

IN THE MATTER OF PETER MAXWELL DURHAM, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr. J.N. Barnecutt (in the Chair)
Mr. J.C. Chesterton
Mr. M.C. Baughan

Date Of Hearing: 12th March 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 Andrew Christopher Graham Hopper solicitor of P O Box 7, Pontyclun, Mid Glamorgan, CF7 9XN on the 12th October 1995 that Peter Maxwell Durham of London, N15 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:

- (i) failed to comply with Rule 13 of the Solicitors' Practice Rules 1990 in that he practised as a solicitor on his own account from (at least) the 8th February 1993 until August 1994 without any supervision or attendance by a solicitor holding a Practising Certificate who had been admitted for at least three years;
- (ii) been guilty of conduct unbecoming a solicitor in that he failed to deliver an accountant's report as required by section 34 of the Solicitors Act 1974 and the Rules made thereunder;

- (iii) failed to comply with the Solicitors Accounts Rules 1991 in that he failed to produce his books of account and associated documents for inspection contrary to Rule 27(2) of the said Rules;
- (iv) failed to comply with the said Rules in that he failed to keep his books of account properly written up notwithstanding Rule 11(1) of the said Rules;
- (v) been guilty of conduct unbecoming a solicitor in that he provided a misleading explanation to the Solicitors Complaints Bureau;
- (vi) been guilty of conduct unbecoming a solicitor in that he made claims for costs upon the Legal Aid Fund which he knew or ought to have known he could not justify;
- (viii) failed to reply to letters from the Solicitors Complaints Bureau.

(The numbering above follows that in the application - the no. (vii) having been omitted)

The application was heard at the Court Room, No.60 Carey Street, London, WC2 on the 12th March 1996 when Andrew Christopher Graham Hopper solicitor or P O Box 7, Pontyclun, Mid Glamorgan, CF7 9XN appeared for the applicant and the respondent appeared in person.

The evidence before the Tribunal included the admissions of the respondent who denied allegations (iii) (failure to produce his books of account) and (vi) (claims of costs made upon the Legal Aid Fund) but admitted all the other allegations.

At the conclusion of the hearing the Tribunal found all of the allegations to have been substantiated and ORDERED that the respondent be struck off the Roll of Solicitors and they further ordered him to pay the costs of and incidental to the application and enquiry fixed in the sum of £3,680.90 inclusive.

Following the pronouncement of the Tribunal's Order, the respondent indicated his intention to appeal against the decision of the Tribunal to the Divisional Court and the Tribunal agreed to suspend the filing of their Order with the Law Society for the period of fourteen days, the effect of that Order to be suspended pending the outcome of the respondent's appeal provided he made his application to the High Court within the fourteen day period.

The facts are set out in paragraphs 1 to 16 hereunder.

1. The respondent, born in 1957 was admitted a solicitor in January 1993.
2. The respondent had obtained a law degree at the age of 21 and thereafter had made two unsuccessful attempts to pass the Law Society's qualifying examination in 1980 and 1981.
3. From 1981 until 1983 the respondent was employed in a variety of fields in the retail and security trades. From 1983 until 1986 the respondent was employed as a cab driver. Since 1987 the respondent had worked for a number of firms of solicitors enjoying the title "Head of Litigation". He took the Law Society's final examination in 1990 leading to his qualification and admission as a solicitor in 1993.

4. Until and including October 1992 the respondent was employed as a clerk by the firm of David Paul & Partners solicitors at 112 High Holborn, London, WC1. In October 1992 the Law Society intervened in the practice which was subsequently disposed of with the Law Society's consent. In the ensuing months the respondent continued to act for "his" clients with the ostensible authority of a succession of firms - initially Bull & Bull to whom the practice of David Paul & Partners had been assigned, followed by Shahid Rhaman from approximately December 1992 until January 1993 thereafter by Gibilaro Choudri & Co. for approximately the month of January 1993 and from or about the 8th February 1993 the respondent apparently established his own practice at his home address at 11 Ferndale Road, London, N15 6UF. Subsequently on 18th April the respondent entered an arrangement with "the Luper Partnership (solicitors) of 49 Camden High Street, London, NW1 - details of which are set out later in this document.
5. The Tribunal had before it a series of letters in the matter of Miss K dated the 8th February 1993 in which the respondent informed all interested parties of his interest as "Peter Durham, solicitor" on behalf of the plaintiff, the said Miss K. That was the evidence before the Tribunal that the respondent had established his own sole practice within four weeks of his admission as a solicitor.
6. The matter had been drawn to the attention of the Solicitors Complaints Bureau (the Bureau) which wrote to the respondent on the 5th October 1993 requiring his explanation. There was no reply and a reminder of the 29th November 1993 was despatched. The respondent wrote to the Bureau by letter dated the 10th December 1993 which was in the following terms:-

Dear Sirs

Thank you for your letter of 5th October and 29th November 1993.

