

IN THE MATTER OF DAVID BURKE, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

---

Mr. R.B. Bamford (in the Chair)  
Mr. D.E. Fordham  
Mr. K.J. Griffin

Date Of Hearing: 21st December 1995

---

## FINDINGS

of the Solicitors' Disciplinary Tribunal  
constituted under the Solicitors Act 1974

---

An application was duly made on behalf of the Solicitors Complaints Bureau by Geoffrey Williams solicitor of 36 West Bute Street, Cardiff on the 15th May 1995 that David Burke of 10/12 Macklin Street, Covent Garden, London, WC2 (subsequently of P.O. Box 4090 Private Mail Box Service, Geelong, Victoria, Australia) solicitor might be required to answer the allegations contained in the statement which accompanied the application and that such Order might be made as the Tribunal should think right.

The allegations were that the respondent had been guilty of conduct unbecoming a solicitor in each of the following respects, namely that he had:

- (a) failed to make his books of account available for inspection by the Investigation Accountant of the Law Society when properly called upon to do so contrary to Rule 27 Solicitors Accounts Rules 1991;
- (b) practised as a solicitor whilst there was no Practising Certificate in force in respect of such practice;

- (c) practised as a solicitor whilst having failed to pay the contributions due from him to the Solicitors Indemnity Fund Limited notwithstanding the terms of Section 37 Solicitors Act 1974 and the rules thereunder;
- (d) practised as a solicitor whilst in breach of a condition imposed on his Practising Certificate.

The application was heard at the Courtroom, No.60 Carey Street, London, WC2 on the 21st December 1995 when Geoffrey Williams solicitor and partner in the firm of Messrs. Cartwrights Adams & Black of 36 West Bute Street, Cardiff appeared for the applicant and the respondent did not appear and was not represented.

The applicant told the Tribunal that letters had been received by the Solicitors Complaints Bureau from the respondent who appeared to be in Australia. The respondent's practice had been closed down in January 1995 and certain litigation arising therefrom was outstanding. Attempts had been made to serve the proceedings upon the respondent. The enquiry agent instructed to serve the Tribunal's proceedings spoke to a friend of the respondent confirming that he would advise the respondent of the hearing before the Tribunal fixed for the 21st December 1995.

The respondent had telephoned the Solicitors Complaints Bureau and confirmed that he was aware of the date. The Tribunal was also asked to consider two copy letters addressed by the respondent to the Solicitors Complaints Bureau respectively dated the 6th and 10th December 1995 in which it was clear that the respondent was aware of the proceedings and the date fixed for the hearing. It was accepted that if the respondent had only shortly before writing those letters received notice of the proceedings, then he had not had the period of notice laid down by the Solicitors (Disciplinary Proceedings) Rules 1994.

In the circumstances the Tribunal took the view that it was right that the matter should proceed and if abridgement of the period of notice was required, then it would consent to it.

The matter then proceeded to a full hearing.

The evidence before the Tribunal included notices served upon the respondent pursuant to the Solicitors (Disciplinary Proceedings) Rules and the Civil Evidence Act and certain affidavit evidence.

At the conclusion of the hearing the Tribunal ORDERED that the respondent David Burke of P.O. Box 4090 Private Mail Box Service, Geelong, Victoria, Australia solicitor be suspended from practice as a solicitor for an indefinite period to commence on the 21st day of December 1995 and they further Ordered him to pay the costs of and incidental to the application and enquiry fixed in the sum of £2,306.42 inclusive.

The facts are set out in paragraphs 1 to 9 hereunder.

1. The respondent was admitted a solicitor on 15th July 1985 and his name remained on the Roll of Solicitors. He was born on the 4th October 1957.

2. At all times material to the application the respondent carried on in practice as a solicitor on his own account under the style of David Burke at the following three addresses:-

29 Stamford Hill Mansions, Stamford Hill, London, N16 5TN,

43 Bow Lane, London, EC4M 9DT, and

10/12 Macklin Street, Convent Garden, London, WC2.

