

IN THE MATTER OF GEOFFREY GRAHAM, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

---

Mr. D J Leverton (in the Chair)  
Mr. A H Isaacs  
Lady Bonham Carter

Date Of Hearing: 14th November 1996

---

## FINDINGS

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

---

An application was duly made on behalf of the Solicitors Complaints Bureau (subsequently the Office for the Supervision of Solicitors) by Gerald Malcolm Lynch solicitor of 16 Warrior Square, Southend on Sea, Essex on the 12th August 1996 that Geoffrey Graham solicitor of Graham & Co., 361B Stamfordhaven Road, Westerhope, Newcastle upon Tyne, might be required to answer the allegations contained in the statement which accompanied the application and in a supplementary statement dated the 11th October 1996.

The allegations set out below are those contained in the original and supplementary statements. The allegations were that the respondent had:

- (i) failed alternatively had failed with reasonable expedition to reply to correspondence and enquiry addressed to him by clients, other solicitors and the Solicitors Complaints Bureau;
- (ii) been guilty of delay alternatively failed to pursue with reasonable expedition the instructions of clients;

- (iii) failed alternatively unreasonably delayed in accounting to clients in respect of clients' monies;
- (iv) failed alternatively failed with reasonable expedition to make payment of agents fees properly due;
- (v) failed to act in accordance with the direction of an Assistant Director of the Solicitors Complaints Bureau in relation to inadequate professional service;  
(in regard to the aforementioned, the direction of the Tribunal it was requested that the said award be enforceable as a judgement of the High Court.)
- (vi) been guilty of delay alternatively had failed with reasonable expedition to arrange for taxation of a bill of costs;
- (vii) acted in breach of an undertaking given in the course of his practice as a solicitor;
- (viii) by virtue of each and all of the aforementioned been guilty of conduct unbecoming a solicitor;
- (ix) failed to respond to correspondence and enquiry addressed to him by an erstwhile client's new solicitors and further failed to hand over an erstwhile clients' papers to those solicitor pursuant to requests made and had thereby been guilty of conduct unbecoming a solicitor.

The application was heard at the Court Room, No.60 Carey Street, London, WC2 on the 14th November 1996 when Gerald Malcolm Lynch solicitor and partner in the firm of Messrs. Drysdales and Janes of 16 Warrior Square, Southend on Sea, Essex appeared for the applicant and the respondent appeared in person.

The evidence before the Tribunal included the admissions of the respondent to all of the allegations, including that the order referred to in allegation (v) might be made save that the respondent denied allegations (vii) and (viii).

At the conclusion of the hearing the Tribunal ORDERED that the respondent Geoffrey Graham of Messrs. Graham & Co., 361B Stamfordham Road, Westerhope, Newcastle upon Tyne solicitor be suspended from practice as a solicitor for an indefinite period to commence on the 14th November 1996 and they further ordered him to pay the costs of and incidental to the application and enquiry to be taxed if not agreed. The Tribunal further ordered that the Direction of the Assistant Director of the Solicitors Complaints Bureau in relation to inadequate professional services be treated for the purposes of enforcement as if it were contained in an order of the High Court.

The facts are set out in paragraphs 1 to 55 hereunder.

1. The respondent was admitted as a solicitor in 1984 and was aged 46 years. At the material time the respondent practised on his own account under the style and title of Graham & Co., at 361B Stamfordham Road, Westerhope, Newcastle upon Tyne, NE5 2LH.

2. Prior to his sole practice, the respondent was in practice as the Graham & Bell Partnership during which partnership several of the matters the subject of complaint herein were dealt with in whole or in part. The partnership with Mr. Bell was from 1988 until dissolution on the 16th August 1993.