I apologise for any delay in replying and assure you that any delay in replying was not intentional.

I did practise on my own account for approximately two months but deny that I practised in breach of Rule 13 of the Solicitors practice rules for the reason that I worked from home and was not open to the public and worked for friends for a short period of time until I joined an existing firm of solicitors.

Mr. K - referred to in your letter of 5th October had been a long standing client of myself for whom I had acted whilst I was with two previous firms, namely Messrs David Paul & Partners and Messrs. Bull & Bull.

On the 26th April 1993 I commenced employment with the Luper partnership a firm of solicitors in Camden. During the period I practised on my own account I had in force a practising certificate and insurance indemnity.

I in no way intended to be in breach of rule 13. In fact I consulted the Law Society Practice Directorate. They confirmed I would not be in breach of Rule

13 provided that I worked from home and was not open to the public and worked only for family and friends.

My position was that I was temporarily between jobs at the time for a very short period of about two months. Pending obtaining employment, I worked from home and was not open to the public and was available only to friends.

I do hope this explanation concludes the matter.

Yours faithfully
(Signed) Peter Durham.

7. As a result of the letter further enquiries were made to the Legal Aid Board and additional information was provided. In February 1993 the respondent had applied to the Legal Aid Board for the transfer to himself of the Legal Aid Account Number of the former practice of David Paul & Partners. The Board's enquiries established that the respondent had a Practising Certificate and the Board was not put on enquiry that the respondent was not permitted to practise on his own account. The assignment of the legal aid account number took place. A total of thirty eight Legal Aid certificates were found to have been allocated to the respondent. Nine had been completed and stage payments had been made on fourteen. Between the 12th March 1993 and the 27th January 1994 a total of £47,735.66 had been paid to the respondent by the Legal Aid Board as a result of claims made by him of which the total for profit costs was £38,809.76.
8. Additional material provided by the Legal Aid Board was put to the respondent by the Bureau for his comments by letter of the 31st March 1994. There was no reply despite a reminder of the 21st April.
9. The Tribunal had before it a bundle of documents showing applications for the transfer of Legal Aid certificates in favour of the respondent in fifteen cases and copies of the payment advices in respect of payments made by the Board to the respondent between the 12th March 1993 and the 12th August 1994. By the latter date the payments made to the respondent had increased to £89,717.01.
10. On the 13th May 1994 the respondent was given notice of an intended inspection of his books by the Law Society's Monitoring Unit. The notice was sent by recorded delivery. It appeared that the respondent had signed the Post Office delivery slip. He said he had no recollection of having received the Notice and believed the slip might have related to more than one item and it was possible that he had signed the slip as a receipt for the other item and not for the notice addressed to him by the Law Society. The respondent was required in that notice to produce books of account for inspection on the 24th May 1994. The respondent failed to appear at the time date and place arranged and the Monitoring Unit visit was accordingly frustrated.
11. An investigation of the respondent's books of account by the Investigation Accountant of the Bureau was next attempted. Notice was given on the 23rd June 1994 requiring the respondent to produce his books of account for inspection on the 11th July. The respondent failed to attend (the letter of notification was subsequently returned in the

course of post as the respondent had failed to collect the recorded delivery package) but the Investigation Accountant succeeded in making contact with him and arrangements were made for the inspection to be re-started on the 13th July.

