively fading eyesight by proceeding with oral evidence on oath in absence of a written statement. The Tribunal had noted the history of this case, specifically that the Respondent had not appeared before the Tribunal for the substantive hearing on 17 January 2013, neither had she been represented. The Allegations had been proved in absence. The Respondent had not complied with the direction of 22 November 2018 to provide details of her financial circumstances.
6. This hearing was of a financial nature, and so bank statements, pension confirmation documents, title documents to any properties whether purchased by her with the proceeds of her own property or any other sources, and redemption statements/mortgage statements, pay slips or invoices from her employment in fostering would provide sufficient information upon which to proceed without a written statement from the Respondent. The delay in addressing this issue since 2013 was not in the interests of the Respondent, the Applicant or the public.
7. The Respondent did not attend the hearing and was not represented. Mr Wade applied for permission to proceed in the Respondent's absence.

Applicant's Submissions

8. Mr Wade told the Tribunal that the Respondent knew of the hearing date and had absented herself. She had made a previous application to adjourn in November 2018 and on that occasion the Applicant had been neutral, noting that it would give her additional time to file her replies and comply with the disclosure order made on 22 November 2018. Mr Wade told the Tribunal that the Respondent had yet to comply with that disclosure order despite having had additional time to do so.
9. The Applicant had offered any appropriate adjustments to enable the Respondent to avoid having to travel to the Tribunal. This had included facilitating her participation by telephone. The Respondent had not taken up those offers and had instead made a final attempt to adjourn the hearing.

10. Mr Wade submitted that there was no purpose in adjourning the hearing to another occasion. The Respondent's conduct made it clear that an adjournment would make no difference. In support of her application to adjourn she had relied on the same material as she had on the previous occasion and so there had been no further developments. The Respondent was clearly not incapable of managing her affairs and was obviously able to provide documentation. Mr Wade submitted that she was "playing for time" and noted that she was safeguarded by Rule 19 of the Solicitors (Disciplinary Proceedings) Rules 2007 (SDPR), which would enable her to make an application for a rehearing. He therefore invited the Tribunal to proceed in absence.

The Tribunal's Decision

11. The Tribunal considered the representations made by the Respondent in her application to adjourn and by the Applicant. The Respondent was clearly aware of the date of the hearing as she had referenced it in her correspondence, and SDPR Rule 16(2) was therefore engaged. The Tribunal had regard to the Solicitors Disciplinary Tribunal Policy/Practice Note on Adjournments (4 October 2002) and the criteria for exercising the discretion to proceed in absence as set out in R v Hayward, Jones and Purvis [2001] QB 862, CA by Rose LJ at paragraph 22 (5) which states:

"In exercising that discretion, fairness to the defence is of prime importance but fairness to the prosecution must also be taken into account. The judge must have regard to all the circumstances of the case including, in particular:

- (i) the nature and circumstances of the defendant's behaviour in absenting himself from the trial or disrupting it, as the case may be and, in particular, whether his behaviour was deliberate, voluntary and such as plainly waived his right to appear;
- (ii) ...;
- (iii) the likely length of such an adjournment;
- (iv) whether the defendant, though absent, is, or wishes to be, legally represented at the trial or has, by his conduct, waived his right to representation;
- (v) ...;
- (vi) the extent of the disadvantage to the defendant in not being able to give his account of events, having regard to the nature of the evidence against him;
- (vii) ...;
- (viii) ...;

- (ix) the general public interest and the particular interest of victims and witnesses that a trial should take place within a reasonable time of the events to which it relates;
- (x) the effect of delay on the memories of witnesses;
- (xi) ...;

12. In GMC v Adeogba [2016] EWCA Civ 162, Leveson P noted that in respect of regulatory proceedings there was a need for fairness to the regulator as well as a Respondent. At [19] he stated:

“...It would run entirely counter to the protection, promotion and maintenance of the health and safety of the public if a practitioner could effectively frustrate the process and challenge a refusal to adjourn when that practitioner had deliberately failed to engage with the process. The consequential cost and delay to other cases is real. Where there is good reason not to proceed, the case should be adjourned; where there is not, however, it is only right that it should proceed”.

13. Leveson P went on to state at [23] that discretion must be exercised “having regard to all the circumstances of which the Panel is aware with fairness to the practitioner being a prime consideration but fairness to the GMC and the interests of the public also taken into account”.
14. The principles identified in Adeogba were affirmed by the Court of Appeal in GMC v Hayat [2018] EWCA Civ 2796.
15. The Tribunal noted that the Respondent had not provided the reasoned opinion of an appropriate medical examiner, such that would demonstrate her unfitness to attend or participate in the hearing. The Respondent had been at liberty to apply for reasonable adjustments, including but not limited to telephone attendance or videolink. She had not applied for any such measures even though Mr Wade had made clear to her that he would not oppose such an application.
16. The Respondent had been directed to disclose her financial circumstances by 3 December 2018, later extended to 19 December 2018. She had not done so and had not applied for any further extensions of time for compliance.
17. The Tribunal was satisfied that the Respondent had voluntarily absented herself from the hearing and in doing so had waived her right to be present. It was not in the interests of justice for the matter to be delayed any further. The Tribunal therefore granted Mr Wade’s application to proceed in absence.

