

IN THE MATTER OF PHILLIP LEONARD GEORGE AVERY AND RESPONDENT 2
solicitors

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr. J N Barnecutt (in the Chair)
Mr. A H Isaacs
Dame Simone Prendergast

Date Of Hearing: 22nd May 1997

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 16th April 1996 that Phillip Leonard George Avery and RESPONDENT 2 both of Sussex Lodge, Station Road, Taunton, Somerset might be required to answer the allegations set out in the statement which accompanied the application and that such order might be made as the Tribunal should think right.

The Office for the Supervision of Solicitors was the successor to the Solicitors Complaints Bureau as from the 1st August 1996.

The allegations were that the respondents had each been guilty of conduct unbecoming a solicitor in each of the following particulars, namely that they had:-

- (i) failed to exercise proper supervision of their financial services staff;

- (ii) contrary to Rule 10 of the Solicitors Practice Rules 1990 failed to account to their clients for any commission of more than £10 received and/or failed to disclose to their clients the amount of any commission received or the basis of calculation of commission;
- (iii) contrary to Rule 8(6) of the Solicitors Investment Business Rules 1990 failed to investigate and maintain records of complaints;
- (iv) contrary to Rule 8(5) of the Solicitors Investment Business Rules 1990 failed to establish or maintain a Central Register of matters required to be recorded by the said Rules;
- (v) contrary to Rules 9(1) and 9(2) of the Solicitors Investment Business Rules 1990 failed to take reasonable steps to ascertain the facts about the client's personal and financial position or the suitability of investments or transactions for the client as may reasonably have been expected to be relevant to the proper performance of authorised investment services;
- (vi) contrary to Rule 9(5) of the Solicitors Investment Business Rules 1990 failed to keep or maintain records to show the information required to be ascertained by Rules 9(1) and 9(2) of the Solicitors Investment Business Rules 1990;
- (vii) contrary to Rule 10 of the Solicitors Investment Business Rules 1990 failed to provide a client with a Client Agreement in an appropriate form;
- (viii) contrary to the requirements of Appendix 7 of the Solicitors Investment Business Rules 1990 failed to make reasonable enquiries and/or to provide the best advice to their clients;
- (ix) contrary to the requirements of Appendix 7 of the Solicitors Investment Business Rules 1990 failed to provide a Buyer's Guide in correct form and/or at the appropriate time;
- (x) contrary to Rule 12(5) of the Solicitors Investment Business Rules 1990 failed to maintain records of transactions;
- (xi) failed to keep accounts properly written up for the purposes of Rule 11 of the Solicitors Accounts Rules 1991;
- (xii) contrary to Rule 8 of the Solicitors Accounts Rules 1991 drawn money out of client account other than as permitted by Rule 7 of the said Rules;
- (xiii) utilised clients' funds for the purposes of other clients;
- (xiv) utilised clients' funds for their own purposes;
- (xv) failed to deliver Accountant's Reports to the Law Society in accordance with the provisions of Section 34 of the Solicitors Act 1974.

The application was heard at the Court Room, No.60 Carey Street, London, WC2 on the 22nd May 1997 when Gerald Malcolm Lynch solicitor and partner in the firm of Messrs Drysdales of Cumberland House, 24/28 Baxter Avenue, Southend on Sea, Essex appeared for the applicant and A D Hughes solicitor of Messrs. Morgan Bruce of Queens House, 55-56 Lincoln's Inn Fields, London, WC2A 3LT appeared for Mr Avery and ~~RESPONDENT 2~~ was represented by Andrew Gregg of Andrew Gregg & Co., of 6 Queen Square, Bristol.

