No.7132/1996

IN THE MATTER OF GRAHAM STANLEY HESSELL, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr. K.I.B. Yeaman (in the Chair)
Mr. A.G. Ground
Mrs. C. Pickering

Date Of Hearing: 28th/29th/30th July 1997
and 5th/6th/7th November 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An application was duly made on behalf of the Solicitors Complaints Bureau (which body was superseded by the Office for the Supervision of Solicitors on the 1st August 1996) by David Rowland Swift, solicitor and partner in the firm of Messrs. Percy Hughes & Roberts of 19 Hamilton Square, Birkenhead on the 14th May 1996 that Graham Stanley Hessell, solicitor of London SE16 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.

Andrew Christopher Graham Hopper, solicitor of P.O. Box 7, Pontyclun, Mid Glamorgan was appointed applicant in place of David Rowland Swift in or about January 1997.

At a Pre-Trial Review which took place on the 21st November 1996 the applicant sought to withdraw certain allegations. The respondent agreed and the Tribunal consented thereto.

On the 16th April 1997 the applicant, Mr. Hopper, made a supplementary statement making two further allegations against the respondent.

The allegations set out below are those made against the respondent in both the original and supplementary statements and reflect the withdrawals and amendments thereto.

The allegations were that the respondent had -

(i) failed to keep accounts properly written up for the purposes of Rule 11 of the Solicitors Accounts Rules 1991;

(ii) contrary to Rule 3 of the Solicitors Accounts Rules 1991 failed to pay funds received from or on behalf of clients into a client account;

(iii) contrary to Rule 5 of the Solicitors Accounts Rules 1991 failed to pay funds received from or on behalf of clients in respect of undispersed liabilities into a client account;

(iv) contrary to Rule 8 of the Solicitors Accounts Rules 1991 drew money out of client account other than as permitted by Rule 7 of the said Rules;

(v) utilised clients' funds for the purposes of other clients;

(vi) utilised clients' funds for his own purposes;

(vii) withdrawn;

(viii) withdrawn;

(ix) practised at an office that was not properly supervised contrary to Rule 13(A) nor properly managed contrary to Rule 13(B) of the Solicitors Practice Rules 1990;

(x) failed to secure payment of Counsel's fees as the same fell due;

(xi) withdrawn;

(xii) been guilty of unreasonable delay in the delivery of clients' papers;

(xiii) withdrawn;

(xiv) acted in a manner that was contrary to his position as a solicitor and/or likely to compromise his good repute or that of the profession;

(xv) misleadingly held out to the firm of Lewis Hessell & Co. to be a partnership of two solicitors.

The application was heard at the Court Room, No. 60 Carey Street, London WC2 on the 28th, 29th and 30th July 1997 (when the matter was not concluded) and subsequently on the 5th, 6th and 7th November 1997. The applicant, Andrew Christopher Graham Hopper, solicitor of P.O. Box 7, Pontyclun, Mid. Glamorgan CF7 9XN appeared and the respondent

was represented by Stephen Fairburn, an executive with Messrs. John Healy & Co., solicitors of 5 Dyers Building, Holborn, London EC1.

The evidence before the Tribunal included the oral evidence of the respondent and of T.M. Wiles, M. Patel, Catherine E. Douch, Ann S. Thomas, Eleanor B.J. Gibson, Mary T. Beard, Ann C. Scanes, Cassandra Saville, Nichola Smith, M.K. Pattihis, Christine Simpkin, J.A. Healy, Jane Bacon, Maureen Fiurze and D.B. Medley and exhibits "GSH 1" to "GSH 15", and details of which were as follows -

1. bundle of documents handed in by the applicant and referred to during the course of Miss Thomas's evidence;

2. copy letter from the respondent to Miss Gibson;

3. Cassandra Saville's response;

4. two letters put in by Nichola Smith of the 18th and 28th July 1995;

5. authority - Bray -v- Haig 1855;

6. letter from Mr. Fairburn to Mr. Hopper of 28th October 1997 and letter from Messrs. Steele & Co.

7. Mr. Pattihis's statement;

8. letters addressed to the respondent by the Office for the Supervision of Solicitors;

9. copy Report of the Adjudication & Appeals Committee Chairman;

10. the respondent's contemporaneous note of conversation with an Investigation Accountant (copy);

11. original of the contemporaneous note at (10) above;

12. letter addressed by Inland Revenue to the respondent dated 29th June 1994;

13. invoice from Emapanglia Newspapers limited dated 21st September 1994;

14. letter from Messrs. Steele & Co. dated 30th June 1997;

15. letter from Messrs. Percy Hughes & Roberts to John Heeley & Co. dated 10th December 1996.

The respondent admitted allegations (i) to (vi), but denied the remaining allegations.

At the conclusion of the hearing the Tribunal ORDERED that the respondent Graham Stanley Hessell, solicitor of London SE16 be STRUCK OFF the Roll of Solicitors and they further ordered him to pay the costs of and incidental to the application and enquiry as to 60% thereof, to be taxed if not agreed.

The Tribunal agreed that the filing of their Striking Off Order with the Law Society might be suspended until fourteen days of the filing of the Tribunal's written Findings with the Law Society. For the avoidance of doubt, the Tribunal wished to make it plain that if any further suspension of the filing of the Tribunal's Order were to be sought by the respondent, that would be a matter for the High Court and not a matter for the Tribunal.

The facts are set out in paragraphs 1 to 99 hereunder.

The personal history of the respondent

1. The respondent was 39 years of age and had entered the legal profession in 1972 upon leaving school. He qualified first as an Associate and then as a Fellow of the Institute of Legal Executives. He also qualified and became a member of the Council for Licensed Conveyancers.

2. Subsequently, the respondent took the Law Society's Common Professional course and examinations followed by the Law Society's finals leading to his qualification as a solicitor in June of 1988. The respondent had previously been employed by reputable solicitors' practices in Lincoln, Nottingham and Melton Mowbray.

3. The respondent joined John Healy & Co., solicitors of 84 Fetter Lane, London EC4 in October 1987 and upon qualifying as a solicitor became a salaried partner there.

4. The respondent had specialised in conveyancing and property related matters throughout his legal career.

5. He left the practice of John Healy & Co. in March 1991.

The history and management of Lewis Hessell & Co. (Allegations (ix) and (xv)

6. In late 1990 the respondent decided to look for a practice for sale. Such a practice had been advertised in the Law Society's Gazette, namely Lewis & Co., the firm of a sole practitioner at Haverhill in Suffolk. Mr. Lewis, the sole principal, had decided to retire from private practice and take a position in industry. At the time the respondent had not acquired three years post qualification experience and was not therefore qualified to be a sole principal. The respondent told the Tribunal that he had not sought to be a sole practitioner but intended to pursue his career in partnership. A number of heads of agreement were reached between Mr. Lewis and the respondent leading to the acquisition of Mr. Lewis's practice by the respondent. Although the details were before the Tribunal, it does not set them out here. Suffice it to say that the respondent took over some of the work in progress, the benefit of office premises at Haverhill with some office equipment and furniture. Subject to certain financial arrangments he also agreed to take on three members of staff, one of whom, Mrs. Scanes, became the respondent's secretary. She gave evidence to the Tribunal during the course of the disciplinary hearing.