3. Upon notice duly given to the respondent an inspection of his books of account was carried out by the Investigation Accountant of the Law Society. The Tribunal had before it a copy of the report of the Investigation Accountant dated 15th July 1994. The respondent told Mr. Patel, an assistant to the Investigation Accountant, that he had practised alone since August 1993 and specialised in acting for people with hearing difficulties. He said was not a controlled trustee and his firm was not regulated in the conduct of investment business.
4. The respondent told Mr. Patel that his books were written up to date with respect to client account transactions. He was not able to make the books available for inspection until the following week as they were at the respondent's weekend home. A further appointment was made for Mr. Patel to attend at the respondent's office on the 28th June 1994. On the 24th June the respondent sent Mr. Patel a letter requiring the meeting scheduled for the 28th June to be postponed until the 30th June because the respondent had extended business commitments.
5. On the 28th June a further letter was received from the respondent explaining that the 30th June would have to be cancelled as a result of personal problems.
6. Mr. Patel telephoned the respondent and re-arranged the appointment for the 11th July 1994. On the 8th July the respondent telephoned the Solicitors Complaints Bureau (the Bureau) explaining that he had been "mugged" and some of his accounting records had been stolen. Nevertheless a telephone message was left with the respondent confirming that Mr. Patel would attend the offices on the 11th July as previously arranged. Mr. Patel did attend but no-one was present.
7. The respondent's Practising Certificate was terminated by the Law Society on 24th August 1994. The termination was the result of the failure by the respondent to pay the proper fees to enable a Practising Certificate to be issued to him for the practice year commencing 1st November 1993. Notwithstanding such termination the respondent carried on practising as a solicitor at least until 11th January 1995 when he was notified that the Bureau had resolved to intervene into his practice as a result of the contents of the report of the Investigation Accountant.
8. As at 8th August 1994 the respondent had failed to pay the total sum of £341.00 to the Solicitors Indemnity Fund Limited in relation to the contribution due from him for the year commencing 1st September 1993. The respondent had failed to pay six instalments. The last instalment should have been made on 2nd March 1994.

Notwithstanding such failure the respondent practised as a solicitor between 2nd March 1994 and, at least, 11th January 1995.

9. On 30th November 1993 an Assistant Director of the Bureau acting under his delegated powers granted the respondent a Practising Certificate for the practice year commencing 1st November 1993 subject to the condition that he lodge half yearly Accountant's Reports with the Law Society. Such reports were due to be delivered within two months of the end of the half year period to which they related. The respondent failed to deliver his Accountant's Report for the half year ended 31st May 1994 which report was due to be delivered by 31st July 1994.

**The Submissions of the Applicant**

10. A shambolic state of affairs had been revealed in connection with the respondent's practice. It was a most unsatisfactory way for a solicitor to run and carry out his practice. His regulatory duties had been almost completely neglected.
11. The Law Society had no option but to intervene in into the respondent's practice in connection with which he was not co-operative.
12. The respondent appeared to have left the country for what he himself had described as "health reasons". His failure to deal properly with his practice and his behaviour would cause inevitable harm to the good reputation of the solicitors' profession.
13. Six applications had been made to the Law Society's Compensation Fund. The sum of £1,084.80 had been paid out of that Fund and pending claims totalled £127.00.

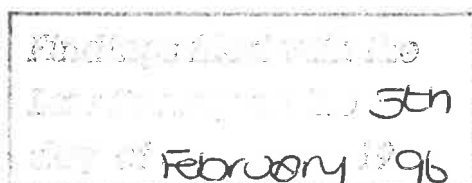
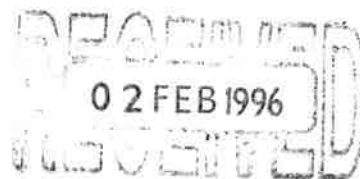
The Tribunal FOUND the allegations to have been substantiated. The respondent's failure to shoulder his professional obligations and responsibilities was outrageous. Clearly he was not fit to practise as a solicitor and the Tribunal ORDERED that he be suspended from practice for an indefinite period.