The evidence before the Tribunal included the admissions of both the respondents and the oral evidence of both respondents and exhibits "A&B1" and "A&B2", respectively the accounts of the practice and a testimonial in support of ~~RESPONDENT 2~~

At the conclusion of the hearing the Tribunal made the following Orders:-

- (i) The Tribunal ORDERED that the respondent Phillip Leonard George Avery of Williton, Somerset, TA4 (formerly of Sussex Lodge, Station Road, Taunton, Somerset), solicitor, be struck off the Roll of Solicitors and they further ordered that he pay the costs of the application and enquiry fixed in the sum of £3,500.00.
- (ii) The Tribunal ORDERED that the respondent 2 of West Monkton, Taunton, TA2 (formerly of Sussex Lodge, Station Road, Taunton, Somerset), solicitor, be suspended from practice for the period of one year to commence on the 22nd May 1997 and they further ordered that he pay the costs of the application and enquiry fixed in the sum of £1,494.66.

The facts are set out in paragraphs 1 to 33 hereunder.

1. The first respondent, Mr Avery, was born in 1946 and admitted a solicitor in 1973. The second respondent, , was born in 1948 and was admitted a solicitor in 1985 having previously been a Chancery Barrister. At the material times the respondents carried on in practice in partnership as Avery Barrie & Co. from offices at Sussex Lodge, Station Road, Taunton, Somerset. The Law Society resolved to intervene into the respondents' practice at the beginning of November 1995. Subsequently the respondents' practice was acquired by Messrs. Veitch Penny who employed both of the respondents as assistant solicitors for some months until they ceased to be so employed.
2. During the course of the hearing the Tribunal had the opportunity of studying the respondents' firm's office manual which contained job descriptions of each partner. Mr Avery was described as "the finance partner" and his main duties and responsibilities were to supervise the provision of financial services to clients; the maintenance of current product information and compliance under the Financial Services Act; to maintain an effective and efficient information system for the firm; to provide timely and accurate communication of financial management information; to be responsible for the standards of the office manager, book keeper, cashier and any relevant on-job training requirements to ensure that the firm's VAT income tax and similar matters were always in accordance with legislation. He was also responsible for information technology strategy. He was expressed to supervise the office manager/book keeper

cashier. ~~RESPONDENT~~2 job description contained none of those matters and in evidence he said he did not in fact assume responsibility for any of them.

3. The respondents' firm was regulated by the Law Society in the conduct of investment business. Discrete investment business was undertaken by the firm's financial services director, Mr Gill who joined the firm in 1990. He left in 1992. In December 1990 Mr Bird had been employed as an additional financial services director until May of 1991. A new financial advisor, Mr Wilson, had joined the firm in August 1994. Mr Gill had left the firm early in 1992 and between then and Mr Wilson's joining the firm Mr Avery himself had given investment advice to clients although only on three or four occasions. All such employees of the firm had backgrounds rendering them experienced in investment business and matters governed by the Financial Services Act.
4. The Monitoring Unit of the Law Society had visited the firm in November 1990 and November 1991 when a number of breaches of the Solicitors Investment Business Rules 1990 had been revealed. The respondents were severely rebuked in May of 1994 by the Law Society in respect of the same.
5. On the 8th and 9th November 1994 a further monitoring visit was made to the firm by a senior investment business officer of the Law Society. The firm's compliance with the Investment Business Rules was found to be wanting in a number of aspects concerning a number of individual matters. The financial adviser, Mr Wilson had been provided with a checklist used for investment business client files, other than that he had not received any formal training in the Solicitors Investment Business Rules. He had had previous experience with another firm of solicitors. Mr Wilson had not been familiar with the requirements of Rule 12(5) - relating to records of transactions and had not complied with the Rule.
6. The document devised by Mr Wilson to obtain client agreement to the retention of commission had been approved by Mr Avery but it did not give any indication of the amount of renewal commission nor did it express the client's right to the commission.
7. The client agreement which was in use at the time and the buyers guide did not comply with the Solicitors Investment Business Rules. The client agreement was a hybrid of a Rule 10 client agreement and a private client letter, the form of which was laid down by the Council of the Law Society and could not be altered. The buyer's guide was not on plain paper and exactly in the form of Appendix 7 part 2 to the Solicitors Investment Business Rules. The firm's version was incorrectly on its own letterhead and omitted the heading "The Law Society".
8. When the Monitoring Officers reviewed a selection of files concentrating on investment business conducted by the firm since the earlier monitoring visit in November 1991 a large number of breaches were found.
9. There had been inadequate records to satisfy Rule 12(5) and none of those records were in a central register which was contrary to Rule 8(5). Records to evidence "best advice" were inadequate on the majority of files. Several files also indicated that the investigation of facts was inadequate with consequent breaches of Rules 9(1) and 9(5).

