No. 6932/1995

IN THE MATTER OF ANTHONY BRYDON PARKER, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr. J.W. Roome (in the Chair)
Mr. A.G. Gibson
Mr. G. Saunders

Date Of Hearing: 23rd May 1996

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 David Rowland Swift solicitor of 19 Hamilton Square, Birkenhead on the 4th July 1995 that Anthony Brydon Parker solicitor of Hailsham, Sussex, B27 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 unbefitting a solicitor in each of the following particulars, namely that he had:-

(i) failed to deliver or delivered late accountant's reports notwithstanding Section 34 of the Solicitors Act 1974 and the Rules made thereunder;

(ii) failed, on being required so to do, to produce his books of account for inspection by the Investigating Accountant of the Law Society contrary to Rule 27(2) of the Solicitors Accounts Rules 1991;

(iii) failed to comply with a professional undertaking;

(iv) failed to reply to letters from a client and/or failed to maintain reasonable and adequate contact with a client;

(v) taken steps in connection with the affairs of his client which were adverse to the interests of his client without his client's instructions;

(vi) failed to disclose material information to his client;

(vii) been responsible for unreasonable delay in the delivery of client's papers;

(viii) failed to reply to letters from other solicitors and/or from the Solicitors Complaints Bureau.

In a supplementary statement dated the 3rd August 1995 the following additional allegation was made against the respondent, namely that he had been guilty of conduct unbefitting a solicitor in that he had written letters to the staff of the Law Society Compensation Fund which were so discourteous in their terms as to amount to professional misconduct.

Hereinafter the supplementary allegation is referred to as allegation (ix).

The application was heard at the Court, Room, No.60 Carey Street, London, WC2 on the 23rd May 1996 when David Swift solicitor and partner in the firm of Messrs. Percy Hughes & Roberts of 19 Hamilton Square, Birkenhead appeared for the applicant and the respondent appeared in person to make an adjournment application. Upon the refusal by the Tribunal to agree to an adjournment, the respondent withdrew from the proceedings and the matter proceeded to a full hearing in his absence.

The evidence before the Tribunal included the oral evidence of Mr. ~~Dander~~ Dhanda, Mr. Mitchell, Mr. Curties, Mr. Simon and Mr. Funnell and exhibits ABP1 and ABP2.

Before the commencement of the substantial hearing, the respondent made an application for an adjournment.

The respondent explained that he had on the 26th September 1995 written to the Solicitors Complaints Bureau to procure his file in connection with the sale of property by his then client Mr. E. In April 1996 he was advised by the applicant that his file was with a firm of solicitors in Worthing, namely Messrs. Marsh Ferriman & Cheale. The respondent spoke to that firm requesting a copy of the file who indicated that they would not copy the file unless the respondent paid their copying charges.

On the 2nd May the respondent was notified of the copying charges and on that day he despatched a cheque for the appropriate sum. The respondent placed before the Tribunal a letter addressed to him by Messrs. Marsh Ferriman & Cheale dated the 16th May 1996 enclosing a copy of his file which was received by the respondent on the 18th May. It was the respondent's view that the file was vital to him in the preparation of his defence to the allegation ((iii)) that he failed to comply with a professional undertaking. Having obtained the file and in the light of the fact that the client had since died, the respondent required time to

interview his deceased client's son as well as to carefully consider the substantial file and then to prepare an affidavit to be lodged with the Tribunal.

The respondent considered that the allegation had been made recklessly and on the basis of secondary evidence. The applicant had not seen the respondent's file. The solicitor who had conduct of the matter at the material time was not to be called as a witness. The respondent said he could not and would not proceed with the matter on the day of the adjournment application.

The applicant strongly resisted the respondent's application. Disciplinary proceedings had been issued in July 1995. A pre-trial review had taken place in October 1995. Prior to the pre-trial review documents in the matter had been served on the respondent as to part in September and as to part in October. A further pre-trial review was heard before the Tribunal in February 1996.

On the 25th January 1996 the respondent sent a letter which dealt with the file relating to allegation (iii) (non-compliance with undertaking). There had been an intervention into the respondent's practice in November 1994. A large number of files and papers had been archived. It was not an easy task to find an individual file. In due course the file was recovered. Initially there had been concern about confidentiality (as the client had not consented to its release) and as soon as possible the respondent had passed the file to his agents in Sussex, Messrs. Marsh Ferriman & Cheale. The respondent had been told that he could inspect any papers at the office of Mr. Funnell, a solicitor who practised locally, but he was unwilling so to do.

The file in question had been made available to the respondent on the 2nd April 1996 in Worthing. That was seven weeks prior to the scheduled hearing. The respondent was unable to inspect the file saying that it was not convenient to him. He requested a copy of the file. It was right that he was told that a copy would be available if he met the applicant's agent's charges, in the event the respondent paid the charges, and a copy of the file was sent to him. He was told on the 2nd May that he would have to pay the charges.

The applicant pointed out that when the solicitors whose client had the benefit of the undertaking initially referred the matter to the respondent he did not deny that an undertaking had been given.