DATED this 1st day of February 1996

on behalf of the Tribunal



R.B. Bamford  
Chairman



IN THE MATTER OF DAVID BURKE, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

---

Mr. K I B Yeaman (in the Chair)  
Mr. J R C Clitheroe  
Mr. G Saunders

Date Of Hearing: 25th June 1996  
16th July 1996

---

## FINDINGS - RE-HEARING

of the Solicitors' Disciplinary Tribunal  
constituted under the Solicitors Act 1974

---

An application was duly made on behalf of the Solicitors Complaints Bureau by Geoffrey Williams solicitor of 36 West Bute Street, Cardiff on the 15th May 1995 that David Burke of 2 High Mousen Belford Northumberland formerly of 10/12 Macklin Street, Covent Garden, London, WC2 (subsequently of P.O. Box 4090 Private Mail Box Service, Geelong, Victoria, Australia) solicitor might be required to answer the allegations contained in the statement which accompanied the application and that such Order might be made as the Tribunal should think right.

The allegations were that the respondent had been guilty of conduct unbecoming a solicitor in each of the following respects, namely that he had:

- (a) failed to make his books of account available for inspection by the Investigation Accountant of the Law Society when properly called upon to do so contrary to Rule 27 Solicitors Accounts Rules 1991;
- (b) practised as a solicitor whilst there was no Practising Certificate in force in respect of such practice;

- (c) practised as a solicitor whilst having failed to pay the contributions due from him to the Solicitors Indemnity Fund Limited notwithstanding the terms of Section 37 Solicitors Act 1974 and the rules thereunder;
- (d) practised as a solicitor whilst in breach of a condition imposed on his Practising Certificate.

The application was heard at the Courtroom, No.60 Carey Street, London, WC2 on the 25th June 1996 when Geoffrey Williams solicitor and partner in the firm of Messrs. Cartwrights Adams & Black of 36 West Bute Street, Cardiff appeared for the applicant and the respondent appeared in person.

The evidence before the Tribunal included the admissions of the respondent.

The matter proceeded by way of a re-hearing and it was agreed between the parties that the Tribunal should have before them the Findings of the Tribunal of the earlier hearing which took place on the 21st December 1995. On that occasion the respondent did not appear and was not represented. The Tribunal Ordered that he be suspended from practice for an indefinite period to commence on the 21st December 1995.

Upon the application of the respondent and with the agreement of the applicant the Tribunal re-heard the matter on the 25th June 1996.

At the conclusion of the hearing the Tribunal said that they were not happy to reach a decision without adequate medical evidence and decided to adjourn the hearing until the 16th July 1996 at 2. pm and required the respondent to provide medical evidence as to his state of health. In the meantime the Tribunal's earlier order of indefinite suspension continued in full force and effect.

The parties appeared again before the Tribunal on 16th July 1996, a psychiatric report having been filed with the Tribunal prior to the hearing. In the opinion of the consultant psychiatrist who was the author of the report, the respondent's current mental state should not preclude him from continuing to practise as a solicitor.

At the conclusion of the second part of the hearing the Tribunal ORDERED that the respondent David Burke of 2 High Mousen Belford Northumberland (formerly of 10/12 Macklin Street, Covent Garden London WC2) solicitor pay a fine of £1,000 such penalty to be forfeit to Her Majesty the Queen and he was further Ordered to pay the costs of and incidental to the application and enquiry fixed in the sum of £3,370.17p inclusive.

The Tribunal confirmed that the order made on the 16th July 1996 was to be substituted for their earlier order made on the 21st December 1995.

The facts are set out in paragraphs 1 to 9 hereunder:

1. The respondent was admitted a solicitor on 15th July 1985 and his name remained on the Roll of Solicitors. He was born on the 4th October 1957.
2. At all times material to the application the respondent carried on in practice as a solicitor on his own account under the style of David Burke at the following three addresses:-

29 Stamford Hill Mansions, Stamford Hill, London, N16 5TN,

43 Bow Lane, London, EC4M 9DT, and

10/12 Macklin Street, Convent Garden, London, WC2.