The buyer's guide was not in the appropriate form contrary to Rule 11 (Appendix 7) the exemption via paragraph 3(e)(i) of part one of Appendix 7 was not available as the client agreement utilised by the respondents' firm in respect of its discrete investment business clients did not qualify as a "client agreement" as it was not in the form specified by Rule 10 and Appendix 2 to the Rules.

10. In relation to a particular client, Mrs B, the Monitoring Officers also identified breaches of Rule 9(2) in relation to an unsuitable investment and the monitoring officer considered there was also a breach of Rule 9(2)(c) - "churning".
11. A breach of Rule 7 was also noted in that the firm had failed to give 28 days notice in writing of the change of its name.
12. Solicitors Practice Rule 10 was breached with regard to the treatment of commission. The document drafted and used by Mr Wilson did not give any indication of the amount of renewal commission nor did it express the client's right to the commission. The officers also found example where a client's consent to retain commission had been sought retrospectively or where no disclosure document had been employed contrary to the Rule.
13. No bank reconciliations of client account could be produced which meant that the clients lacked the protection of accounting controls.
14. The Monitoring Unit Officers were unable to verify the actual amount of investment business conducted.
15. The Monitoring Unit Officers reached the conclusion that the firm was in breach of the Securities and Investment Board Principle 9 requiring a firm to organise and control its internal affairs in a responsible manner keeping proper records, and where the firm employed staff or was responsible for the conduct of investment business by others, it should have adequate arrangements to ensure that they were suitable adequately trained and properly supervised and that the firm had well defined compliance procedures.
16. The Monitoring Unit's report set out details of investment business matters relating to specific clients. The respondents admitted allegation (viii) and (x) in respect of Mrs H Mr A and Miss T and allegation (ix) in respect of Mrs B and Mr G. The Tribunal has therefore, confined itself to setting down brief details of the position relating to those clients.
17. Mrs H who was eighty nine years of age had shares with a market value of £149,000 and a further £36,500 in bank and building society accounts. In 1991 Mr Gill advised that the portfolio be "rationalised" and the total sum invested in an NPI with profits bond linked to a PEP. Mrs H had taken advice and the matter was the subject of possible litigation concerning an allegation that the firm had given negligent investment advice. Mr Avery had not treated the matter as a complaint to which Rule 8(6) applied and records of the complaint were not in the central register contrary to Rule 8(5). Rule 9(1) and 9(5) were breached because the investigation of facts (client fact find) was inadequate because it omitted details of the client's income, outgoings or

attitude to risk. Rule 9(3) was breached because the risk warnings included in the letter to the client of November 1991 were incomplete and did not refer to the losses relating to early surrender or losses relating to dealing costs. The client agreement dated 22nd November 1991 was not in compliance with Rule 10 as it omitted certain mandatory clauses. There was no evidence that products of companies other than NPI had been considered contrary to Rule 11, Appendix 7. No records of transactions relating to the purchase of the bond or PEP were found contrary to Rule 12(5).