12. The Investigation Accountant confirmed that as at the 30th June 1994, as a result of numerous claims made by the respondent on the Legal Aid Board using his own account number, payments had been received by him from the Legal Aid Board totalling £60,307.89 and as at the same date he held £49,008.58 on client account and £4,400.10 on office account. The respondent had failed to maintain proper accounts at all and in particular had not maintained a clients' ledger or cash book.
13. The respondent had been receiving money from the Legal Aid Board since at least March 1993 and as not all the money received from the Board belonged to the respondent it fell within the definition of clients' money, and as the respondent had also handled clients' money on behalf of at least one client, the respondent was obliged to comply with the Solicitors Accounts Rules and to deliver accountant's reports. At the time of the applicant's application to the Tribunal no accountant's report had been delivered by the respondent. However the respondent produced a copy accountant's report dated the 19th December 1995. It was recognised that the accounting period did not comply with the Solicitors Accounts Rules, the accounting period examined being from the 8th February 1993 to 31st August 1994.
14. The accountants said in their covering letter that the respondent had been clearly in breach of the Solicitors Accounts Rules during the period in that he did not keep sufficient accounting records by way of recording in, through the medium of a cash book, nor were periodic reconciliations of clients' bank account carried out. It was said that that deficiency had at the time been rectified. In an appendix to the accountant's report it was said that the reporting accountants believed the solicitor's failure to maintain adequate records was attributable to inexperience in practice management and work on a number of complex Legal Aid cases.
15. In his application the applicant referred in particular to a client of the respondent, Miss K, who had complained to the Bureau. During the course of discussions between the applicant and the respondent, the Tribunal was told, the respondent had given detailed explanation of that matter and the applicant did not intend to rely upon the facts surrounding that case.
16. Following investigation by the Legal Aid Board and the respondent's then employers, the Luper Partnership, the respondent repaid in full two claims, having failed to produce any file records at all and having conceded that there had been an over-payment in respect of a further thirteen client matters involving eighteen unjustifiable green form claims which had been identified and were admitted by the respondent. The total sum repaid to the Legal Aid Board was £2,150.00.

The Submissions of the Applicant

17. The applicant was aware of the respondent's representation that he in fact had not received notice to produce his books of account. That was a matter to be decided upon by the Tribunal in the light of the respondent's own representations.

18. With regard to the allegation that claims had been made for costs upon the Legal Aid Fund which the respondent knew or ought to have known he could not justify, the respondent had spent some time making explanation. As a result the applicant did not put the case as fraud upon the Legal Aid Fund. It was the applicant's case that the respondent's method of working had amounted to a "disaster waiting to happen". The respondent had employed a series of unqualified assistants who undertook the fee earning work. They had not been supervised to any great extent, evidenced by the fact that the respondent had not been able to explain certain of the claims made under the green form scheme. In some cases he had been unable to produce a file relating to a particular matter.
19. The respondent had applied to the Law Society for a waiver in connection with Practice Rule 13. In his application to the Law Society he indicated that he had worked for four firms of solicitors prior to qualification in which he enjoyed the title "Head of Litigation". The respondent did not have a track record of great maturity. The respondent's background and his personal history were central to the matters placed before the Tribunal.
20. The respondent had set up in sole practice within days of being admitted as a solicitor. He said he practised as a sole practitioner only until April 1993 but there was no doubt that the respondent had handled clients' money until 1994. Some £89,000.00 had been paid to him by the Legal Aid Board up to August 1994.
21. It was the respondent's case that he believed that running a successful practice on his own account would be a good basis upon which to apply for a waiver. In the submission of the applicant that approach was illogical. By practising in breach of the relevant Practice Rule, the respondent was in effect ensuring that he was disqualified from a successful application for a waiver by dint of the fact that he had thereby simply put himself in default.
22. The respondent was to say that he had been disorientated when moving clients from firm to firm. The respondent's dealings with Messrs. Lupers were particularly disturbing whatever label was applied to the respondent's relationship with that firm, in the submission of the applicant the respondent had taken the view that the clients for whom he acted were his own clients and he would retain them. The respondent had been determined to keep his client base with a view to financial gain.
23. The respondent had delivered an accountant's report after the commencement of the disciplinary proceedings. The report revealed an apparent shortage of some £30,000.00 and other inadequacies. The respondent had provided a relevant ledger card showing lump sum transfers. The respondent's accountants report had indicated to the Law Society that the respondent's failure to keep adequate records was due to his inexperience. Rule 13 was in place precisely to cover that aspect. It was the intention of that Rule that an inexperienced solicitor should not be permitted to practise on his own at a time when he had insufficient practice management experience. It had been the respondent's case that he had been acting for clients only in a modest way but the payments received by him from the Legal Aid Board gave a clear indication that that was not so.