7. The firm became known as Lewis Hessell & Co. and the respondent commenced trading on the 1st January 1991. He would not complete three years qualification as a solicitor until June 1991.

8. The respondent's new practice was begun by him before he left his employment as a salaried partner at John Healy & Co. The respondent did not attend daily at his new practice while he was working out a three month period of notice with his former employers. He kept in daily touch with the new office and had a mobile telephone. He attended at the new office on a weekly basis, during holiday periods due to him from his former employers and at weekends. During that initial period one of the staff taken over from Mr. Lewis, a licensed conveyancer, managed the office. As a licensed conveyancer that gentleman could not perform the function of the management of a solicitors' office in accordance with the relevant Practice Rules unless the office dealt only with conveyancing. In fact it was a general practice.

9. The arrangement with Mr. Lewis was not a partnership. The respondent confirmed that Mr. Lewis would carry out no executive function in the firm nor receive any annual remuneration or fees. The respondent's own explanation of the arrangement was that Mr. Lewis would be held out as a partner in the new practice because the respondent did not have three years post-qualification experience to enable him to practise on his own and also because certain building societies would not entrust their work to a sole practitioner, but in all relevant respects the respondent was a sole principal.

10. Mr. Lewis's name appeared on the printed stationery of Lewis Hessell & Co. as a partner. He took no part in the firm. There was no one qualified to manage the practice until the respondent had been qualified for three years in June 1991.

11. Between 1991 and 1994 the respondent increased his staff from the original three to fourteen in all. He opened a new branch office in Newmarket in April 1993. He said he had taken on new partners. He had taken on Mr. Howe as a partner in 1992 and Mr. Lane as a partner in 1993. Mr. Howe, a solicitor, was engaged to deal with an increasing litigation workload in or about March 1992 when Mr. Lewis's name was removed from the letterhead as a partner and was shown to be a consultant. Mr. Howe remained a partner until March 1993 when he left the practice. He had been a salaried partner. Mr. Howe was replaced by Mr. Lane who joined the practice as a salaried partner in April 1993, at about the same time as the respondent opened the branch office in Newmarket.

12. The respondent told the Tribunal that the initial arrangement had been that Mr. Lane would look after and manage the Haverhill office whilst the respondent sought to develop the Newmarket office.

13. It appeared that there had been difficulties between the respondent and Mr. Lane who left the firm in October 1994.

14. At the latter end of 1991 a legal executive and former colleague of the respondent, Mr. Medley, had agreed to cover for the respondent while he was on holiday. During the course of his own evidence, Mr. Medley explained to the Tribunal that he previously

had been unemployed and had worked in the respondent's office initially "to keep his hand in" paying regular, but not very frequent, visits owing to the long distance which he had to travel from his home to Suffolk. He described his visits as being "approximately two days every other week."

15. The respondent had also engaged a self-employed locum, Mr. Ayling, who worked part-time primarily to deal with litigation matters. The Tribunal did not have before it details of the dates or the hours worked by that gentleman. The respondent had become aware of dishonest dealings with clients' money by that gentleman who had been dismissed and subsequently was made the subject of an order pursuant section 43 of the Solicitors Act 1974 by the Tribunal.

16. Another solicitor, Mrs. Eleanor Gibson, joined the respondent's firm in September 1994. She was to be based at the Newmarket office. She had completed three years post-qualification experience by November 1994. Mrs. Gibson had a young child and was to work on a part-time basis, probably to the extent of working mornings only. It appeared that there had been discussion as to whether or not Mrs. Gibson would become a partner on a salaried basis. The matter had not become formally or clearly concluded at the time when the respondent's practice was beset with a number of difficulties, further details of which are set out later in these Findings at paragraphs 78 et seq.

17. Mr. Medley told the Tribunal that he returned to the practice on a basis that was close to being full-time from about September 1994 when he was to manage the Haverhill office in place of Mr. Lane. Mr. Medley was a Fellow of the Institute of Legal Executives, but accepted that for a time he had not been recognised as a person of good-standing with the Institute because his membership fee had not been paid. That matter had been put right. Mr. Medley had still travelled long distances from home and had arrived at the office at about midday on Monday and had left the office in the afternoon of Friday but had worked normal office hours on Tuesday, Wednesday and Thursday because he had been able to stay locally in a property owned by the respondent.

18. Miss Thomas, an assistant solicitor who joined the respondent's firm in September 1993 confirmed that she spent her week divided between the Haverhill and Newmarket offices. She worked at Haverhill on Mondays Wednesdays and Fridays and on Tuesdays and Thursdays in Newmarket. She said that whilst she was in Haverhill the respondent would be in Newmarket and Mr Lane would be in Haverhill. She said that she would be at the Newmarket office on her own save for the extremely rare occasion when the respondent would also be there for the purpose of seeing a client. She said on some occasions the Newmarket office was left totally unmanned on Mondays Wednesdays and Fridays. At that time Miss Thomas was a recently qualified solicitor of less then three years admission.

19. Mrs Scanes in evidence said that in August 1994 when Miss Costello joined the Newmarket office of the firm as a secretary the respondent was then spending much time at Haverhill. Miss Costello had to telephone Mrs Scanes about matters of office procedure on a number of occasions as no one in a supervisory capacity was present.

20. In her evidence Miss Costello (Mrs Beard at the date of the hearing) said she was described by the respondent as "office manager" or "trainee legal executive". She had been given no explanation about office procedures or books to which she might refer. She had to be told from Haverhill office how to start up the computer and how to complete other jobs such as opening file ledger cards and dealing with the banking.

21. Mrs Smith who gave evidence had been employed as a part time receptionist at Haverhill in October 1992. She recalled many days when she was working at the Haverhill office alone with no one else in the office.

22. In October 1993 the Haverhill offices were moved to better, more central, offices in the town and at the same time the firm opened an agency with Alliance & Leicester Building Society which enjoyed considerable success.

23. The respondent's business stationery indicated that he also maintained an office at unit 16, Holyoake Court, Bryan Road, London. The respondent told the Tribunal that he maintained an office at his home at Holyoake Court and also consulting rooms in Fetter Lane, London.

24. On 7th June 1995, the Conduct Committee of the Adjudication & Appeals Committee of the Law Society resolved to intervene in the respondent's practice. On 18th July 1995, the respondent disposed of his practice and the intervention was withdrawn.

The visits to the respondent's practice by the Investigation Accountant and the Monitoring Unit of the Law Society (Allegations (i) to (vi))

25. On the 13th April 1994 Mr Wiles, an Investigation Accountant of the Law Society, attended at the respondent's offices at Haverhill to inspect the firm's books of account. The Investigation Accountant reported that Mr Hessell and Mr. Lane were in partnership, Mr Lane being a salaried partner, and that Mr Ayling an unadmitted locum had also been there.

26. Mr. Wiles ascertained that Mr Ayling had been employed as a locum since November 1992 and had been dismissed in October 1993.