The Tribunal considered that the respondent had called for his own file of which clearly he had prior knowledge. It was not a new document. The document was made available to the respondent on the 2nd April. He was aware of the date of the hearing and took no steps to make sure that he had plenty of time to consider the contents of the file. The Tribunal had been invited by the applicant to take the view that the respondent was using the fact that he had received a copy of the file until shortly before the hearing as a delaying tactic. The Tribunal, mindful of course of its obligation to ensure that the respondent was treated with the utmost fairness, was also mindful of the interests of the public and of the solicitors' profession in the expeditious determination of disciplinary proceedings involving solicitors. The respondent had not availed himself of the period of time available to him to study the file. That matter lay in his own hands and it would be wrong further to delay the disciplinary proceedings in order to accommodate the respondent's own failure to grasp the nettle. The Tribunal refused the application for an adjournment.

At that juncture the respondent told the Tribunal that he withdrew from the proceedings and intended to go to a higher authority.

The matter proceeded to a full hearing in the absence of the respondent.

The evidence before the Tribunal included the oral evidence of Mr. Simon, Mr. Funnell, Mr. Curties, Mr. Mitchell and Mr. Dhanda and exhibits "ABP 1" and "ABP 2".

A number of papers had been filed with the Tribunal prior to the hearing. Those documents included two affidavits of the respondent. Although said to be affidavits, they were apparently dated the 29th December 1995 but appeared not to have been sworn. The Tribunal nevertheless have relied upon the contents of those documents.

At the conclusion of the hearing the Tribunal ORDERED that the respondent Anthony Brydon Parker solicitor of , Hailsham, Sussex, be struck off the Roll of Solicitors and they further ordered him to pay the costs of and incidental to the application and enquiry such costs to be taxed by one of the Taxing Masters of the Supreme Court.

The facts are set out in paragraphs 1 to 29 hereunder.

1. The respondent, born in 1945, was admitted a solicitor in 1973. At the material times he practised on his own account under the style of Parker & Co., at 29 St. David's Close, Willingdon, Eastbourne, and at 3 Cambridge Gardens, Hastings and PO Box 940 Hailsham East Sussex.

2. On the 9th November 1994 the Adjudication and Appeals Committee of the Law Society resolved to intervene into the respondent's practice and such intervention was effective.

3. The respondent's practising certificate was subject to a requirement that he lodge Accountant's Reports with the Law Society every six months such reports to be submitted within two months of the end of the period to which they related. The respondent had not provided an Accountant's Report to the Law Society for the year ending 26th February 1994 nor had he lodged the Accountant's Report for the six month period to the 31st August 1994. At paragraph 9 of the respondent's "affidavit" he said:

> "As regards the major allegation of failing to produce audited accounts it is formally admitted that these audited accounts were not produced and the supplementary affidavit deals fully with my reasons for failing to produce those audited accounts."

4. Upon due notice to the respondent the Investigation Accountant of the Law Society attended at his offices at 29 St. David's Close, Willingdon, Eastbourne in order to carry out an inspection of his books of account. The Tribunal had before it a copy of the Investigating Accountant's Report of the 17th October 1994 which showed that the respondent failed to produce any records or books of account contrary to Rule 27(2)

of the Solicitors Accounts Rules 1991. A letter was sent to the respondent seeking his explanation on the 20th October 1994. The respondent replied in a letter dated the 24th October 1994 which was confrontational, offensive and did not address the complaint. Mr. Dhanda was the assistant to the Chief Investigation Accountant who had attended at the respondent's office to inspect his books of account. Mr. Dhanda held a bachelor of science degree and was a chartered accountant. He had been in the Chief Investigation Accountant's office for some three and a half years and had conducted a number of investigations into a solicitors' accounts being thus experienced and familiar with the procedures.

5. In his letter of the 24th October 1994 addressed by the respondent to the Solicitors Complaints Bureau (the Bureau) (which ran to some ten hand-written pages) the respondent said amongst other things:-

> "If you wish to set hands upon sole practitioners then at least ensure that they have the vaguest notion about what they are investigating. This is the second person that you have appointed to deal with me who has not the faintest clue about domestic conveyancing."

He went on to say:-

> "By what right do you send persons who clearly do not know the difference between a Cornish pasty and a conveyancing transaction to investigate accounts relating to a practice that deals solely in such matters? (sic)."

He went on to set down a number of offensive personal remarks about Mr. Dhanda which the Tribunal do not repeat here.

6. The respondent's supplementary "affidavit" dealt with his alleged failure to produce his books of account in which the respondent repeated his view that the Investigation Accountant did not understand conveyancing procedures and was not therefore qualified to carry out the inspection. In his affidavit the respondent said he was rightly reluctant to permit the Investigation Accountant to inspect his books of account on the basis that he would fail to undertake a proper and full accounts verification but merely record prima facie findings that meant nothing in real terms and they were misleading in that they implied that there might be problems. It was the respondent's view that the whole exercise was unfair and highly prejudicial. The respondent had no confidence that a proper and effective verification process could be undertaken by Mr. Dhanda.