24. There had been two attempts to inspect the respondent's books of account. It was the respondent's case that he had not known about the inspections despite apparently having signed the receipt for one notice delivered to him. He did not collect the recorded delivery item from the Post Office when he had been notified that it was awaiting collection in the second instance.
25. The most serious allegation, in the submission of the applicant, that was before the Tribunal was that the respondent had given a misleading explanation to the Bureau. There was no doubt that that did amount to conduct unbecoming a solicitor. In his letter of the 10th December 1993 the respondent said that he had worked from home and was not open to the public. He indicated that he acted only for friends and family. From the evidence before the Tribunal that was manifestly not so. Further enquires conducted by the Legal Aid Board provided much information showing the extent to which the respondent conducted work on behalf of clients and the payments received by him. When the position had become clear, the respondent made no further response to letters addressed to him by the Bureau.
26. With regard to the legal aid matters conducted by the respondent it was not the applicant's case that the respondent had attempted a fraud on the Legal Aid Fund. In the submission of the applicant the respondent had conducted his practice in a shambles. The respondent had employed fee earners whilst apparently working under the umbrella of the Luper Partnership. In effect the respondent was "sub-contracting" work. The Luper Partnership regarded that as extremely distressing and, indeed, might well have been held responsible for the actions of those persons when they were unaware of what was going on.
27. No file records of a number of Legally Aided matters survived which was in the submission of the applicant a disastrously misguided approach on the part of the respondent. At best the respondent's method had been a recipe for disaster. In every Green Form case the maximum sum had been claimed from the Legal Aid Board - when the Board questioned that practice certain monies were repaid.
28. The working of the Legal Aid system depended entirely upon there being absolute trust by the Legal Aid Board on those computing the claims on the fund. If at any time the Board could not rely upon the honesty, integrity and meticulous approach of a solicitor, then the system could not continue in its current form.
29. The applicant accepted however that the respondent had not made a deliberate attempt to obtain more money from the fund than that to which he was entitled. The respondent had adopted an unacceptably cavalier approach which really was likely to mean that inaccurate claims would be made. The respondent had a reckless disregard for getting things absolutely right.

The Submissions of the Respondent

30. The respondent accepted that he had practised on his own account for a period of some two months between February 1993 and April 1993.

31. The respondent had entered into partnership discussions with Gibilaro Choudhri who were former colleagues at David Paul. The respondent had suggested that they together with the respondent should start up a practice at serviced offices. The respondent assisted them to find such offices. Partnership meetings were held and the respondent had obtained a Legal Aid reference number and introduced clients to them. It had been agreed that the respondent would join them from day one as a partner in the new firm. He had transferred all his clients to the new firm.
32. On the 23rd January 1993 the respondent was married and went on honeymoon. On his return in early February the former colleagues at Gibilaro Choudhri informed the respondent that he was not to be a partner but was to work on a commission basis. The respondent was disorientated by having to transfer his client list to four different firms who he believed wanted only to use him. That took place in a short space of time when the respondent was concentrating on his wedding arrangements.
33. The respondent stupidly thought he would transfer the files into his own name. He searched for a firm to join. He had been in negotiation with three firms and had been put in contact with a number of solicitors and an employment agency. Eventually he joined the Luper Partnership in April.
34. The respondent had run his own firm as a holding operation, a reaction to adversity, for about two months between 24th February and 26th April.
35. It was on the 26th April that the respondent entered into an arrangement with the Luper Partnership.
36. The respondent had put before the Tribunal a copy of the letter which he wrote to the Luper Partnership dated the 29th April 1993. This is set out in full below;

"Dear Sirs

RE: AGREEMENT

I write to confirm the following agreement reached on Friday 16th April:-

- (1) I will pay a rent of £200.00 pounds per week commencing on 26th April payable weekly in advance.
- (2) The Luper Partnership will be acting as Agents for collecting my payments for bills which I personally rendered to the Legal Aid Board in respect of my arrangement to use their Legal Aid Reference number.
- (3) All costs received in respect of any work carried out by myself shall be paid to me upon service of my invoice without any deductions within 7 days of the Luper Partnership receiving the same. I shall be directly responsible for my VAT accounts.
- (4) That there will be no further charges upon myself for 6 months in respect of use of all overheads of your firm. For the purposes of

clarification the maximum amount payable to the Luper Partnership shall amount to £200.00 pounds per week.