**The Estate of HH Deceased**

3. HH died in April 1991 and the administration of her Estate was placed in the hands of Messrs. Graham & Bell. Her affairs were not complicated, the main asset being her house. On the 24th May 1993 Mrs MP wrote in complaint to the Solicitors Complaints Bureau (the Bureau) alleging delay by the respondent in the execution of instructions. The complainant in October 1992 had been told that the administration was concluded and Estate Accounts were being finalised. In January 1993 she was told the same. In March and April 1993 she was told that several matters still required attention. Photocopies of relevant correspondence were enclosed. In July 1993 the complainant said that she still had no settlement in respect of the Estate. The Bureau sought to intervene and correspondence ensued. In August 1993 the complainant confirmed receipt of an interim payment of £7,000. By letter of the 3rd March 1994 the complainant confirmed that she had not received further correspondence or payment in respect of the administration.
4. The Bureau wrote to the Senior Partner of Graham & Bell on the 14th February 1994 asking that the matter be finalised. By letter of the 3rd March the complainant confirmed that nothing had been paid. On the 18th April the Bureau asked the respondent to deal with the matter. On the 17th May, the complainant wrote again to say that it was now in excess of three years since the death of the deceased and the administration had still not been settled.
5. The first response from the respondent was by letter of the 27th September 1994 advising of the dissolution of the Graham & Bell Partnership in August 1993 saying that the matter had been in the hands of a legal executive. The respondent expected the administration to be completed in the near future. The respondent wrote again on the 19th January 1995 to say that he was applying for a Remuneration Certificate and would pay interest in the balance of the estate.
6. The complainant instructed Messrs. Park & Co., solicitors who on the 24th February 1995 wrote in complaint against the respondent.
7. It was not confirmed that the administration of this estate was completed and the matter was referred by the Bureau to the Conduct Committee.
8. On the 22nd February 1996, David Auld & Co., solicitors appointed in place of the respondent in relation to the administration, wrote to the Bureau. They enclosed a resume of what had happened in the administration and complained that they could not obtain from the respondent moneys being held which would enable the estate administration to be finalised. Copy correspondence was enclosed.
9. On the 5th March the Bureau wrote to the respondent asking that he should co-operate with David Auld & Co., to enable the administration to be completed as soon as possible. On the 19th March nothing having been heard, the Bureau asked the

respondent to confirm within 7 days that he had accounted to David Auld & Company for moneys he was holding. On the 1st April David Auld & Co. confirmed that they had heard nothing from the respondent and on the 24th April wrote to say that in a telephone call the respondent had confirmed that moneys would be paid by the end of the week i.e. 12th April. Further correspondence with the respondent was enclosed. Further correspondence was dated the 24th June.

10. On the 21st June David Auld & Company wrote to the Bureau to confirm that they had received a copy of the ledger accounts for the respondent's firm together with the sum of £7,498.23 being the closing balance of the Trustee Account. It was their belief, however, that the respondent still held a sum in excess of £7,000 which had not been the subject of account.
11. On the 3rd June 1993 Michael Ward, solicitor of Sheffield wrote on behalf of a beneficiary of the estate of HH complaining of delay in the administration of the straightforward estate. Copy relevant correspondence was enclosed. On the 2nd July 1993 a letter was received from the Graham & Bell Partnership (Mr. Bell) referring to the complaint.
12. Correspondence in relation to this complaint was entered into by the Bureau. On the 21st June 1994 the respondent wrote to the Bureau in relation to the partnership dissolution, illness of the respondent and the involvement of the legal executive. He alleged that delay had been caused owing to a third party not approving estate accounts.
13. Further correspondence between the complainant firm and the respondent was submitted by letter of the 22nd May. The matter remained incomplete.
14. On the 20th July 1995 the Bureau wrote to the respondent asking that he confirm precisely the position in relation to the administration. On the 25th July the respondent said that he had passed the papers to a solicitor friend to look at and to prepare final accounts.
15. On the 9th September 1994, Messrs. Llewellyn Gomersall, solicitors of Bournemouth complained to the estate of HH. Their complaint was the delay in the administration of the estate, failure to account to their client and failure to respond adequately to enquiry made. The Bureau wrote to the respondent in relation to this further complaint asking that it be resolved quickly. Nothing having been heard, a further letter was sent dated 22nd December. By letter dated the 20th January 1996 the complainant firm said that despite action and intervention by the Bureau, no accounts or payment of balance of funds to their client had been offered. The administration of the estate was complete.
16. By letter of the 27th September 1995 the respondent had written to the Bureau in relation to the complaint concerning the HH administration. Inter alia the respondent made the following representations:-
  - (a) The matter had been dealt with by a legal executive;