7. On the 25th July 1994 Messrs. Mitchells solicitors of Bexhill-on-Sea complained to the Bureau that the respondent had acted for the vendor of leasehold property acquired by their client. Prior to exchange of contracts on the 27th November 1990, the respondent undertook to discharge all arrears of ground rent and maintenance out of the sale proceeds. The respondent did not comply with his undertaking nor did he respond to letters from Messrs. Mitchells seeking his compliance.

8. The respondent denied the allegation that he had been in breach of an undertaking. In the documents the respondent contended that his former client had discharged all

outstanding liabilities and the question had arisen because of the property agent's incompetence.

9. The undertaking had been given in the following circumstances. The respondent acted for the vendor of a leasehold flat. It appeared that a sum was due to the landlord in respect of service charges and ground rent. The respondent gave Mr. Mitchell's firm an undertaking to discharge any arrears of service charge and ground rent. The undertaking was given during the course of a telephone conversation. Mr. Mitchell had employed a capable, competent and experienced solicitor to undertake conveyancing work. The telephone conversation had been recorded on the file and had been confirmed in a letter addressed to the respondent.

10. The file note was before the Tribunal in the following form:-

> "File Note - Telephone to Parker & Co., 1650 Hours when contracts were exchanged with completion scheduled for 3rd December. Tony Parker undertook verbally to discharge all arrears of ground rent and maintenance out of the sale proceeds. Time engaged 35 minutes, 27th November 1990".

The following letter was addressed on the 27th November 1990 to the respondent:

> "Dear Sirs
>
> re: (Leasehold Flat)
>
> We refer to our letter of the 22nd November and our subsequent telephone conversation this afternoon when it was agreed that we would treat contracts as being exchanged today with completion scheduled for Monday 3rd December.
>
> 1. We enclose part contract and await your client's part by way of exchange. You agreed to accept a nil deposit. We explained to you that we were still without funds, but in view of the urgency of the matter you agreed to exchange on this basis.
>
> 2. We enclose requisitions on title and draft transfer for approval. If approved kindly arrange for the top copy to be executed by the vendor.
>
> 3. Exchange of contracts has taken place in reliance upon your letter of the 22nd November. Furthermore you undertook to discharge all arrears of ground rent and maintenance out of the sale process to Messrs. Dillons. We are treating this as a representation.
>
> Yours faithfully"

11. In due course Mr. Mitchell's clients were taken by surprise when they received a demand for ground rent and service charge showing arrears accrued prior to the date of their purchase of £633.

12. When approached about the matter the respondent first said that he had not given a personal undertaking but it was an undertaking given on behalf of client. He went on later to suggest that he had difficulty in obtaining arrears from his former client who had since died. He also suggested that the managing agents had been inefficient and he had not been able to get the figures in time for completion.

13. The matter had been raised with the respondent in August 1993 and eventually by April 1994 when the matter still had not been resolved Mr. Mitchell was compelled to address the following letter to the respondent:-

> "With the greatest of respect your attitude is not satisfactory.
>
> Your undertaking was to discharge the arrears out of the sale proceeds. This was your responsibility. You have not done it.
>
> We have gone along with you wasting a considerable amount of our time and all that seems to happen is that you do nothing...
>
> You are the solicitor acting for the seller. You undertook. You sort it out.
>
> Please will you arrange to sort the problem out now, if necessary going to visit Dillons (the managing agents) and having a meeting with them which we perceive is probably the only way of resolving the problem.
>
> If it is your wish that our clients be parties to proceedings with the landlords following the non-compliance with your undertaking, then we presume that you will be responsible for our costs and should be grateful if you would confirm this.
>
> Either the sum claimed has to be paid or arrangements have to be made to contest it.
>
> You have not complied with your undertaking and we must now hear from you as to what are your proposals, otherwise we will have no alternative but to go to the Law Society.
>
> Yours faithfully
>
> p.s. after dictating this letter and before sending it Mr. Mitchell tried to speak to you on the telephone at 9.40 am and received no answer despite ringing on two separate occasions.

14. The respondent's response was as follows:-

> "We have today spoken to the son of our late client and he reminded us that Mr. E. settled a bill for £879.00 for drainage works in order to progress his sale ... we are obtaining a copy of that receipt and suggest that this should be knocked immediately to Messrs. Dillons with a view to their settlement or that amount been taken into amount in the present claim.

If your wish to refer the matter to the Law Society get on with and don't waste our time on that score.

Yours faithfully"

15. In his affidavit the respondent said that he had not been in breach of an undertaking. The allegation was denied. Mr. Mitchell was the applicant's witness and he did not have dealings with the conveyancing matter at the material time. He said he did not have knowledge of the conversations which took place at the time. The solicitor who had conduct of the transaction subsequently practised on his own account and it was he who should provide the evidence. The respondent went on to say that the claim by the new managing agent that any money was due relevant to the undertaking was fundamentally denied.