- (5) I shall provide and employ my own secretary.
- (6) I shall have the free use of the Document Exchange but shall be liable for my own postage.
- (7) The terms of this agreement are to continue for a 6 months period and shall not be altered except by mutual consent.
- (8) As the Luper Partnership is the firm on record either with Legal Aid or the Courts then the Luper Partnership retains a lien over the files introduced by me until such time as the Luper Partnership are no longer the firm on record or if the Legal Aid Certificate has been transferred.
- (9) The Luper Partnership agree that their professional Insurance Indemnity shall provide Indemnity to me in respect of any liability arising out of the conduct of any case I deal with. If the professional Insurance Indemnity is subject to any excess, then I, will be liable to pay such excesses for any action brought against the Luper Partnership on the files I had the conduct and control over. Further the Luper Partnership agrees not to pursue any action against me save for matters of fraud or other matters not covered by the professional Insurance indemnity.
- (10) I shall also agree to provide my own office equipment and to pay for all disbursements. Client or otherwise.
- (11) I will be allowed access to the office of the Luper Partnership between the hours of 7.30 a.m. to 7.00 p.m. (weekdays only).
- (12) I will make such arrangements as are necessary to deal with my matters while I am away from the office due to illness/holiday.
- (13) I agree not to hold myself out as a partner of the Luper Partnership or to bind the firm in any way. Further, I have no authority to give undertaking other than those specifically sanctioned by one of the partners of the Luper Partnership.

Yours faithfully
(Signed) Peter Durham

37. The respondent told the Tribunal that after the 26th April all clients were seen from the Luper partnership offices for which he paid rent. It was represented that the respondent was acting for clients on behalf of Luper.
38. The respondent said that was with the exception of files which had concluded which he dealt with under his own name. The administrative task of dealing with the

preparation of the bills, attending taxation and claiming costs were the administrative tasks to which he referred.

39. After the 26th April 1993 the respondent's office was not open to the public. He took on no new cases in the name of Peter Durham after the 26th April. He dealt merely with the administration of closed files. He represented no-one nor advised anyone in the name of Peter Durham.
40. The respondent said that after April 1993 he ran offices in the name of Peter Durham in order to collect monies in. The majority of his files had concluded by the time they were transferred to him. The remainder concluded in April 1993 except perhaps for two which concluded early in May 1993.
41. The respondent had taken the view that if he kept his own firm going it would be of assistance to him in applying for a waiver of Practice Rule 13. He had understood that there existed an exception to Rule 13 of the Solicitors Practice Rules 1990 in that a solicitor was permitted to open a practice in his own name provided it was not open to the public.
42. In the matter of the accountant's report, the respondent had employed an accountant although he had not much confidence in him. Apparently a good working relationship did not exist. The respondent thought he could draft the client ledgers himself as there were only a few of them. Unfortunately the respondent had become so busy that he did not keep up with that task. After joining the Luper Partnership the respondent relied upon their resident book-keeper who was highly experienced. The respondent said he had been lulled into a false sense of security in that he did not feel that he was doing any work in the name of Peter Durham as he had no live files in that name after May 1993.
43. In addition the number of transactions were smaller in number which encouraged the respondent to believe that he could sort out his accounts himself. This was evidenced by the fact that the total number of payments out of the respondent's client account had between February 1993 and January 1994 been nine in number. After January 1994 no payments were made out of client account in respect of any client. Between February 1993 and August 1994 there were only twenty three payments into client account most of which were in respect of profit costs. The respondent regretted that he had not kept his books of account up to date, he had intended to do so but had been deflected by pressure of work. His accounts had been brought up to date at the time of the hearing and an accountant's report had been submitted to the Law Society.
44. The respondent denied that he had failed to produce his books of account to the Law Society's Monitoring Unit Inspector or Investigation Accountant. He did not remember receiving the recorded delivery notice of the Monitoring Unit inspection. The copy delivery card referred to a discrepancy in the items that were supposed to be delivered and the items that were actually delivered. The respondent could not understand the reason for that. It was suggested that perhaps one letter was not delivered on that day. He believed the postman might have made a mistake. At no time did he know about the Law Society's letter dated the 13th May 1994 or that an appointment had been fixed for the 24th May 1994.