18. In the matter of the clients Mr A and Miss T, who consulted the firm to act on their behalf in a house purchase, they were referred to the financial services department for mortgage advice. Notes on the file indicated that from the outset the clients were seeking a mortgage that they could overfund in the future when they had more resources which would enable them to repay the mortgage early. There was no evidence on the file that anything other than endowment mortgages had been discussed with the client and the Monitoring Officers noted that only two particular products had been specifically discussed only one of which met the clients' criterion of early repayment. That amounted to breach of Rule 11, Appendix 7 as there were inadequate records to evidence "best advice". No records of transactions sufficient to satisfy Rule 12(5) were found on the file and no such records were in the central register contrary to Rule 8(5).
19. In the matter of Mrs B and Mr G the firm recommended and arranged an Eagle Star life policy for those clients. The client agreement dated 29th June 1992 did not contain the mandatory clauses laid down in Appendix 2. The alternative to a client agreement, the buyer's guide was also not in the correct form and there were inadequate records to evidence "best advice" contrary to Rule 11, Appendix 7. No records of transactions were in the central register in breach of Rule 8(5). There was no disclosure in writing of the commission or consent obtained to retain it contrary to Solicitors Practice Rule 10.
20. The Monitoring Unit of the Law Society concluded that the firm's compliance with systems and procedures was inadequate to ensure compliance with discrete investment business rules and the lack of up to date accounting controls raised serious concerns.
21. The Investigation Accountant of the Solicitors Complaints Bureau had inspected the respondents' books of account in April 1995 and again in October 1995. The two reports following those inspections respectively dated the 31st May 1995 and 17th October 1995 were before the Tribunal.
22. In the first of those reports the Investigation Accountant said the firm's books of account were not in compliance with the Solicitors Accounts Rules as they contained no entries later than the 30th September 1994 and no client account bank reconciliations had been carried out later than the 31st May 1994.
23. In view of the lack of entries and reconciliations the Investigation Accountant did not consider it practicable to calculate the firm's total liabilities to clients as at the 30th April 1995. However from available documents he was able to compute that a

minimum liability of £67,060.03 existed at the 13th April 1995 in respect of the five undernoted clients alone:-

Dr and Mrs S	£2,160.00
G and Ms W	6,000.00
S Deceased	9,928.75
Mr and Mrs A	40,000.00
R S Deceased	<u>8,971.28</u>
Minimum Liability	<u>£67,060.03</u>

24. A comparison of the minimum liability with cash held on client bank account at that date revealed a cash shortage of £32,413.88. The respondents replaced the minimum cash shortage during May 1995.

25. It had not been possible to account for even the minimum cash shortage but transfers from client bank account to office loan account totalling £18,700.00 had been made as follows:-

<u>1994</u>	<u>£</u>
15th November	5,000.00
30th November	2,800.00
1st December	4,200.00
16th December	<u>6,700.00</u>
	<u>£18,700.00</u>

26. The effect of those transfers was to reduce the respondents' indebtedness to their bankers from £27,839.00 to £9,138.00. In evidence Mr Avery said he believed they represented transfers made against Legal Aid cheques.

27. Mr Avery told the Investigation Accountant that his own reporting accountant had indicated that a shortage of £27,839.00 existed on the firm's client bank account and the partners had rectified that shortage by obtaining an office loan and introducing those funds into client bank account on the 18th October 1994. The loan had been repaid in part by the above noted transfers. Mr Avery had told the Investigation Accountant that transfers had been made in respect of costs available but he had been unable to indicate the clients concerned. He went on to say that in all probability the transfers had been duplicated and had therefore contributed to the minimum cash shortage.

28. Further in the first report the Investigation Accountant stated that the respondents had not delivered Accountants Reports covering a period later than the 31st May 1993. The applicant told the Tribunal that a qualified Accountant's Report had in fact been filed for the financial period ending on the 31st May 1994. The respondents had not filed an Accountant's Report for the practice year spanning the 31st June 1994 to the 31st May 1995. It should have been filed by the 1st November 1995.

29. The second Investigation Accountant's Report dated the 17th October 1995 revealed that the books of account were not in compliance with the Solicitors Accounts Rules

as they had not been reconciled since the 31st May 1993 and in the period from the 1st June 1995 to the 30th September 1995 numerous client bank account receipts and payments had not been allocated to any individual accounts in the clients ledger. The respondents had engaged the services of the firm's own accountants to complete the writing up of the books of account and fully to reconcile them for the period from the 1st June 1995 to the 30th September 1995. The accountants had written to the Solicitors Complaints Bureau on the 12th October 1995 saying that they expected to complete that work by the 30th November 1995.