16. Mr. Mitchell, of course, was able to prove the file note and copy letter on his firm's file set out above and Mr. Mitchell had the conduct of the matter when it was sought to enforce the undertaking. The managing agents had not changed until after complaint had been made to the Law Society.

17. Mr. Mitchell told the Tribunal that he had in fact paid the monies himself so that his own clients would not be inconvenienced but had been reimbursed in due course from the Solicitors Indemnity Fund.

18. The respondent had acted for Mr. & Mrs. C in connection with the purchase of a leasehold flat at Hastings in July 1989. Mr. C gave evidence to the Tribunal. The proportion of service charge attributable to the flat of Mr. and Mrs C. was expressed in the lease to be 9.26 % of the overall expenditure for the block which contained eight flats. Mr. C and his wife were clear about that figure as the proportion of the service charge to be met had been a point particularly borne in mind by them when they were seeking a flat to buy. The counterpart lease executed Mr. and Mrs. C contained the service charge figure of 9.26%. The original lease contained a wholly different figure. The proportion shown in that lease had been amended to 17.42%. Mr and Mrs. C had settled a number of maintenance bills and it was only when a somewhat larger bill was presented, itemising the proportion of service charge for each flat, that they noticed that the proportion relating to their flat was referred to as 17.42%.

19. It transpired that the figure in the original lease had been altered. The respondent had not registered the lease for a considerable period of time. After completion but before registration the lessor's solicitors had approached the respondent pointing out that there had been a error and that the proportion of service charge attributable to Mr and Mrs C.'s flat was the higher figure of 17.42%. The alteration was carried out by the respondent without any communication being made to Mr and Mrs C.

20. Mr and Mrs C had instructed Messrs. Funnell and Perrin solicitors to assist them in the matter. On the 26th February 1993 that firm wrote to the respondent seeking a copy of the counterpart lease (as he had in the meantime been instructed by Mr. S who had purchased the freehold of the block). That was not forthcoming despite further letters sent to the respondent. The counterpart lease was not handed over by the respondent

until an order of the High Court had been obtained after intervention by the Law Society. In his affidavit the respondent said that the lease had been altered by the landlord's solicitors to reflect the true and proper position as to the maintenance percentages based upon square footage. The lease was only altered to rectify an incorrect figure.

21. Early in 1990, as set out above, the respondent was instructed by Mr. S who was acquiring the freehold reversion of the block which included the flat belonging to Mr and Mrs C. It became apparent that the proportion of the service charges relating to all of the flats did not total 100%. During correspondence with the vendors of the freehold reversion, who were the landlords in the transaction in respect of which Mr. and Mrs C were the tenants, the respondent had agreed, without reference to Mr. and Mrs C, to increase the percentage of the service charge relating to their particular flat to 17.42%. The respondent had not attended to the registration of the new lease granted Mr and Mrs C and had inserted the alteration in the lease which was thereafter registered at HM Land Registry.

22. On the 17th November 1993 the Bureau wrote to the respondent seeking explanation after attempts at conciliation had proved unsuccessful. The respondent did not reply nor did he provide any explanation. Further letters were sent to the respondent's firm on the 6th January and 14th March 1994. The respondent did not reply until the 27th March when he wrote a letter which was confrontational and did not address the complaint.

23. On the 5th January 1993 Mr. S's firm, which was in the business of property management, complained to the Bureau that the respondent had acted on their behalf in connection with property transactions but he would not pass to them the title deeds of their properties. Requests for the documents had been by Mr. S's firm over a period of some two years without response from the respondent.

24. On the 17th November 1993 the Bureau wrote to the respondent seeking explanation. The respondent did not reply nor did he provide any explanation A further letter was sent to the respondent on the 14th march 1994 but the respondent did not reply until the 27th March 1994 when he contended that Mr. S had not paid his bill although no particulars were given.

25. When giving evidence, Mr. S stated that he believed that he did not owe any money to the respondent. A bill had been delivered to him in respect of the purchase of the block several months after the completion of the purchase. Mr. S had queried the bill pointing out that he had in the normal way settled the solicitor's charges in connection with the purchase on completion. He accepted that further work had been undertaken and it was agreed that he would pay a further £100 and not the larger figure shown by the bill. Mr. S was adamant that he did not owe any sum for costs to the respondent and there was no question of the respondent having a lien over any of Mr. S's title documents which related to some three freehold properties.

26. The letter which it was alleged the respondent had written (referred to in allegation (ix)), it transpired, had not in fact, been written to staff of the Law Society's Compensation Fund but had been written to a member of staff at the Bureau who dealt

with the question of inadequate professional services. The Tribunal did not formally amend the allegation but took note of the fact that the letters had been written to members of staff at the Bureau as well as the Law Society's Compensation Fund.

27. In October 1994 the Law Society's Compensation Fund was dealing with an application made for a grant from the Compensation Fund as the result of an award against the respondent in respect of inadequate professional services. In the course of dealing with the application, staff at the Bureau made contact with the respondent. In response the respondent wrote two letters dated the 24th October 1994 and 11th November 1994 copies of which were before the Tribunal. The Tribunal set out those two letters hereunder.