45. The letter would have been delivered at the respondent's home address. He would leave home in the morning before the postman called to deliver mail. Sometimes the respondent would speak to the postman in the street. He believed that might have happened on that day and not all post had been given to him because he was hurrying to get to work. The missed appointment was not intentional and the respondent apologised for any inconvenience caused.
46. With regard to the letter of the 23rd June 1994 sent by recorded delivery, the notification was left at the respondent's home address again the respondent normally leaving for work before the post arrived. He did not note the appointment fixed for the 11th July. When the Investigation Accountant called on the 11th July the respondent was at work. He left a card informing the respondent that he had called. When the respondent returned home from work he telephoned the Investigation Accountant and made an appointment for the next day, 13th July 1994. The respondent had co-operated fully with the Investigation Accountant and had showed him all financial records and remained available to deal with any questions raised.
47. The respondent admitted that he had not complied with the Solicitors Accounts Rules in that he had failed to keep his books of account properly written up. He had believed he would be able to do so but had been deflected by pressure of work.
48. The respondent admitted that he had provided a misleading explanation to the Bureau. He had written an ill advised letter and apologised.
49. The respondent denied that he had been guilty of conduct unbecoming a solicitor in that he had made claims for costs upon the Legal Aid Fund which he knew or ought to have known he could not justify. The Tribunal was invited to note that the applicant did not put his case as one of fraud. One client who had complained had been particularly difficult and hot tempered. The respondent did not go into detail before the Tribunal as this was the client in respect of whom the applicant considered sufficient explanation had been given by the respondent. The details of the explanation were contained in the statement of the respondent dated 12th October 1995 which had been filed with the Tribunal.
50. There were a number of matters where Legal Aid green forms appeared to have been backdated. The relevant cases had been handled by one of the clerks employed by the respondent who initially had omitted to insert the dates on the forms. When the claims for payment came to be made the estimated date when the green form was signed was inserted. Instead of inserting 1994, the clerk had inserted 1993, thus the forms appeared to have been backdated. The clerk did not retain files for the matters and the costs claimed could not be proved. The respondent had decided to allow the Legal Aid Board to recoup monies paid in respect of some eight files where that happened.
51. Another clerk dealt with different legal aid matters. In six of the matters handled by that clerk the files had not been retained and again the respondent decided to allow the Legal Aid Board to recoup the monies paid because the costs claimed could not be proved. The clerk involved had several years experience of general litigation and had attempted the Law Society Finals on two occasions.

52. There had been four further matters queried by the Legal Aid Board. Substantial work had been undertaken, but the files were not available to support the claims made upon the legal aid fund.
53. The respondent admitted that he had failed to reply to some letters from the Bureau addressed to him and apologised for that.
54. The respondent believed he was a competent solicitor who had been treated badly by firms of solicitors by whom he been either employed or had a form of association. In January 1993 when the respondent married he was destitute. He could not afford a honeymoon and was assisted financially by his father. The respondent had discussed the question of a waiver in respect of Practice Rule 13 with the Law Society. He had placed correspondence concerning that matter before the Tribunal. He had not been granted the waiver but believed that his position had been covered by the arrangement made by the Luper Partnership. In connection with that relationship he rented office space from the partnership and had the use of a telephone and a courier. The respondent himself provided two secretaries. The clients had already been told that the respondent worked for the Luper Partnership. The respondent said the position was that he acted for the Luper Partnership. He always represented that work had been undertaken by the Luper Partnership. All letters were written on that firm's letterhead. The respondent was never represented as working on his own.
55. The respondent had taken out his own Indemnity Insurance, however in the arrangement with the Luper Partnership it was agreed that that firm's indemnity insurance would be extended to provide cover for the respondent.
56. The respondent confirmed that all costs went to him but all Legal Aid certificates had been in the name of the Luper Partnership. Letters and bills had been sent out in that firm's name. It was the respondent's case that the profit sharing arrangement which existed was not unlawful and confirmed his view that the arrangement was not a device to get around the provisions of Practice Rule 13.
57. The respondent told the Tribunal that he would not deal with ~~the~~ matters in the way that he did again and would not be as silly as he had been in connection with the keeping of proper accounts. The respondent's book-keeping failures had been fully remedied by his accountant.
58. The respondent accepted that he took a cavalier approach to the meticulous completion of and adherence to the requirements of the Legal Aid Green Form Scheme.
59. The respondent was a caring solicitor taking great pains to ascertain the context in which clients' problems arose and the history of the client. He took a great deal of time to ascertain that information.
60. The respondent believed when he first took the Law Society's qualifying examination in 1980 that because a new system had been introduced, geared to prospective solicitors who had experience of solicitors offices, he was at a disadvantage as were