30. In view of the bookkeeping deficiencies the Investigation Accountant had not considered it practicable to attempt to calculate the firm's liabilities to clients. However from available documents he computed that a minimum liability of £438,743.25 existed at the 30th September 1995 in respect of the fourteen undernoted clients alone:-

S Deceased	£9,320.31
Mr and Mrs A	48,661.21
P Deceased	21,032.24
Mr and Mrs S	18,000.00
Mr G	14,522.58
Mr and Mrs B	30,899.42
Mr and Mrs W	44,713.16
Mr B	11,000.00
Mr and Mrs P	119,236.00
Mr and Mrs W	29,250.00
D Deceased	4,138.69
R S Deceased	8,971.28
Mrs H	28,598.36
Mr and Mrs F	50,400.00
	<u>£438,743.25</u>

31. A comparison of that figure with the cash available of £325,101.46 revealed a minimum cash shortage of £113,641.71.
32. Mr Avery had agreed the existence of the minimum cash shortage but gave no explanation as to how it had arisen. He had been unable to give any explanation in his oral evidence before the Tribunal. The respondents had not been able immediately to rectify the cash shortage.
33. The Investigation Accountant went on to report that the respondents had delivered an accountant's report on the 17th July 1995 for the financial year ending 31st May 1994 which was qualified, amongst other things, in respect of an unexplained shortfall of £61,549.93 after comparing liabilities to clients with cash available. The respondents said that they had placed a total of £61,549.93 into client bank account which in part was provided from their own personal resources and in part from a bank loan to the practice.

The Submissions of the Applicant

34. The respondents had breached both the Solicitors Investment Business Rules and the Solicitors Accounts Rules to a considerable extent.
35. The Investment Business Rules governed the position of a solicitor offering investment business advice under the provisions of the Financial Services Act. The Rules set out the requirements which were to be met.
36. The applicant revealed that eleven applications had been made to the Law Society's Compensation Fund. Grants paid totalled £183,713.44. Pending claims totalled £5,087.66. No recoveries had been made.

The Submissions of Mr Avery

37. Mr Avery had begun as a sole practitioner with a trade union client base. By 1980 he had developed a general office base and was joined by ~~RESPONDENT 2~~ a former barrister, in about 1989. At about the same time the firm opened its financial services department. They recruited Mr Gill who was experienced in the insurance industry and in merchant banking. A commercial software package and trading analysis covering the Financial Services Act practice was obtained. The financial services business increased rapidly and some four or five months after the first appointment Mr Bird was appointed as a second financial advisor. He had previous experience with brokers and then with a major insurance company. That appointment was described as a disaster and the department collapsed over the ensuing five months.
38. Mr. Avery was the compliance officer for the purposes of the Solicitors' Investment Business Rules.
39. By May 1991, the respondents were paying the salaries but the income had dwindled. The respondents decided to close the financial services department. The respondents had looked to the future and had decided to revamp their offices in order to attract clients and had sought to obtain British Standard 5750 and a Legal Aid franchise. An up-dated computerised accounts system was considered necessary to achieve those ends, but time and care was devoted to choosing an appropriate system. Mr Avery had attended a course and eventually an accounts package was bought. The respondents had been unable to get the system to work at all. The system was replaced with another, but that meant that there had been a considerably delayed start to the new accounting system.
40. Eventually the system was in place from November 1993. The respondents had employed a cashier for a number of years and despite the fact that she was given much assistance, she had not mastered the system and left the firm.
41. The respondents were aware that there were some irregularities. The first indication that there really was a problem was when the respondents' own accountants were unable to reconcile inter-account transfers. Some transfers appeared to have been too high and some to have been too low. The respondents instructed their accountants to investigate those matters. The respondents decided to dispense with the cashier's

services. The respondents themselves had to check the manually kept client ledger cards. They had from time to time been given what purported to be reconciliations, but they had found themselves unable to make sense of a number of the entries.