28. The letter addressed by the respondent to HF Cunningham at the Bureau dated 24th October 1994 was in the following terms:-

> "Dear Sirs,
>
> Your letter dated 21st October was duly received.
>
> The nonsensical report dated 20th October by one WRIGLEY is certainly totally unacceptable to me.
>
> Who the hell is WRIGLEY? What the hell does WRIGLEY know or understand about efforts made by me (see the file) to ensure that the impatience of my client to take up occupation urgently was <u>not</u> frustrated.
>
> The report is rubbish and it is a travesty of justice that the pathetic Law Society lends itself to such a joke pastime.
>
> <u>Under no circumstances whatsoever will I ever pay a penny to Miss E and the Solicitors Complaints Bureau can get stuffed - it is already stuffed anyhow but the taxidermist should finish the job and stuff it out of sight.</u>
>
> <u>I suggest that you all sod off to Toytown and read more Enid Blyton Stories.</u>
>
> The real world of private practice is something that you will never understand as you creep round to find yourselves dishonourable graves.
>
> (Signed) A.B. Parker"

29. The second letter of the 25th November 1994 addressed by the respondent to the Bureau was as follows:-

> "Dear Sirs,
>
> I have already indicated that I am not happy about unknown characters who do not even interview the solicitor involved making reports that are the basis for a disciplinary decision.

It smacks of the Spanish Inquisition and the Third Reich and is totally unacceptable to me. If this "E" woman has any sort of case against let her appear together with this unknown to me investigating officer and face cross-examination by me on the work done by me (i.e. excess and over and above the norm for which no charges were made) other wise, get lost!

You have no idea whatsoever about the rules of natural justice (i.e. audi alteram partem is the central point). I will, of course, make no payment whatsoever in this case where the fees for the work done were derisorily low in all circumstances.

(signed) A.B. Parker"

The Submissions of the Applicant

30. The respondent appeared to have accepted that he had not filed Accountant's Reports.

31. The respondent appeared to consider that he was not obliged to produce his books of account to an investigation accountant of the Law Society of whom he did not personally approve. The respondent, was, of course, obliged to produce his books of account under the provision of Rule 27(2) of the Solicitors Accounts Rules 1991. He had been given proper notice that he was required to produce his books of account. His response when enquiry was made as to why he had not produced his books was couched in confrontational and offensive terms.

32. There was no doubt that the respondent's firm, where he was a sole practitioner, had given an undertaking to discharge arrears of maintenance charge. When called upon to comply with his undertaking the respondent had adopted a number of stances in order to evade compliance. He did not respond to enquiries about the matter made by the Bureau. It was unacceptable professional behaviour on the part of a solicitor to fail to comply with an undertaking.

33. In the matter of Mr and Mrs C, the respondent had altered their lease after completion in a way which adversely affected them as to the proportion of maintenance charge attributable to their flat. Clearly that was adverse to the interests of his client and he had done so without taking his client's instructions. It followed in that matter the respondent had failed to disclose material information to his client.

34. It was apparent from Mr. S's evidence that the respondent had been responsible for considerable delay in the delivery of the title deeds to which Mr. S had been entitled.

35. The respondent had on a number of occasions failed to respond to letters addressed to him by the Solicitors Complaints Bureau. He had not responded to Mr. S's requests for documents and had also failed to respond to letters addressed to him by other solicitors where aggrieved clients had sought advice in connection with matters in which the respondent had initially been instructed.

36. Overall the respondent had not dealt with matters in respect of which he might to a greater or lesser degree been criticised in any substantive way, but had taken the view

that the best form of offence was attack. The papers before the tribunal contained a number of letters written by the respondent which were inappropriately confrontational, discourteous and offensive, not the least of those were the two letters addressed to the Solicitors Complaints Bureau which supported the supplementary allegation (ix).

The Submissions of the Respondent

37. Although the respondent withdrew from the proceedings the Tribunal had taken note of explanations and submissions made by him during the course of correspondence and in the two "affidavits" referred to above.

38. It was the respondent's clear view that investigating accountants should understand the subject matter of their investigation.

39. The existence of a voluntary arrangement was no justification for suspecting dishonesty and it was harassment to embark upon the procedure of persecuting a sole practitioner with a voluntary arrangement. The respondent asked the question "what could be the objective other than to frighten and harass?" The respondent was not prepared to suffer that injustice ever again because the investigation was by its nature so restricted that, presumably, the clear intention was not to exonerate the party being investigated.

40. The respondent suggested that he might not have received notice of Mr. Dhanda's visits. The respondent said he had no confidence in Mr. Dhanda whatsoever nor that a proper and effective verification process could be undertaken by him.

41. It was the contention of the respondent that the Law Society had to have been acting unreasonably if it failed to complete a full verification check to establish the true position.

42. No client was owed any money. No client money had ever been removed by the respondent other than costs and his client account was always properly in credit. The service to the respondent's clients in connection with the handling of clients' money was very efficient, client money always being dispatched promptly to its proper destination.