27. Mr. Wiles reported that the firm's books of account were not in compliance with the Solicitors Accounts Rules. A list of liabilities to clients as at 31st March 1994 was produced for inspection. The items were in agreement with the balances shown in the clients' ledger. The partners agreed that it did not include further liabilities to six clients totalling £1,630.

28. A comparison of the total liabilities together with the liabilities not shown by the books when compared with cash available revealed a cash shortage of £3,002.44.

29. The cash shortage had arisen in the following way:-

(i)	misappropriations by Mr Ayling	£1,130
(ii)	debit balance	3,000

(iii) improper transfer	500
	£4,630
less (a) office funds improperly retained on client bank account	1,120.81
(b) book difference (surplus)	506.75
	1,637.56
	3,002.44

30. Mr Ayling had not accounted to the firm for five cash receipts from clients. Mr Ayling had utilised those amounts for his own personal benefit. His dismissal and the Tribunal's Order are recorded at paragraph 15 above.

31. Part rectification was obtained by obtaining clients' permission to raise and deliver interim bills for the amounts paid on account of costs. The cash shortage had been rectified in full during the inspection.

32. On the 8th November 1992 a payment of £3,000 was charged to a client account in the name of Mr G. The respondent said that payment had been made to Mr G in order to reimburse monies held on client bank account on his behalf. However on investigation by the firm's accountants they found that no credit balance existed at the time of payment for that client thereby giving rise to the overpayment of £3,000. The overpayment was rectified during the inspection by a transfer from office bank account. Further reference is made to this payment to Mr G in paragraph 98 hereunder.

33. An improper transfer was made in respect of a client, Mr M. On the 10th November 1993 £500 was received into client bank account and recorded as "on account of costs". On the 21st January 1994 £500 was transferred to office bank account. No bill of costs had been raised, the improper transfer was rectified during the inspection by a transfer from office bank account. The respondent told the Investigation Accountant that costs to the value of the improper transfer had been incurred by the date of the transfer.

34. On the 20th October 1994 Fiona Smith, a Compliance Monitoring Officer with the Law Society attended at the respondent's office at Haverhill on the 20th October 1994.

35. The Monitoring Officer's report explained that the firm had a manual accounting system. The accounts records were not up to date and that was explained to Fiona Smith by the respondent. His original cashier had left him to work closer to home. A temporary cashier had been taken on who was deaf and dumb. She had left after about five weeks because she had seemed unable fully to grasp the system and the fact that she was deaf and dumb caused problems. Her leaving had been by mutual agreement.

36. At the beginning of August a further cashier joined the firm. She was experienced although not in legal accounts. She handed in her notice when she heard of the impending monitoring visit.

37. The respondent had only shortly before the Monitoring Unit visit realised that his books of account had not been kept properly. At the time of the Monitoring Unit visit he was endeavouring to sort the position out. He instructed an experienced legal cashier (who advertised in the Law Society's Gazette as being able to assist in the rectification of disorderly accounts) to bring the records in respect of the Haverhill office up to date. The respondent also appointed a new cashier, Christine Simpkin, who was to begin working for him in early November. At that time she was already bringing the Newmarket office accounts up to date.

38. The Unit went on to report that work had begun initially on the cash books. The Haverhill office cash book had at the inspection date been reconciled with the bank statements to the 31st August 1994 and the Newmarket office books had been reconciled to the bank statements to the 30th September 1994.

39. When the ledger extractions were compared a substantial shortage became apparent. The Newmarket ledger extraction indicated that funds of £101,289.35 should have been held at the 30th September 1994 whereas the bank and client account cash book reconciled at that date to £67,090.02.

40. The ledger extraction at Haverhill office indicated that £127,929.91 should have been held at the 31st August 1994 although there appeared to have been a query about funds held on behalf of Mrs APR and adjustments had been made to the printed figures. The bank and cash book reconciled at that date to £43,244.39.

41. The respondent explained at the time of the visit that the ledger cards had not been brought up to date and so the ledger extractions could not be relied upon. It was not therefore possible on the day of the visit to ascertain whether sufficient funds were held to meet those client liabilities.

42. On the 14th November 1994 a Senior Compliance Monitoring Officer of the Law Society wrote to the respondent drawing certain matters to the respondent's attention. The respondent was reminded in that letter of the effect of certain specific Solicitors Accounts Rules.

43. On the 12th January 1995 Mr Patel, an Investigation Accountant of the Law Society, attended at the respondent's offices at Haverhill to inspect his books of account. At that time the respondent told Mr Patel that he had practised alone since the 1st March 1994 and he conducted a general practice assisted by a staff of ten including one assistant solicitor. (The respondent must have been referring to Miss Thomas)

44. Three separate books of account were maintained in respect of each of the firms three offices. They were not in compliance with the Solicitors Accounts Rules.

45. A list of liabilities to clients as at 31st December 1994 was produced for inspection which totalled £103,231.02 in respect of all three offices combined. The items were in agreement with the balances shown in the clients' ledger but the list did not include further liabilities to clients totalling £10,592.62 and the inclusion of those additional liabilities increased the total to £104,823.64. A comparison with that figure with cash

held on client bank and building society accounts at that date after allowance for uncleared items revealed the following position:-

Liabilities to clients	£103,231.02
Add: Liabilities not shown by the books	1,592.62
	104,823.64
Cash available	96,957.36
Cash shortage	£7,866.28

46. The cash shortage was partially rectified by the introduction of £116.40 into client bank account. The remaining cash shortage of £7,766.28 was not rectified.

47. The cash shortage of £7,766.28 had arisen in the following way:-

(i)	Unallocated improper transfer from client to office bank account	£3,042.16
(ii)	Clients' funds improperly retained in office bank account	1,117.50
(iii)	Debit balances	1,111.25
(iv)	Personal payment	200.00
(v)	Improper transfer from client to office bank account	475.12
(vi)	Book difference - shortage	1,928.80
		7,874.83
(vii)	Bank interest credited to client bank account	(8.55)
	Cash shortage	£7,866.28

48. The Investigation Accountant recorded that the respondent had said that he would instruct his book keeper to locate the difference of £1,928.80 and make any necessary adjustments.

49. The circumstances surrounding the unallocated improper transfer from client to office bank account were as follows. On the 30th August 1994 client bank account was charged with £3042.16 in respect of a transfer from client to office bank account which was not allocated to any individual clients' ledger account. The respondent said that there appeared to be a double transfer of costs and agreed that the clients' funds had been improperly transferred to the office bank account. The resultant shortage on client bank account remained in existence for over six months.

50. With regard to the clients' funds improperly retained in office bank account of £1,117.50, during the period 13th December 1993 to 12th September 1994, that sum had been lodged into office bank account in respect of professional disbursements received on account of four clients. The disbursements remained unpaid at the inspection date. The respondent agreed that they were clients' funds which had been improperly retained in office bank account and that the disbursements had not been paid.

51. The respondent had inherited accounting deficiencies from Mr. Lewis's practice. Further he had employed a succession of book-keeper/cashiers who had proved to be unsatisfactory for one reason or another. He had been aware of the shortcomings in his book-keeping and keeping of accounts and had taken steps to put matters right eventually employing Mrs. Simpkin, who gave evidence to the Tribunal, who was an experienced book-keeper who had made some headway in putting right the accounting deficiencies.