42. There were further substantial difficulties with the computerised system mainly in connection with dates. There had been no way of relating items to a particular month.
43. At the firm's year end in 1994 the figures had been some £60,000 adrift. The respondents had a meeting with their accountants who advised that that figure had to be put in as a balancing figure and they prepared their report accordingly.
44. The respondents returned to a manual system. New accountants had been instructed and there were wide discussions as to the viability of the practice and so on. The respondents' Accountant's Report for the year ending May 1994 had not been completed by the time the Law Society intervened into the practice.
45. Mr Avery said he had despatched a letter of explanation to the Solicitors Complaints Bureau to which were appended thirty enclosures. The enclosures could not be found by the Bureau or its successor. Mr Avery had not obtained copies from the firm which took over his practice following the intervention. He believed those enclosures were crucial to any explanation he might be able to give, but they were not available. Mr Avery was pursuing a career not connected with the law. He had, following discussions with the firm which took over the practice, entered into a partnership voluntary arrangement. It was not known whether the respondents had been or would be given credit for work in progress taken over by the firm. Mr Avery had not kept in touch with the Compensation Fund and was unaware of the matters in respect of which payments had been made or claimed.
46. Mr Avery had been frustrated that his firm's assets had been taken over. He had the difficulty of not being in control of the firm's documents, in particular, the missing enclosures sent with the letter addressed to the Solicitors Complaints Bureau.
47. Mr Avery had set up a financial services department following the recommendation of the Law Society. He had introduced quality standards and was seeking a Legal Aid franchise. He had not put his head in the sand and had wished to be progressive and had sought to obtain an entirely appropriate computerised system for the purposes of accounting.
48. The firm had not been served well following very unfortunate appointments of staff in the financial services department. Similar problems had occurred on the accounts side and it had proved necessary to dispense with the services of a cashier. It would never be known if that cashier had contributed to the accounts discrepancies.
49. It was inevitable that to a certain extent a solicitor had to concentrate on client work and at the same time deal with accounting difficulties, problems with the firm's computer and financial services problems.
50. In addition to the staff and computer difficulties, the firm had been badly served by its accountants. Irregularities had been identified but the firm had not been given proper

conclusive advice. Mr Avery had been unable to explain why a flourishing practice should arrive at the state where the Law Society resolved upon an intervention. It was something that he would never ascertain.

51. No dishonesty had been alleged against Mr Avery and from the facts before the Tribunal it was impossible to infer dishonesty on his part.
52. Mr Avery estimated that the costs recovered by the firm which took over the practice's client files would reimburse payments made out of the Law Society's Compensation Fund.
53. Mr Avery was not enjoying good health. In the summer of 1996 he underwent tests for stomach problems and was waiting for an operation on his shoulder. He was not employed and had no immediate prospect of employment.
54. Mr Avery had been adjudicated bankrupt having previously entered into a partnership voluntary arrangement.

The Submissions of RESPONDENT 2

55. RESPONDENT 2 admitted the allegations and accepted that he had a joint responsibility as a partner for compliance with the Accounts Rules and Solicitors' Investment Business Rules. He was shocked and horrified at the sums paid out by the Law Society's Compensation Fund.
56. RESPONDENT 2 had not received training in management or running of a practice or in the area of financial services.
57. RESPONDENT 2 had prepared the firm's practice manual with a view to obtaining British Standard 5750 and a Legal Aid franchise. He had prepared the job descriptions contained therein from which it was plain that Mr Avery was responsible for financial management and the supervision of the accounts and finances of the firm.
58. The firm had endured a catalogue of disaster. The firm's cashier had suffered domestic problems and her work had deteriorated. She was dismissed from the firm in 1993. It was all too easy to expect the staff to undertake the tasks allotted to them and difficulties arose if they did not perform as they should. The employment of two gentlemen as financial services directors proved disastrous and led to the Solicitors' Investment Business Rules breaches. RESPONDENT 2 himself was a total stranger to the Legal Services Act and he relied heavily upon Mr Avery in that area.
59. Further, the firm's accountants let them down badly.
60. No question of dishonesty arose in the case of RESPONDENT 2. He was a very honest man, but he was not competent running a solicitor's practice.
61. RESPONDENT 2 was in a difficult financial position. Since losing his employment as an assistant solicitor with Messrs. Veitch & Penny, RESPONDENT 2 had been largely