3. Upon notice duly given to the respondent an inspection of his books of account was carried out by the Investigation Accountant of the Law Society. The Tribunal had before it a copy of the report of the Investigation Accountant dated 15th July 1994. The respondent told Mr. Patel, an assistant to the Investigation Accountant, that he had practised alone since August 1993 and specialised in acting for people with hearing difficulties. He said was not a controlled trustee and his firm was not regulated in the conduct of investment business.
4. The respondent told Mr. Patel that his books were written up to date with respect to client account transactions. He was not able to make the books available for inspection until the following week as they were at the respondent's weekend home. A further appointment was made for Mr. Patel to attend at the respondent's office on the 28th June 1994. On the 24th June the respondent sent Mr. Patel a letter requiring the meeting scheduled for the 28th June to be postponed until the 30th June because the respondent had extended business commitments.
5. On the 28th June a further letter was received from the respondent explaining that the 30th June would have to be cancelled as a result of personal problems.
6. Mr. Patel telephoned the respondent and re-arranged the appointment for the 11th July 1994. On the 8th July the respondent telephoned the Solicitors Complaints Bureau (the Bureau) explaining that he had been "mugged" and some of his accounting records had been stolen. Nevertheless a telephone message was left with the respondent confirming that Mr. Patel would attend the offices on the 11th July as previously arranged. Mr. Patel did attend but no-one was present.
7. The respondent's Practising Certificate was terminated by the Law Society on 24th August 1994. The termination was the result of the failure by the respondent to pay the proper fees to enable a Practising Certificate to be issued to him for the practice year commencing 1st November 1993. Notwithstanding such termination the respondent carried on practising as a solicitor at least until 11th January 1995 when he was notified that the Bureau had resolved to intervene into his practice as a result of the contents of the report of the Investigation Accountant.
8. As at 8th August 1994 the respondent had failed to pay the total sum of £341.00 to the Solicitors Indemnity Fund Limited in relation to the contribution due from him for the year commencing 1st September 1993. The respondent had failed to pay six instalments. The last instalment should have been made on 2nd March 1994. Notwithstanding such failure the respondent practised as a solicitor between 2nd March 1994 and, at least, 11th January 1995.
9. On 30th November 1993 an Assistant Director of the Bureau acting under his delegated powers granted the respondent a Practising Certificate for the practice year commencing 1st November 1993 subject to the condition that he lodge half yearly

Accountant's Reports with the Law Society. Such reports were due to be delivered within two months of the end of the half year period to which they related. The respondent failed to deliver his Accountant's Report for the half year ended 31st May 1994 which report was due to be delivered by 31st July 1994.

### **The Submissions of the Applicant**

10. A shambolic state of affairs had been revealed in connection with the respondent's practice. It was a most unsatisfactory way for a solicitor to run and carry out his practice. His regulatory duties had been almost completely neglected.
11. In view of the respondent's lack of co-operation the Law Society had no option but to intervene in the respondent's practice.
12. The respondent appeared to have left the country for what he himself had described as "health reasons". His failure to deal properly with his practice and his behaviour would cause inevitable harm to the good reputation of the solicitors' profession.
13. Six applications had been made to the Law Society's Compensation Fund. The sum of £1,158.87p had been paid out of that Fund and pending claims totalled £132.00. The respondent explained that the Law Society had taken over his client account which had a credit balance in the region of £5,000 so there was no doubt that those sums would be met and there would in fact be no payment made on behalf of the profession. The applicant was unable to confirm that as the respondent's affidavit in reply to those proceedings had been filed with the Tribunal only on the day prior to the hearing.
14. The respondent would say that he had invited the Investigation Accountant to inspect his books in his absence. In the submission of the applicant that was not an answer to a breach of Rule 27 of the Solicitors Accounts Rules, if the Investigation Accountant was properly to discharge his duties then he need the solicitor who's books he was inspecting to be present.
15. The respondent would say that his office was never actually open to the public as the buildings were undergoing building works. He had very few current matters although he had assisted a friend in the purchase of a property and acted in the sale of his late grandmother's house in his capacity as an executor. He believed that he did not hold himself out to the public as a solicitor. It was the applicant's submission that the respondent maintained a client account and he had undertaken conveyancing and a divorce case in which Counsel had been instructed. He held himself out as a practising solicitor to his bankers, his clients, and Counsel. It followed that the respondent was in practice and he was required to hold a current Practising Certificate.
16. The respondent would tell the Tribunal that he had been told the requirements of the Investigation Accountant would take precedence and apparently lifted the requirement that he comply with the condition on his Practising Certificate to submit his accounts on a six monthly basis. In view of the lateness of that explanation, the applicant had not had time to take instructions upon it. However in the submission of the applicant a solicitor had total responsibility to comply with conditions on his Practising Certificate and could not justify a failure to comply unless he had a formal written waiver from the Law Society. The applicant considered it was most unlikely that any member of staff



would have indicated to the respondent that he need not file his accountant's report in due time because his books were to be inspected by the Investigation Accountant.