52. Debit balances had arisen of £1,111.25 during the period 29th May 1992 to 19th December 1994 when overpayments varying in amount between £2.00 and £413.40 and totalling £1,111.25 had been made on account of thirteen clients.

53. The largest debit balance had arisen in connection with a claim arising out of a road traffic accident involving a Mr A. On the 28th October 1994 the relevant account in clients' ledger was charged with £1,572.08 in respect of a payment to the respondent when only £1,158.68 was properly available giving rise to an overpayment of £413.48. The respondent explained to the Investigation Accountant that the payment to him of £1,572.08 was in satisfaction of a debt to him from the proprietor of Mr A's insurers on the sale of the respondent's car to those insurers. The respondent did not provide Mr Patel with a signed original agreement relating to the sale of the car. However a hand-written telephone note dated 20th May 1994 on the client matter file referred to the respondent getting confirmation from the client to utilise funds received towards the balance due to the respondent from the sale of the car.

54. On the 12th August 1994 a cheque for £200 was drawn on client bank account to cash but not allocated to any individual client ledger account. The respondent said he believed the payment was in relation to bookkeeping services provided by his former bookkeeper and agreed that it was a personal payment. The resulting shortage on client bank account remained in existence for over seven months.

55. On the 31st May 1994 client bank account had been charged, inter alia, with six transfers to office bank account varying in amount between £22.37 and £135.12 and totalling £475.12 purporting to be in respect of bills of costs. The respondent said there had been hand-written "dummy bills" raised by a former bookkeeper and agreed that they might or might not have been sent to the respective clients concerned.

56. During the period 23rd November 1994 to the 1st February 1995 clients' funds were improperly lodged into office bank account as shown below:-

Date lodged into office bank account	Date transferred to the client bank account	Amount
(i) 23/11/94	06/12/94	£1,537.00
(ii) 25/11/97	07/12/94	37,050.00
(iii) 15/12/94	19/12/94	11,500.00
(iv) 01/02/95	06/02/95	1,289.00
		£51,376.00

57. The respondent agreed that the above lodgements of clients' funds in office bank account was improper and he said that he had not been aware of that until Mr Patel brought it to his attention during the inspection.

58. Both Mr. Wiles and Mr. Patel were called to give oral evidence. There was apparently no area of dispute between the evidence of Mr. Wiles and that of the respondent. However, there were some areas of conflict between the respondent and Mr. Patel.

59. It was the respondent's contention that Mr. Patel had adopted a friendly attitude towards the respondent and had on one occasion joined him for a drink at a local public house. Mr. Patel denied that.

60. The respondent also said that Mr. Patel had indicated that the breaches discovered during his inspection and the subject of the Investigation Accountant's Report had not been of such a serious nature that the Law Society would consider taking any serious steps in connection with the respondent's practice. In support of his contention, the respondent produced the contemporaneous notes made by him during his interview with Mr. Patel - those notes bore a date "3/95" on the front of the counsel's note book in which they were made and constituted exhibit "GSH10" in these proceedings. On page 4 of those notes at paragraph 5 the following was written in the respondent's hand-writing,

> "Mr. Patel confirmed the errors found were strictly breaches when asked 'certainly not of an intervening nature' and having regard to difficulties with writs and staff should not cause me any anxiety providing they're rectified a.s.a.p."

The respondent confirmed that he had gone back to add that note at the foot of the page after the meeting.

61. The respondent in evidence told the Tribunal that he considered himself assured that there was no urgency in the situation. There had been no indication given to him that the shortfall should be remedied as a matter of urgency.

62. In evidence, Mr. Patel said he had not given an assurance that the shortfall need not be rectified as a matter of urgency. He explained that solicitors subject to an accounts inspection often asked such a question and the investigating accountants had a standard response, namely that the matter would be reported to the Law Society who would decide what steps, if any, were to be taken. No assurance that an intervention would not take place was given or confirmation that there was no urgency to replace the shortfall was given by Mr. Patel in this instance.

63. The respondent further supported his contention that he was led to believe that an intervention was not a likelihood because the Investigation Accountant had not found that the respondent had been guilty of dishonesty and an intervention would only take place on the grounds of a suspicion of dishonesty. In support of that view the respondent placed reliance upon a Report of the Chairman of the Adjudication & Appeals Committee of the Law Society in particular upon he words "if a solicitor is unhappy with a decision that the Law Society should intervene in his or her practice on

the grounds of suspected dishonesty, he or she may appeal to the High Court". A copy of that Report was put in at the disciplinary hearing, exhibit "GSH 9". The Tribunal took note of the evidence of Mr. Pattihis, the respondent's former partner, that he and his partners had expressed to the respondent a willingness to lend him sufficient money to discharge his client account shortfall. The respondent had not availed himself of that offer considering that he should discuss matters with his bankers.

Failure to secure payment of Counsel's fees (Allegation (x))

64. Counsel's fees which Mr. Swift alleged remained unpaid in the original application had, it transpired, been paid.

65. Mr. Hopper had identified fees of three counsel which had not been paid following claims made upon the Law Society's Compensation Fund.

66. Those fees were £102.82 due to Mr. Ian Martignetti, the fees of Graham Sinclair amounting to £1,821.25 had been paid only to the extent that accumulated instalments from the client of £452.10 had been received and the total fees due to Andrew Tettenburn amounted to £2,261.88 in respect of seven different matters. The respondent accepted that he was responsible for incurring those fees and therefore was responsible for their payment. However, it was his belief that there were sufficient funds in his client account which had been frozen and taken over upon the Law Society's intervention to meet those outstanding fees. He also believed that Mr. Martignetti's fees were disputed, although he was unable to recall precise details owing to the lapse of time and the fact that he no longer was able to refer to the file.

Unreasonable delay in the delivery of clients' papers (Allegation (xii))

67. On the 4th July 1995 Messrs. Stephens, solicitors, who were then instructed by Mr. A, sought the papers from the respondent who had previously acted for Mr. A. Despite requests on that date and on the 6th, 7th, 11th, 12th, 14th, 17th, 18th and 19th July, the respondent did not deliver the papers until the evening of the 19th July 1994. The respondent agreed those facts, pointing out that the delay had been of some fourteen or fifteen days and that at the time there was a Law Society intervention into his firm making it very difficult for him to comply with the request made of him.

The areas in which the respondent acted in a manner that was contrary to his position as a solicitor and/or likely to compromise his good repute and that of the profession (Allegation (xiv))

68. The matters set out above were prayed in aid of this allegation. However, the most serious allegation facing the respondent in support of allegation (xiv) was that he had falsified file records. The evidence in support of such allegation came from former members of the respondent's staff. The respondent denied that he had been guilty of such behaviour.

69. The Tribunal had before it a wealth of information which they have not ignored, but in the interests of clarity they propose to set out under this heading first the somewhat unusual and difficult circumstances surrounding the respondent's practice at the

material times and secondly, those specific matters put forward in support of the allegation which the Tribunal have found proved to the requisite standard.