43. The respondent said that since the closure of his business, property repossession and bankruptcy he threw all his accounts records away because he wished to sever all connection with the collapse of his business. All the respondent's personal resources had been put into the business in a desperate attempt to continue trading since the property market recession started in 1989. The respondent said he was mistaken in taking the view that the property market would revive and that his business would revive. The respondent had endeavoured to pick up the threads of his previous career in local government.

44. The respondent took the view that the allegations had been drummed up out of no real substance to seek to create a case against him out of sheer tissue. There had been no

question of dishonesty on the part of the respondent and no question that any client had been deprived of money to which he was properly entitled.

45. The respondent had not filed his Accountant's Report as he had been unable to meet the fees of his accountants.

46. The allegation concerning breach of undertaking and of altering a lease without his consent were specious.

47. The question of discourtesy in letters that the respondent had written over a period of time concerned his distress and unacceptance of the totally non-forensic manner in which the Bureau conducted its buiness. The respondent's complaints remained valid and his annoyance and frustration at such a system remained in place.

48. It never had and never would be the respondent's intention to cause offence to any officers of the Law Society and his serious complaints were directed to the systems which those officers operated. He apologised if his letters were deemed to be discourteous in their nature but his zeal in the pursuit of his serious concerns clearly overtook the overriding need to remain courteous in his correspondence at all times.

49. The respondent said the allegation of breach of undertaking was total nonsense. The applicant's witness, Mr. Mitchell, had no knowledge of the conversations which took place at any time. The basic obvious legal point was that an undertaking only had to be honoured when the purpose of the undertaking had been proved to arise. The respondent's client had paid moneys to the managing agents and it was their disorganisation and chaotic state which had led to the arrears being sought from the purchaser of the flat.

50. With regard to the alteration of the lease, the lease was only altered to rectify an incorrect figure. The allegation was specious and no dishonesty was involved.

51. The respondent was engaged in full-time employment and publication of the proceedings could cause serious prejudice to the respondent in connection with his employment.

The Tribunal FOUND all the allegations to have been substantiated. The Tribunal is very well aware of the enormous difficulties, both financial and otherwise, faced by solicitors who in the past had made a livelihood in the conduct of conveyancing following the recession and the decline of the property market. The Tribunal readily accept that the pressures upon a sole practitioner who had relied upon income from conveyancing at this very difficult time were enormous. It did not, however, absolve a solicitor from his professional responsibilities.

The respondent's personal difficulties might well have been a mitigating factor but they could not excuse his behaviour. The respondent's specific failures were serious, as was his failure to make any attempt to put matters right when required so to do. The Tribunal was appalled by the discourtesy and offensiveness of many of the letters written by the respondent and addressed to a number of different recipients.

The catalogue of failures which made up the first eight allegations, taken together with his rudeness of which examples were contained in the correspondence set out above, showed that the respondent was a person whose attitude and behaviour were such that he was unfit to be a solicitor.

The Tribunal ordered that he be struck off the Roll of Solicitors and further ordered him to pay the costs of and incidental to the application and enquiry to be taxed.

The Tribunal expressed its gratitude to the two solicitors who had attended the hearing to give evidence who had, despite the tirades of the respondent to which they had been subjected, managed to conduct themselves in a very proper, courteous and professional manner. The Tribunal were grateful also to the Investigation Accountant for his clear and unbiased evidence despite the scurrilous attack made on him by the respondent and the two erstwhile clients of the respondent who themselves had given up time to give evidence and had done so in an admirably clear and dispassionate manner.

DATED this 18th day of June 1996

on behalf of the Tribunal

A.G. Gibson on behalf of
J.W. Roome
Chairman

No. 6932/1995

IN THE MATTER OF ANTHONY BRYDON PARKER. solicitor

- AND -

IN THE MATTER OF THE SOLICITORS' ACT 1974

Mr. A.H. Isaacs (in the chair)
Mr. A.N. Spooner
Ms. A. Arya

Date of Hearing: 23rd February 1999

SUPPLEMENTAL FINDINGS

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

An application had been duly made on behalf of the Solicitors Complaints Bureau by David Rowland Swift solicitor of 19 Hamilton Square, Birkenhead on 4th July 1995 that Anthony Brydon Parker solicitor of Cowden Farm Cottage, Tilley Lane, Boreham Street, Hailsham, Sussex, B27 4UY 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 application had been heard on 23rd May 1996 when the following allegations were found to have been substantiated by the Tribunal. The allegations were that the respondent had been guilty of conduct unbefitting a solicitor in each of the following particulars, namely that he had:-

(i) failed to deliver or delivered late accountant's reports notwithstanding Section 34 of the Solicitors Act 1974 and the Rules made thereunder;

(ii) failed, on being required to do so, to produce his books of account for inspection by the Investigation Accountant of the Law Society contrary to Rule 27(2) of the Solicitors Accounts Rules 1991;

(iii) failed to comply with a professional undertaking;

(iv) failed to reply to letters from a client and/or failed to maintain reasonable and adequate contact with a client;

(v) taken steps in connection with the affairs of his client which were adverse to the interests of his client without his client's instructions;

(vi) failed to disclose material information to his client;

(vii) been responsible for unreasonable delay in the delivery of client's papers;

(viii) failed to reply to letters form other solicitors and/or form the Solicitors Complaints Bureau.