unemployed but he was able to undertake some lecturing in law on a part-time basis. He had entered into a partnership voluntary arrangement.

62. The Tribunal was invited to deal leniently with ~~RESPONDENT~~ who apologised for letting down the solicitors' profession. He loved being able to work in the law and hoped that he might be able to continue to practise as a solicitor.

The Findings of the Tribunal

The Tribunal FOUND all of the allegations to have been substantiated.

On 18th June 1987 the following allegations were found to have been substantiated against Mr Avery. The allegations were that the respondent had -

- (i) delayed making an application to the Law Society for a Remuneration Certificate;
- (ii) delayed and/or failed to deal expeditiously or at all with correspondence and enquiry addressed to him by the Law Society;
- (iii) failed to comply with Section 34 of the Solicitors Act 1974 and the Rules made under that Section namely the Accountant's Report Rules 1975;
- (iv) failed to comply with Section 32 of the Solicitors Act 1974 and the Rules made under that Section namely the Solicitors Accounts Rules 1975;
- (v) by virtue of the aforementioned been guilty of conduct unbecoming a solicitor.

On that occasion the Tribunal said that it had borne in mind Mr Avery's unfortunate circumstances and they accepted that the deficiencies on client account (a matter of the utmost gravity) not to have been the result of his dishonesty. Mr Avery had suffered considerable financial loss in putting matters right and the Tribunal ordered that Mr Avery pay a penalty of £1,000 and the costs of and incidental to the application and enquiry to include the costs of the Law Society's Investigation Accountant.

The Tribunal was dismayed to find that Mr Avery had been the subject of earlier disciplinary proceedings relating in particular to failures in regard to his book-keeping and accounts where his mitigation had been that he had had difficulties with his accountants and the computerised accounting system.

It appeared that a very large sum of money indeed was missing from client account and Mr Avery, whose primary responsibility it was in this partnership to maintain the accounting records and to comply with the Solicitors Accounts Rules, had been unable to offer any explanation for the deficiency. It was of the utmost importance that solicitors should comply with the Solicitors Investment Business Rules. The enforcement of those Rules was necessary so as to ensure that the Law Society as a self-regulating organisation fulfilled its functions as the profession's regulator for investment business.

The Tribunal had no doubt that Mr Avery should be struck off the Roll of Solicitors and in view of the larger part he paid in the financial management of the firm, they ordered that he pay £3,500 towards the costs of and incidental to the application and enquiry.

The Tribunal took the view that ~~RESPONDENT 2~~ who properly accepted his responsibility as a partner, worked in a vacuum. His previous experience as a Chancery barrister would not have equipped him for financial and practice management. However, he was a practising solicitor and had to accept his responsibilities accordingly. The Tribunal also took note of the fact that it was ~~RESPONDENT 2~~ who joined Mr Avery's already existing practice. The Tribunal have taken the view that although ~~RESPONDENT 2~~ could not avoid responsibility, his level of culpability was considerably less than that of Mr Avery. The allegations were, however, extremely serious and it was appropriate that ~~RESPONDENT 2~~ be suspended from practice for one year. In order to mark the smaller part which he played in the matter they ordered him to pay costs in the sum of £1,494.66.

DATED this 9th day of July 1997

on behalf of the Tribunal



J.N. Barnecutt
Chairman

Findings read with the
Law Society on the 11th
day of July 1997