many other people who took the examination. He said that 120 people took the examination of whom only 19 passed.

61. After failing the qualifying examination for some time the respondent undertook menial jobs. He believed he had retrained himself spiritually, intellectually and morally. The respondent had joined a firm of solicitors in 1986 the principal of which subsequently suffered a nervous breakdown when the whole of the litigation department fell on the shoulders of the respondent. After the respondent joined another firm it was suggested that he might take his Law Society final examinations. He attended lectures and had two to three months off when he passed the examinations largely because, he believed, his experience had led him to understand the practical dimension of the examination.
62. The respondent had suffered as a result of the rules imposed upon him by the Law Society. He had not worked since December 1994. He was concerned that he had appeared to be a villain. He had needed time to take stock and believed he had developed himself spiritually, emotionally and psychologically. He asked the Tribunal to look upon him with a degree of leniency assuring the Tribunal that he would not behave again as he had done.

The Tribunal FOUND all of the allegations to have been substantiated but noted in particular that no fraud was alleged against the respondent. The picture which unfolded before the Tribunal was one demonstrating that the respondent had a cavalier disregard for the rules of the Solicitors' profession. Any person entering that profession had the potential to derive benefits therefrom but had also to recognise that membership of the profession imposed considerable burdens which could not be overlooked or ignored.

The whole purpose of Practice Rule 13 was to ensure that an inexperienced solicitor could not be available to advise members of the public and have conduct of possibly complicated and important matters without being supervised by a more senior experienced member of the profession. The respondent acted for clients whilst not qualified for a sufficient period to enable him to practise on his own account and the failures and discrepancies which arose reflected precisely the mischief which Practice Rule 13 was designed to avoid.

The Tribunal was deeply concerned that an established firm of solicitors might take in a fledgling lawyer and make it look as if he was supervised when that manifestly was not the case. Established firms must not take this step.

The respondent's failure to provide an accountant's report, to produce his books of account and his failures to comply with the Solicitors Accounts Rules were in his view minor matters because of the small number of financial transactions carried out by him on behalf of clients. The Tribunal find that attitude to be wholly unacceptable. The importance of handling clients' monies with meticulous regard to the Solicitors Accounts Rules was of fundamental importance. Clearly it was of the utmost importance for a solicitor to comply with the Solicitors Accounts Rules, to keep his books of account accurately and up to date and to ensure that an accountants report was filed with the Law Society in good time. A solicitors' books of account must be produced to an investigator of the Law Society whether from its Monitoring Unit or its

investigation accountant. A solicitor who fails in any of those respects actively prevents the Law Society from fulfilling its role of policing the profession and making sure that members of the public are not placed in jeopardy. It is for those reasons that the respondent's failures are regarded as serious.

The allegation which the Tribunal consider to reflect the gravest action of the respondent was that he had misled his own professional body. The respondent accepted what he had done and had apologised for it.

Having considered all explanations and matters of mitigation placed before the tribunal, they could not overlook the respondent's cavalier disregard for the rules by which he was bound being a member of the solicitors profession which had been put in place for the protection of the public and to preserve the good reputation of the solicitors' profession. That disregard was wholly unacceptable and the Tribunal did not consider that the respondent was fit to be a solicitor. The Tribunal Ordered that the respondent be Struck Off the Roll of Solicitors and further Ordered that he pay the costs of and incidental to the application and enquiry in a fixed sum.

DATED this 3rd day of May 1996

on behalf of the Tribunal

A handwritten signature in black ink, appearing to read 'J.N. Barnecutt', written in a cursive style.

J.N. Barnecutt
Chairman