Applicant's Submissions

18. Mr Wade invited the Tribunal to grant leave for enforcement of the order for costs made on 17 January 2013. As noted above, the Respondent had not attended the original hearing but she had sent a letter to the Tribunal dated 16 January 2018 which stated as follows:

“With regard to costs, I have never been provided with draft statements and exhibits referred to in the Applicant’s schedule of costs. Also having regard to the fact that I have not engaged in controversial communications with the Applicant or its legal representative, 25 hours drafting statements appears excessive. There also appears to be duplication of work between Mr Greensmith and his assistant in relation to the consideration of papers and preparing documents.

Finally, I am now a pensioner with limited income from state pension and fostering allowance. I have an overdraft of approximately £20,000 to repay which was incurred in respect of the firm; a copy of the bank statement is attached. I also have outstanding further substantial debts relating to the firm.

Due to my financial circumstances it will be extremely difficult for me to pay the costs claimed. Also I would only be able to pay any cost ordered by instalments. I respectfully ask the Tribunal to take these matters into consideration”.

19. The Applicant had subsequently established from the Land Registry that the Respondent had, at the time of the hearing in 2013, been the owner of two residential properties in London, one of which contained a separately registered loft conversion. Mr Wade took the Tribunal to Office Copy Entries which showed that one of the properties was sold for £360,000 on 5 December 2013 and another was sold for £290,000 on 24 February 2014.
20. The Respondent was currently residing in Folkestone in a property owned by her daughters. This had been purchased on 5 December 2013 for £320,000, the same day that one of the London properties had been sold. Mr Wade told the Tribunal that he did not know how much, if any, mortgage funds had to be repaid on the sale of the London properties. He reminded the Tribunal that the Respondent had failed to provide those details despite the direction made on 22 November 2018. Mr Wade invited the Tribunal to infer that the reason the Respondent had not done so was because she did not want the Tribunal to know how much she had sold them for and the details of mortgages.
21. Mr Wade referred the Tribunal to the case of SRA v James [11647-2017] in which the Tribunal had concluded that the Applicant should not be more disadvantaged than other unsecured creditors, who could apply for a charging order over the property. In this case if the Respondent had put assets beyond the reach of her creditors by purchasing the Folkestone property in the names of her daughters, the Applicant should have the opportunity to have that investigated by the Trustee in Bankruptcy.

22. Mr Wade invited the Tribunal to allow the costs order to be enforced and to put the Applicant on the same footing as other creditors.

The Tribunal's Decision

23. The Tribunal considered all the material before it and noted that the Tribunal had taken account of the contents of her letter of 16 January 2013 when deciding to make the costs not enforceable without leave of the Tribunal. That letter had not disclosed that the Respondent had assets at that time. This was information that may have affected the Tribunal's original determination and the Tribunal was concerned that the letter had not presented the full picture. It would have been open to the Applicant to register a charge against one of the properties had it been aware that the Respondent owned them.
24. In these proceedings the Respondent had been directed to disclose details of her financial circumstances and had failed to do so. The Tribunal also found this concerning as this was information that was directed in order to ensure that the full picture was placed before the Tribunal at the hearing. The Tribunal was satisfied that the Respondent had deliberately chosen not to co-operate.
25. The Tribunal was entirely satisfied that it was fair that the Applicant have leave to enforce the costs order. The Respondent's assets appeared to have been disposed of but that should not preclude the Applicant from attempting to recover the monies in the same way as any other creditor.
26. The application for enforcement of the costs order was granted.

Costs

27. Mr Wade sought costs in the sum of £2,304.00 in accordance with the costs schedule that had been served in advance of the hearing. This included the costs of bringing the proceedings and the private investigator's fee.
28. The Tribunal was satisfied that the costs were reasonable and proportionate and saw no reason why the Respondent should not pay them in full. The Tribunal therefore ordered that she pay the Applicant's costs fixed in the sum of £2,304.00.

Statement of Full Order

29. The Tribunal Ordered the Applicant is granted leave to enforce the Order for costs against the Respondent, YVONNE PATTERSON in the sum of £8,000.00.

The Tribunal further Ordered that the Respondent do pay the costs of and incidental to this application fixed in the sum of £2,304.00.

DATED this 1st day of February 2019
On behalf of the Tribunal

Jacqueline Devonish

J. Devonish
Chair

Judgment filed
with the Law Society
on 01 FEB 2019