70. The first difficulty encountered by the respondent related to the issue of certain Writs. Mr. Lewis, who had previously been the sole principal of Lewis & Co. and who had been shown on the letterhead of Lewis Hessell & Co. to have been a partner in that firm, had undertaken considerable work on behalf of housing association self-build schemes. The schemes had been financed by Alliance & Leicester Building Society who had come to believe that the dealings of Mr.Lewis and his clients with that Society had not been entirely frank and truthful and that not all of the transactions had been conducted at arms' length so far as Mr. Lewis had been concerned. Writs were issued by solicitors representing Alliance & Leicester Building Society, but had not been served. The defendants to the Writs included the firm of Lewis Hessell & Co. Details of the Writs were published in local newspapers in February 1995 and it was the respondent's position that such publication caused his firm great damage. Indeed, he said the firm lost the core of its business as the result of the publicity. Staff employed by the firm left as a direct result. Local firms, such as estate agents, felt unable to continue to recommend Mr. Hessell's firm to prospective clients and Alliance & Leicester Building Society determined the hitherto thriving agency arrangement which it had with the firm. Later the writs were withdrawn against the respondent and not served upon him. Nevertheless the damage had been done.

71. At about the same time, the Law Society's Investigation Accountant was carrying out a second inspection of the respondent's books of account. The fact that the Writs were issued and the inspection of books coincided operated to cause consternation amongst the respondent's staff.

72. The respondent considered that another important factor which operated to his detriment was the fact that he and Miss Thomas (an assistant solicitor) had embarked on a relationship, which included spending a holiday together, which the respondent had brought to an end clearly causing Miss Thomas some unhappiness.

73. Eleanor Gibson, the solicitor referred to in paragraph 16 above, was, according to the respondent, prepared to enter into partnership with him at about that time. Upon learning of the Writs she prepared a Memorandum setting out details of her telephone attendances. In evidence she told the Tribunal that she had previously told Mr Patel, the Law Society's Investigation Accountant, that she was a salaried partner. That had not been true and she accepted that she had been foolish.

74. Despite that, the Tribunal preferred the oral evidence of Mrs Gibson to that of the respondent. In evidence Mrs. Gibson told the Tribunal that her memorandum recorded her conversation with Mr. Patel as follows:

> *"Mr Patel questioned EG as to whether she was a partner salaried or not. EG said that the whole matter is open to debate and that whilst she had been offered a partnership she had never signed the letter agreeing to take partnership and that if ever she was a partner it was from the 1st January and not before. Mr. Patel pointed out that she had said that she was a salaried partner in January. EG said she knew but the whole matter was*

still open for discussion then and that GSH may been holding her out as an equity partner since Mr Patel did not seem to know that she was only a salaried partner. Mr Patel said that GSH had said that she was a salaried partner and that he had only asked to see what EG would say. EG said that she had never held herself out to be a partner and that if GSH had held her out to be a partner it was without her consent because she never been happy with the idea of being a partner and it never been finally decided in the form of an agreement. EG said that she did not consider herself to be a salaried partner. EG said that she had refused to sign anything to do with the partnership and she had stalled on signing until coming to a final decision on Tuesday 28th February when she told GSH that she would definitely not sign the Building Society Agency Agreement and she did not consider herself to be a partner. EG also said that she was concerned that GSH had held herself out possibly to the bank and the Inland Revenue as an equity partner when she was not."

75. The respondent's position was that his staff, in particular those who gave evidence in the support of the applicant in the case before the Tribunal, had got together or "conspired" against him. All of those witnesses denied that to be the case. As might have been expected, the respondent was unable to place unequivocal evidence in support of his contention before the Tribunal. Mrs Simpkin described "meetings behind closed doors" between three or four members of staff one of whom was on maternity leave and had brought her new baby into the office. It was further the respondent's contention that Miss Gibson's series of attendance notes had been the subject of discussion amongst members of staff. There could be no doubt that the respondent and his staff were concerned and dismayed by the unfolding events and had endured public humiliation. It was not surprising that feelings should run high between the respondent and members of his staff and indeed between members of the staff themselves with the worst possible interpretation being placed upon what might otherwise have been unremarkable factors.

76. A number of members of the respondent's staff had said that the respondent had deliberately back dated correspondence and attendance notes so that files did not on their face truly reflect the conduct and progress of the matter. The respondent denied all such allegations. No evidence was put to the Tribunal in the form of a file from which such matters were apparent. The Tribunal accepted the applicant's view that an altered file would not demonstrate on its face that it had been altered. The Tribunal has not recited here specific details of such allegations as they had before them a clear conflict of evidence, on the one hand a member of the respondent's staff saying that files had been falsified and on the other the respondent saying that he had not. The Tribunal have however found themselves entirely satisfied as to the evidence of Mrs Gibson and Mrs Saville which related to their own respective positions and not to the affairs of clients.

77. Mrs Gibson left the respondent's firm on the 7th April 1995. The respondent said he would deduct part of her practising certificate fee from the balance of salary due to her. She would not authorise that. The matter was brought before the Industrial Tribunal which made an award in Mrs Gibson's favour. In the Industrial Tribunal

proceedings the respondent produced documents purporting to record dealings between Mrs Gibson and himself. Mrs Gibson told the Tribunal that she had never seen the documents before and that they were "pure invention,"

78. In her evidence Mrs Gibson said that in or about December 1994 she had seen a letter being written to her that was dated July 1994 offering terms of employment. She saw it in a secretary's typewriter. She said "I thought it was rather curious actually because the entire hours of work were wrong." She said she had been interested to see whether the letter ever turned up at a later date.

79. Although a proposal of partnership had been made to Mrs Gibson at about Christmas 1994, Mrs Gibson was firm in her evidence that the letter did not relate to that. She had never received a letter following her interview for employment with the respondent in July 1994 and the letter which she saw being typed in December 1994 offering her employment was dated September 1994.

80. Mrs Gibson's evidence was that the engagement letter of 15th September 1994 turned up in the Industrial Tribunal's proceedings which she brought against the respondent. She said she recollected most vividly that the letter stated that her hours of work were ten to three o'clock or ten o'clock to two when in actual fact those were the original hours that the respondent offered her on the telephone and in that same conversation she had said she would not work those hours she preferred to work nine to one. The respondent had said to her that he would incorporate the hours she preferred and that was why she distinctly remembered it because the hours were wrong.

81. She had never received the letter, indeed if she had done she would have commented that the hours were wrong. The copy of the letter in Mrs Gibson's possession was that which she had taken out of the respondent's bundle prepared for the Industrial Tribunal proceedings. She remained adamant however that she never received it.

82. The letter was back dated to September and was being typed in December. The hours were wrong, the wording of the holiday entitlement was wrong, Mrs Gibson said she would have taken pains to point that out to the respondent. In addition there was a covenant restricting Mrs Gibson's ability to practise after leaving the respondent's firm that would have taken effect after three months. That restrictive covenant had never been mentioned to Mrs Gibson and she had been entirely unaware of it. She was unaware that to include such a covenant had been the respondent's intention until she saw the letter in the Industrial Tribunal proceedings.

83. The matter of Mr A, in which delay in handing over papers had been alleged, had been taken over by the firm of Messrs. Stevens where Mrs Douch took conduct of the matter. In her oral evidence she said she was an experienced conveyancing solicitor and the file did not demonstrate that the work carried out on behalf of Mr A was of good quality.