17. The respondent had agreed to meet the applicant's costs, including the costs thrown away by the previous hearing

**The submissions of the respondent**

18. The respondent accepted that his books of account had not been made available for inspection by the Investigation Accountant. He had not deliberately withheld them and he had invited the Investigation Accountant to inspect them in the respondent's absence. The Monitoring Unit had made two previous visits to the respondent's office and no shortfalls on his client account were revealed.
19. At the time of the request for the inspection of his books the respondent had suffered an extremely stressful time. He was in the process of preparing to submit his accountant's report.
20. In the previous months there had been a number of deaths in his family and a member of the respondent's family had suffered a heart attack whilst landing in the United Kingdom on his return from attending one of the funerals. The respondent had at that time to support his family.
21. When the Investigation Accountant was again due to visit the respondent in July 1995, the respondent had attended his bank to withdraw substantial sums of cash to transfer to his mortgage account. Shortly afterwards he met a friend who invited the respondent to take lunch with her at a nearby restaurant. During lunch the respondent was approached by a person who stole his money and documents, including certain bank statements, paying in and cheque books. The respondent tried to resist his attacker, whose accomplice then threw a small baby across the restaurant and hit the baby's grandmother on the head.
22. Following the event in the restaurant and having later found out that the respondent's attackers had watched the bank all day and the shock of seeing the baby and grandmother hurt caused the respondent much stress.
23. The respondent had not prepared his accountant's report for the period ended 31 May 1995 and had understood that the requirements of the Investigation Accountant would take precedence.
24. The respondent had paid a Practising Certificate fee but did not pay the Indemnity Fund contribution which he had become aware should have been paid. The respondent moved to his offices at Macklin Street, WC2 in August 1994 but never actually opened that office to the public as the building was undergoing building works. There had been a break in whilst the respondent was decorating the offices which led to his being unable to practise because he could not obtain office insurance. At the time he had very few current matters although he had assisted a friend in the purchase of a property to whom he made no charge. He also acted in the sale of his late grandmother's house in his capacity as executor to her will but the sale proved abortive. The matter was handed to independent lawyers prior to the respondent's departure overseas. The respondent believed that he had not held himself out to the public as a solicitor.

25. The respondent accepted that he had failed to pay the contribution to the Solicitors Indemnity Fund but he had believed that the same had been sent.
26. The respondent accepted that he had behaved in an unprofessional manner that had resulted from personal problems.
27. After the incident in the restaurant in July 1994 the respondent sought medical advice and was treated for depression. He was given a medication to which he developed a reaction. A subsequent diagnosis by another doctor in the South of France was that the respondent had suffered from anxiety as a result of the build up of events. He was prescribed a short course of medication and believed that he had recovered.
28. The respondent accepted that it might have appeared that he had been uncooperative towards the Law Society at the time of his illness but he had tried to deal with the matters being raised. The respondent regretted that he had not attended the earlier hearing. He advised the Bureau that he was physically unable to attend because he was in Australia and was unable to obtain a flight over the Christmas period.
29. His behaviour had not been deliberate or intentional. The Tribunal was invited to take into account the unfortunate state of the respondent's health. He apologised for any disrepute that he might have brought upon the Law Society and the solicitors' profession.

Following the adjournment of the hearing to the 16th July 1996 the Tribunal FOUND the allegations to have been substantiated, indeed they were not contested. The Tribunal considered the allegations related to regulatory breaches. It is important that solicitors comply strictly with the Rules & Regulations to which they are subject. The Tribunal considered it right to impose a financial penalty upon the respondent and Ordered him to pay fixed costs (which included the costs of the earlier hearing). This decision superseded the order of indefinite suspension made by the Tribunal at the first hearing.

The Tribunal recommend to the Law Society that the respondent should be permitted to practise only in approved employment and further recommended that the Law Society should require the provision of a satisfactory psychiatric report by the respondent before it grants a Practising Certificate to him.

DATED this 23rd day of August 1996

on behalf of the Tribunal



K I B Yeaman  
Chairman

Findings filed with the  
Law Society on the 30<sup>th</sup>  
day of August 1996