In a supplementary statement dated 3rd August 1995 the following additional allegation was made against the respondent, namely that he had been guilty of conduct unbefitting a solicitor in that he had written letters to the staff of the Law Society's Compensation Fund which were so discourteous in their terms as to amount to professional misconduct.

On 23rd May 1996 the Tribunal found all of the allegations against the respondent to have been substantiated and ordered that the respondent be struck off the Roll of Solicitors and further ordered him to pay the costs of and incidental to the application and enquiry to be taxed.

On the 17th day of June 1996 the respondent appealed against the Tribunal's decision to the Divisional Court. On that date the Divisional Court dismissed the respondent's appeal.

The respondent appealed to the Court of Appeal and the judgement of the Master of the Rolls was pronounced on 4th December 1998. The respondent was successful in his appeal to the extent only of having the allegation relating to a breach of undertaking quashed (allegation (iii) above).

The Master of the Rolls in his judgement indicated that the question of what was an appropriate sanction in respect of the remaining eight allegations which had been substantiated against the respondent was better dealt with by the Tribunal. The finding of the breach of undertaking was therefore set aside, the Tribunal's order striking the respondent off the Roll of Solicitors was quashed and the matter referred back to the Tribunal for consideration of the appropriate sanction.

At a hearing on 23rd February 1999 the applicant was represented by Jonathan Goodwin solicitor and partner in the firm of Messrs Percy Hughes & Roberts, 19 Hamilton Square, Birkenhead, Merseyside, L41 6AY and the respondent appeared in person. The Tribunal was invited to consider the appropriate sanction to be imposed upon the respondent.

The Tribunal had before it the documents before the first division of the Tribunal which had considered this matter. They do not here set out the facts as these already had been set out in the earlier findings and amendment thereto was unnecessary save that paragraphs 8 to 17 had

ceased to be relevant as they related to the allegation of breach of professional undertaking which no longer was before the Tribunal.

The Submissions of the Applicant

1. The respondent had breached the Solicitors Accounts Rules. He had been guilty of failures to reply to letters from a client and failed to maintain reasonable and adequate contact with the client.

2. He had taken steps in connection with the affairs of a client which were adverse to the interests of his client without his clients' instructions when he sought to change the share of the maintenance charges borne by the flat which his clients were purchasing, so that their share was greater than that expected (and provided for in the draft documentation) without that clients' agreement. As a result the respondent had failed to disclose material information to his clients.

3. Additionally the respondent had unreasonably delayed in the delivery of clients' papers and had failed to reply to letters from other solicitors and from the Solicitors Complaints Bureau.

4. Further the respondent had written letters to the staff of the Law Society's Compensation Fund which were so discourteous in their terms as to amount to professional misconduct. It was the applicant's view that the tenor of those letters had been appalling and disgraceful.

5. There had been a catalogue of failures and breaches by the respondent. The respondent's attitude to his obligations as a solicitor were characterised by the fact that he had destroyed his books of account. He apparently had no regard for the Law Society's supervisory and regulatory role. There had been a breach of trust between this solicitor and his clients. All of those matters adversely and severely affected the good reputation of the solicitors' profession. For those reasons the applicant put the matter as a serious one. The fact that one allegation had been quashed by the Court of Appeal did not affect the seriousness of the respondent's behaviour demonstrated by the other allegations.

The Submissions of the Respondent

6. The respondent placed the following documents before the Tribunal, a letter from a recruitment consultant, a number of earlier decisions made by the Tribunal and a copy of an article written by Professor Michael Zander.

7. The respondent invited the Tribunal to consider the allegations against the background and circumstances in which the respondent finds himself.

8. Of the eight allegations before the Tribunal, two related to breaches of the Solicitors Accounts Rules. The respondent had been required to submit to a further inspection of his books of account, having already had two inspections carried out. He said he would only submit to that inspection if the Law Society was prepared to carry out a full audit in order fully to exonerate the respondent. The respondent's client account

had always been in credit and no client had been deprived of any money. The respondent said he undertook conveyancing only on a small scale.

9. No client had ever claimed that there remained any money due to him.

10. The respondent closed his practice himself. He accepted that the Law Society had instituted a formal intervention into his practice in November in order that his practice files might be taken over. There was at that time a credit balance in the respondent's client account.

11. It was the opinion of the respondent that the solicitor who had initiated the complaint of breach of undertaking had embarked upon a witch hunt which had been thrown out by the Court of Appeal.

12. The respondent's position had been that he did not have the financial resources to pay his accountants. After unsuccessfully managing an insolvency voluntary arrangement (after the payment of some £10,000 to his creditors) the respondent was adjudicated bankrupt in November 1994.

13. The respondent invited the Tribunal to place considerable weight on the fact that the respondent had not been dishonest and dishonesty had not been alleged against him.