84. The file contained a memorandum which indicated it was dictated on the 6th July 1995, stated to have been typed on the 19th July 1995 from Mr Medley to the respondent explaining difficulties about Land Registry fees in the matter. Mr Medley was said to have left the respondent's firm in June. It was further noted that the file

contained two letters addressed to Mr A asking for extra fees which were unsent as was one addressed to Abbey National explaining that the deeds were still at the Land Registry.

85 Mrs Douch had had previous dealings with the respondent's firm and had never considered it to be efficient. Mrs Douch described the firm as having an "air of shambolicness". Miss Thomas in her evidence also described the respondent's firm as "shambolic". The respondent called evidence to show that his office premises were entirely satisfactory to refute that suggestion. The Tribunal accepted the evidence that the manner in which professional work was conducted was shambolic not that the actual premises could be so described.

86. In her evidence Miss Thomas said she had been asked by the respondent to represent a client, Mr M, at a County Court directions hearing where the other side was threatening to debar Mr M from defending the action. She said the respondent had not progressed the matter but had dictated letters, typed by Mrs Scanes, placing the carbon copies on the file and throwing away the top copies. Miss Thomas saw a him do that. The letters were back dated and referred to telephone calls and requests to extend deadlines.

87. Mrs Scanes in her evidence confirmed that the respondent had asked her to type and back date letters on numerous occasions. In her oral evidence she said she recalled occasions when work was dictated on to tape when she had completed a letter only to be told to go back to it to change the date. There was no file before the Tribunal where such back dated letter could be identified. She said it was not unusual to find letters which ought to have been sent out stuffed in the drawer of the respondent's desk or in his briefcase.

88. Miss Thomas gave evidence that many creditors were owed money by the firm and two of her salary cheques had "bounced". The respondent said the firm enjoyed a degree of success leading to a modest profit in its second year with an upward trend in fee turnover and profitability. Miss Simpkin gave evidence that there were outstanding debts, in particular to the Inland Revenue, but an instalment payment scheme had been negotiated and the firm's cash flow would not have caused problems if carefully managed.

89. Mrs Smith in evidence said she saw the respondent on a number of occasions destroying the originals of letters leaving the copies on the file.

90. Mrs Smith also had cause to refer the respondent to the Industrial Tribunal. She produced a letter addressed to her by the respondent. She said she had written to the respondent on the 27th June to enquire about her salary (she had been on maternity leave). She received a letter from the respondent which made no reference to salary but said it was dictated on the 28th June and typed on the 18th July. She said the envelope was franked on the 20th July and overstamped by the Post Office on the 25th July, the date upon which she received it.

91. Miss Saville who worked as a litigation clerk had passed some Institute of Legal Executive examinations under the Institute's old system but was not a fellow nor an

associate. She had considerable experience in the law and was permitted to advocate before district judges. She was employed by the respondent to work in the Haverhill office commencing in July 1994 to replace Miss Thomas. Miss Thomas had left some notes to assist. Miss Saville had never had any discussion with Miss Thomas, although Miss Thomas had telephoned her at home when Miss Saville had declined to discuss matters.

92. Miss Saville's evidence was that the respondent often lost files.

93. She said barristers' chambers would not accept instructions from the firm and neither would costs draftsmen.

94. It appeared from the evidence of Miss Saville and Miss Thomas that the respondent did on occasions conduct his private life in the office in front of members of staff. This caused embarrassment and bad feeling.

95. Miss Saville said the respondent was greatly exercised by the issue of the Alliance and Leicester Building Society Writs. He spent much time writing long letters and pursuing the solicitors, whose team was headed by a young lady solicitor. That young lady committed suicide. Miss Saville was extremely upset by the satisfaction which that appeared to give the respondent.

96. Mrs Beard recalled one particular matter relating to a client Mr M when the respondent was about to leave the office to go to court. He asked Mrs Beard to type one letter, a brief paragraph enclosing documents, and asked her to print off a carbon copy. She had been asked to put a date on the letter some six to eight weeks before the date of typing. She remembered the incident specifically because the date which appeared on the letter was a date prior to her taking up employment with the respondent's firm.

97. A letter addressed to Mrs Saville by the respondent confirming her position as a legal executive was put to her. (A copy of that letter was before the Tribunal it was dated 21st September 1994) She said she had not seen that letter before. She was sure she would have remembered it because of its reference to advocacy and its reference to the generation of costs. Also there was a covenant in restraint of trade. Mrs Saville said she would have protested because it was so unfavourable. Mrs Saville was adamant that she had not seen that letter because she would on its receipt have insisted that the respondent discuss it with her, indeed she described it as "a fiction".

98. A memorandum dated 18th January 1995 was put to Mrs Saville. Again she said she had not previously seen it. The memorandum taxed Mrs Saville with misleading the respondent about her qualifications. She was adamant that she had not seen the document. If she had she would have referred the respondent to the particulars shown on her curriculum vitae. She also said she would not have anticipated signing cheques so the injunction on the document against signing cheques indicated the falseness of the document.

99. With regard to the matter concerning Mr G, Mrs Scanes told the Tribunal that a local authority had sent a cheque to the firm for £3,000 which they had calculated to be due

to Mr G after a miscalculation of discount available to him on the purchase of his council house. It appeared that a letter had been prepared by the respondent sending the cheque to the client, but she had seen the letter in the draw of the respondent's desk unsent and he had indicated that he was considering keeping the money for himself. After the Investigation Accountant's inspection the respondent had said that his accountants had advised him to pay the money to Mr G and he had done so although no trace of such sum having been paid in had been found. The respondent believed that there had been a bookkeeping error or that there was another explanation.

Submission of the Respondent of No Case to Answer - in connection with allegation (xiv)

100. Upon the opening of the fourth day of the hearing the respondent made a submission that there was no case to answer in the case of allegation (xiv). The Tribunal deals with that application briefly here as the respondent supported his application by a written skeleton argument.

The Submissions of the Respondent

101. Despite his recognition that the Tribunal had a discretion as to whether or not the strict rules of evidence applied to its proceedings, in the submission of the respondent he was entitled to reply upon the best evidence rule.

102. A large part of the oral evidence before the Tribunal was inadmissible as the only reason primary evidence of the client files and their contents was not before the Tribunal was because the applicant chose not to rely on it.

103. The applicant further was in breach of his duty of disclosure.

104. Failure to produce the files had deprived the respondent of the means of testing the oral evidence and failure to make disclosure rendered the respondent unable properly to prepare his defence.

The Submissions of the Applicant

105. In response to the respondent's submissions the applicant said it was inappropriate that the respondent should make his submission when all the evidence was in and before the Tribunal. If such a submission was appropriate it should have been made at an earlier stage.

106. The Tribunal had heard all of the applicant's witnesses whose oral evidence was clear and compelling.

107. The applicant had not failed to disclose material or to assist the defence - there was no duty to disclose material prejudicial to the respondent.

108. Mrs Gibson, Mrs Saville and Mrs Smith all had documents put to them during the course of their evidence.

109. The evidence before the Tribunal was not specific to particular files.

110. The respondent's application was partly philosophical and partly based on an erroneous belief that certain files were readily available.

111. In the submission of the applicant the Tribunal had before it evidence that was clear compelling cogent and admissible.

The Decision of the Tribunal (Re: No case to answer)

112. The respondent's application that there was no case to answer in regard to allegation (xiv) was refused. The Tribunal considered the submissions made on behalf of the respondent as to the admissibility of the evidence placed before it. The Tribunal did not accept those submissions, but in any event the Tribunal had a discretion as to the evidence which it could admit. The Tribunal would, of course, give due weight to the evidence placed before it bearing in mind the nature of such evidence.

The Submissions of the Applicant

113. The respondent had set up his firm improperly ab initio. He had been a sole principal unsupervised when he had not been admitted a solicitor for three years.

114. There was a sham partnership. The second partner merely being a name on the respondent's firm's letterhead to provide some superficial justification for the respondent's setting up in practice on his own account within three years of his admission to the Roll. From time to time the respondent had been desperate to have the name of other solicitors and legal executives on his letterhead.

115. The respondent had admitted his spurious partnership in correspondence entered into by him.

116. The non payment of Counsel's fees was incontestable. The outstanding fees came to light as a result of claims made on the Law Society's Compensation Fund. They had been put to the respondent late in the day and the Tribunal would want to consider whether those matters should be aired.

117. With regard to the delay in handing over papers, one matter supporting that allegation had been recognised by the applicant to have amounted to incompetent conveyancing and he had withdrawn it. There remained the matter of Mr A. The delay in question was short, a matter of a few days, but the allegation was maintained as part of the overall picture. The handling of the retainer was unsatisfactory throughout. The failure of the respondent to produce the file promptly was consistent with his tendency to "cover his back" at all costs. The respondent clearly knew that disclosure of that file would provoke complaints about his handling of it. He delayed in delivery with no excuse at all. The respondent claimed to be "working on the file". He could not properly do so as he was at that time suspended from practice by reason of the intervention. The motive to be inferred in the submission of the applicant was that the work on the file was not for the benefit of the client but to try to present a more

defensible account of the conduct of the matter. The respondent sought to impose conditions for delivery which he was in no position to require. The anxiety of the client and the strenuous attempts to obtain the file were relevant.

118. The Accounts Rules breaches were clearly made out and were admitted by the respondent. A question remained as to what had happened to Mr G's money. Clearly the refund received from a local council had at best not been dealt with properly. The respondent relied upon staff, a number of whom were untrained secretaries, to deal with accounting procedures. The respondent appeared not to have been unduly concerned by errors and anomalies that were discovered. When a shortfall of £7,866.28 was found on the client account by the Investigation Accountant the respondent did not consider it necessary to take urgent steps to make rectification. He considered that there was no urgency because he said that he had been told by the Investigation Accountant that was so. That was denied categorically by the Investigation Accountant. It was difficult to believe that a solicitor should not recognise the seriousness of a deficiency of funds in client account or the need to make immediate rectification. At the time the respondent had considerable indebtedness to his office and loan accounts.

119. In the submission of the applicant the respondent's attitude revealed a form of self delusion which was a common element in all of the matters before the Tribunal. The respondent displayed an ability to delude himself as to reality. He had been unable to recognise the problem which was central to the case. Investigation Accountant Mr Patel denied speaking the words which the respondent attributed to him. The respondent further deluded himself that his firm was successful and happy. It was rare for a solicitor's practice to be the subject of an intervention less than four years after its creation. That was not a successful practice indeed it was never really properly established.

120. By far the most serious allegation facing the respondent was number (xiv) which although couched in general terms in the main related to the falsification of documents and files.

121. The evidence from former employees of the respondent was compelling. They were very clear that they had not conspired together to achieve the respondent's downfall. It was, in the submission of the applicant, further evidence of the respondent's self delusion that he formulated the theory that there had been a conspiracy against him.

122. It was the applicant's submission that the respondent had been guilty of wholesale dishonest doctoring of files as a common practice. It was fanciful of the respondent to say former members of his staff were all lying to cause damage to him.

The submissions of the respondent

123. With regard to allegation (x) there was no evidence that Counsels' fees had not been paid. That matter had not properly been brought before the Tribunal.

124. In the matter of Mr A and allegation (xii) the delay in the delivery of papers was very short and the request for them had been made at a time of very great stress to the

respondent, staff were leaving and there were taking place negotiations for the transfer of the respondent's work in progress.

125. The Tribunal had heard about an alleged sham partnership. There was no evidence of that before the Tribunal. The respondent had made explanation and a document setting out the partnership arrangements had been produced.

126. There had been some evidence about the respondent's alleged failure to supervise his Newmarket office. That was amended to relate to a period from September 1994 to March 1995. There was a conflict of evidence about that. Some witnesses said the respondent was there on a daily basis, others were doubtful about that. In the submission of the respondent that allegation was not made out.

127. The most serious allegation made against the respondent was that he had been engaged in the systematic doctoring of files. Six former employees of the respondent had been called to give evidence, indeed the applicant's witnesses were called in the main to support allegation (xiv), namely that the respondent had been dishonest and had been guilty of falsification and backdating of documents. The respondent called a number of witnesses to support his denial that such activities had taken place. They were made up of former employees or former work colleagues of the respondent. There was no doubt as to the previous good character of the respondent and the high esteem in which he was held by professional colleagues. It was inconceivable that the honest and trustworthy nature of the respondent could have changed.

128. The allegation of doctoring files was tantamount to an allegation of forgery. A jury could not be invited to convict a defendant of forgery without the evidence of the forged document. No file had been produced to demonstrate "doctoring" in this case. The respondent had already made submission that there was no case to answer which had not found favour with the Tribunal, but there was no dispute that the Tribunal had to satisfied upon the evidence to the criminal standard of proof. Such files as were placed before the Tribunal did not bear out the allegations that they had been "doctored".

129. The Tribunal was invited to discount the evidence of Ann Thomas who was in the submission of the respondent a scorned and bitter woman. On the one hand she had written a letter to the respondent saying that she had been "blissfully happy" both professionally and personally whilst employed by the respondent and on the other hand she gave evidence of alleged impropriety on the part of the respondent during the same period of time. She was a person seeking revenge. Mrs Simpkin, to her great surprise had been approached by Miss Thomas and told of the relationship between Miss Thomas and the respondent.

130. Mrs Gibson was a discredited witness who had admitted that she had lied to the Investigation Accountant. Her evidence should be viewed in that light. It was inconsistent and unreliable.

131. Mrs Simpkin told of meetings of members of the respondent's staff. At the time of the issue of the Alliance and Leicester Building Society Writs and the second inspection by

the Investigation Accountant his former staff had acted together and had continued to do so to fabricate a case against the respondent.

132. The respondent had been treated unfairly by the applicant who had not obtained or produced relevant documents. The respondent had not been given an opportunity to comment upon the serious allegations made against him until the commencement of the formal disciplinary proceedings.