14. As a result of the matter with which the Tribunal dealt in May 1996 in the absence of the respondent ,the respondent had in effect been deprived of his ability to practise for some two years and nine months. He had been unable to find employment. It appeared that enquiries made of the Law Society had not made it plain to enquirers that the matter had been subject to appeal when that appeal was ongoing. Following the decision in the Court of Appeal, enquirers were not notified that the striking off order had been quashed pending the reference of the entire matter back to the Disciplinary Tribunal. The respondent was aggrieved by the Law Society's failure to ensure that accurate information about the respondent had been disseminated.

15. The respondent questioned the findings of the earlier Tribunal that he had taken steps in connection with the affairs of a client which were adverse to the interests of the client and failed to disclose this information to the client. That related to the amendment of the share of maintenance charges in a lease to be granted in favour of the respondent's clients. The Tribunal pointed out to the respondent that that matter had been established against him and had not been overturned upon appeal. The respondent explained that the matter had been resolved and the clients had been required to pay only the proportion of the maintenance charge which they had initially expected. They had not suffered any loss. The respondent wished to make it plain that he had not improperly made any amendments to the relevant documents. The fact that the respondent's former clients had employed another solicitor to deal with the matter had prevented the respondent from resolving the matter himself.

16. The respondent had refused to deliver papers to a client because the client concerned owed him money. The client had paid £100 on account of costs but the respondent's ultimate fees were in excess of £500. The respondent's position was that he had been right to refuse to hand over documents.

17. In summary the respondent invited the Tribunal to consider that he had in effect already been struck off the Roll of Solicitors for a period of two years and nine months. It was his submission that the Tribunal should take into account the fact that he had already been struck off wrongly for a long period of time. He should not have been struck off even if the Tribunal had been right in finding him guilty of a breach of a professional undertaking. That decision had been out of line with other decisions and had been excessive.

18. The Tribunal was invited to consider a number of documents handed in by the respondent from which he deduced and invited the Tribunal to conclude that even in cases involving dishonesty the solicitors were not automatically struck off the Roll and the allegations substantiated against the respondent had come somewhat lower down the scale than allegations involving dishonesty and/or misuse of clients' money.

19. The earlier decisions in cases placed before the Tribunal, in the submission of the respondent, demonstrated how unfair the striking off order had been. In the submission of the respondent it represented an excessive reaction on the part of the Tribunal which did not follow its normal sentencing pattern. It was his view that a fine at the lower end of the scale would have been entirely appropriate.

20. The respondent, as a result of the Tribunal's earlier decision, had suffered considerably from a financial point of view. He had been prevented from earning his living as a solicitor and no compensation for that loss would be available.

21. The respondent had spent sixteen years as a local government solicitor in which time compliance with the Solicitors Accounts Rules did not feature. He had also spent two years as a chief magistrate appointed by the Overseas Development Agency in the Solomon Islands.

22. The respondent had been in private practice for six years – that represented a small proportion of his hitherto unblemished career. The respondent was of the view that he should have been entitled to compensation for his financial losses caused by the result of the disciplinary proceedings but was unable to afford the expense of taking the matter to the European Court of Human Rights.

23. In the submission of the respondent in view of the substantial penalty already imposed upon him no further punishment was necessary.

The Findings of the Tribunal

In this case the Court of Appeal quashed a finding of the Tribunal that the respondent was in breach of a professional undertaking and in doing so stated that the alleged breach of undertaking was probably the most serious charge which the respondent faced. This Tribunal has therefore needed to consider what would be the appropriate sanction in relation to the remaining eight allegations, all of which were found proved. The Tribunal took into account (as did the Appeal Court) that the respondent did not appear before the original Tribunal. The Tribunal consider that the proved allegations are by no means trivial. So far as the accounts breaches are concerned the Tribunal absolutely deplores the fact that the accounting records had been destroyed

thus making it impossible for the true position to be established. However, the Tribunal acknowledged that there is no allegation of dishonesty.

The Tribunal accept that the respondent's problems with the Law Society are due to his wholly inappropriate, aggressive and rude conduct to those who have the responsibility for investigating and regulating his conduct as a solicitor. The respondent when appearing before the Tribunal appeared to continue to believe that his conduct justified no sense of contrition or apology and he continues to have little respect for the Law Society or fellow members of the profession. Such a breakdown in confidence described by the Court as corrosive means that the reputation of the profession is put seriously, even fatally, at risk.

The Tribunal concluded that the respondent appeared to be incapable of demonstrating an ability to adhere to conduct which enables the Law Society properly to perform its regulatory functions, nor was it confident that the respondent would behave with courtesy towards fellow members of the profession and with the public. The Tribunal considered that the proven allegations against the respondent were serious and bearing in mind its duty both to protect the public and the reputation of the profession the Tribunal ordered the suspension of the respondent from practice for an indefinite period and ordered him to pay costs (including costs in relation to the previous hearing before the Tribunal) to be taxed if not agreed.

DATED this 26th day of April 1999

on behalf of the Tribunal

A.H. Isaacs
Chairman