133. After the finding by the Tribunal that a number of the allegations against the respondent had been substantiated it was said on behalf of the respondent in mitigation that the Tribunal was already aware of the mitigating circumstances. The tragedy already had occurred. The respondent had suffered considerably from a professional point of view and his health had suffered. His financial position had been destroyed and he was living on income support. He had had to face a horrendous hearing involving an examination of his life. The respondent's reputation had been considerably damaged both publicly and repeatedly.

134. Many of the allegations levelled against the respondent either had been found not to have been substantiated or had been withdrawn.

135. It was difficult to offer mitigation on behalf of the respondent with regard to allegation (xiv) without the Tribunal's written reasons.

136. The Tribunal was requested to impose the minimum sanction and it was pointed out that any further financial burden placed upon the respondent he would find difficult to meet.

137. The respondent had worked professionally and honestly for the firm of J Healy & Co. since the intervention into his practice. The Tribunal was asked to permit the respondent to continue to work on that basis and to recover his life.

138. The respondent had been admitted as a solicitor in 1988 and had been a legal executive ten years before that. Before becoming a legal executive he had worked in a solicitor's office. His whole life had been devoted to training and studying and working in the law. He knew no other profession or trade. The respondent was young and a very able lawyer. The Tribunal was urged to exercise leniency.

139. Complaint had not emanated from clients, no client of the respondent had been called to give evidence. No member of the public had complained. The only evidence before the Tribunal was evidence from the respondent's former members of staff. There had before the Tribunal been no examples of cases where the respondent had let down a client. No one had suffered loss.

The Findings of the Tribunal

The Tribunal FOUND allegation (i) to (vi) to have been substantiated, indeed they were not contested. Allegations (vii) and (viii) had been withdrawn. They found allegation (ix) to have been substantiated. They found allegation (x) not to have been substantiated. Allegation (xi) had been withdrawn. They found allegation (xii) not to

have been substantiated. Allegation (xiii) had been withdrawn. They found allegations (xiv) and (xv) to have been substantiated.

The matter took up six days to be heard, and rather more hours than a six day hearing might indicate.

The majority of the time was spent upon evidence concerning allegation (xiv), the main thrust of which was that the respondent had falsified documents by backdating and making file copies of documents which had not been despatched as appeared upon the face of those copies. The Tribunal do not consider that the evidence they have heard supported the respondent's case that there was a conspiracy of his staff.

The Tribunal have not considered it necessary to set out every facet of the evidence before them. They have set out only those areas which they consider to have been incontrovertible.

The Tribunal have two reasons for adopting this course. The first is that to try to write down even a summary of everything that was said before them would lead to a lengthy and cumbersome document. The second is that, although the allegation that the respondent had falsified documents is the most serious of them, even if the allegations were limited to allegations (i) to (iv) (ix) and (xv) the Tribunal are firmly of the view that a Striking Off Order is entirely appropriate.

The respondent demonstrated an arrogant disregard for the rules and regulations governing the profession to which he had only recently been admitted. He had always been employed in the law, having achieved qualifications both as a Fellow of the Institute of Legal Executives and as a Licensed Coveyancer. He was not inexperienced, but nevertheless appeared to think that he could flout the Practice Rules without regard for the truth.

The respondent was clearly aware of the requirement for supervision of a solicitor qualified for less then three years. He sought to take over a firm and make it appear by the printing of Mr Lewis's name on the letterhead that he was so supervised and the requirements of Practice Rule 13 were met when manifestly that was not the case, Mr. Lewis was living and working elsewhere and had no interest in the respondent or the respondent's firm whatsoever. The Tribunal did not believe the respondent when he told them that he had consulted the Law Society who had approved the arrangement.

In addition to the attempts to cover up the breach of the Rule 13 requirement for supervision, the respondent sought to hold out his firm to prospective clients as a partnership. That was untruthful. In particular he sought to deceive institutional lending clients who might not have agreed to instruct a sole practitioner. That was dishonest.

It is essential that a solicitor complies punctiliously with the Solicitors Accounts Rules. Any breach is always a serious matter. Those Rules are in force to ensure that clients' moneys are treated fairly are not placed in jeopardy and to enable the Law Society to police solicitor's compliance with the Rules.

The Tribunal was told that the respondent had suffered considerable difficulty with his accounts staff. That is not an unfamiliar explanation of accounting deficiencies to the Tribunal, and would be recognised by them as a mitigating factor of some weight. In this case, however, upon the second inspection of the respondent's books, the Investigation Accountant of the Law Society found a shortfall on client account. That is a serious matter in itself. The respondent did not take the obvious and fundamental step of immediately making rectification. He told the Tribunal that he believed there was no urgency. The Tribunal take the view that a shortage of clients' funds must be the subject of the most urgent rectification. The Tribunal did not believe the respondent when he said that the Investigation Accountant of the Law Society indicated that the matter was neither serious nor required urgent attention.

Whilst the Tribunal had some sympathy for the respondent in connection with the issue of the Writs by Alliance and Leicester Building Society in respect of matters handled by Mr Lewis, the Tribunal could not avoid the conclusion that the respondent was to a great extent the author of his own misfortune when he sought to demonstrate that his firm was the successor to Lewis & Co.

The Tribunal recognised that at the time when the Writs were given great publicity and the Investigation Accountant of the Law Society was carrying out a second inspection of the respondent's books of account the respondent's members of staff to a degree panicked. Although it was accepted by both parties to these proceedings that the most serious allegation faced by the respondent was allegation (xiv), the Tribunal believe they have made it clear that it was their view that the substantiation of the other allegations and the fact that the Tribunal had found the respondent to have been untruthful was sufficient for the Tribunal to conclude that the respondent was not a fit and proper person to be a solicitor and that a Striking Off Order was the proper sanction to be imposed upon the respondent without their making any finding at all in respect of allegation (xiv). However the Tribunal has found allegation (xiv) also to have been substantiated.

The allegations of backdating letters and throwing away top copies were not specific to any files but Mrs Scanes gave evidence that she had been asked to backdate letters on a number of occasions. Miss Costello had a very clear recollection of one occasion when she had been asked to backdate a letter as had Mrs Smith. Miss Thomas had seen the falsification of a file. Mrs Gibson and Mrs Saville both had documents, apparently addressed to them, put to them during the course of their evidence which they had not received and which they considered to be fictitious. There was the evidence of Mrs Douch that on the file of Mr A when it was eventually handed over there were letters which had been typed but not sent. The Tribunal accepted the evidence that the respondent's management of the practice was shambolic and has gained the impression that the respondent perhaps saw little wrong with economies with the truth which made the files of which he had conduct appear to have been rather better handled than in fact was the case. That was to be deprecated and represented behaviour which would not be tolerated.

In summary the Tribunal reached the conclusion that the respondent was not a man who displayed the requisite probity trustworthiness and integrity required of a solicitor and it was right that he should be Struck Off the Roll. The Tribunal's order for costs

reflected the fact that not all allegations initially made against the respondent had been pursued or found to have been substantiated against him. The Tribunal declined to make an order for costs in favour of the respondent considering that it was right that all allegations should have been investigated or put to the respondent even if they had subsequently been withdrawn.

DATED this 20th day of December 1997

on behalf of the Tribunal

K I B Yeaman
Chairman

Findings filed with the Law Society on the 5th day of January 1998