- (b) After dissolution of the partnership Mr. Bell and the legal executive were liaising in relation to the file but it was returned to the respondent in January/February 1994.
  - (c) There was delay and difficulty in obtaining money from a building society.
  - (d) The solicitor "friend" had not been able to prepare the accounts.
  - (e) The respondent had a "mental block" in respect of the matter. Certain additional correspondence was enclosed.
17. On the 13th December 1995, the Conduct Committee resolved to refer the conduct of the respondent in this matter to the Disciplinary Tribunal.

**Delay in taxation, failure to reply**

18. On the 12th April 1994, Messrs. Mitchell Dodds & Co., solicitors of Gosforth wrote in complaint against the respondent. They had, under legal aid, acted on behalf of a Mr. and Mrs N in connection with a dispute over a motor car. In April 1989 the respondent had been instructed. An Order was made in the Newcastle County Court on the 13th March 1990 providing for costs to be taxed in accordance with the Legal Aid Act. The Order had been made upon an application to strike out for want of prosecution by the plaintiff's former solicitors. The application was successful, but the former solicitors were not deprived of their costs. The respondent had only shortly before gone on the record - he had only recovered a small amount of costs himself. He had in effect been required to seek taxation on behalf of the previously instructed firm.
19. There was correspondence between the complainant firm and the respondent relating to the drawing of a bill of costs and it was agreed that one bill be drawn and the complainants had sent to the respondent a cheque for their portion of the fee for drawing the bill, asking that the respondent should keep them informed of the position after taxation.
20. Further enquiry of the respondent did not elicit a reply. On the 25th September 1992 the complainants threatened to report the matter to the Bureau if satisfactory information as to taxation was not received within 7 days. This prompted a reply from the respondent saying that the firm was awaiting the Allocatur from the Court following which they would submit the report on case and claim for costs.
21. The complainant firm had asked to know the date on which the bill was taxed but received no reply. Two further letters also were ignored. In July 1993 a further letter had been sent and the complainants were told (by Mr Bell) that the Allocatur had been sent out by the Court in October 1992. It was suggested that the firm had not received this and the Court had been asked for a further copy. In August 1993, the complainant firm were told that the Allocatur was in the possession of the respondent. Nothing further was heard and in December 1993, further enquiry was made. The respondent confirmed over the telephone the dissolution of the partnership, saying that he did not have the file. In April 1994 letters had been addressed to the respondent

and indeed Mr Bell asking that the matter be sorted out and saying that if it was not within 7 days, the matter would be reported by way of complaint. That was the position at the time of the complaint.

22. On the 4th July 1994 the Bureau wrote to the respondent asking that the matter be dealt with. Further letters were sent on the 21st September, 6th October and the 14th October without response being made. On the 21st October, the complainant firm wrote to say that they had had no contact from the respondent.
23. On the 4th November the respondent wrote to the Bureau to say that the delay had been caused by loss of the file at the Court: the bill had been taxed and would be submitted to the Legal Aid Board for payment. On the 11th November, the complainant firm wrote to say that they still had heard nothing further. On the 21st November the Bureau wrote to the respondent noting that the bill had been taxed and asking that the matter be expedited. On the 2nd May 1995, the bureau wrote again to the respondent, having received further correspondence from the complainant to the effect that payment had not been made. It was pointed out to the respondent that the matter had been near completion six months earlier. The Bureau asked the respondent to confirm the position. The respondent had not replied and a further letter was sent by the Bureau on the 22nd May. On the 2nd June the respondent asked for an extension of time to reply and this was granted for 14 days by letter of the 7th June.
24. On the 9th June the complainants wrote again setting out their complaint, pointing out that they had not received payment and that despite the fact that taxation had taken place in March 1992, the matter appeared no closer to resolution. It was now more than five years since the order for costs had been made.
25. Nothing further was heard from the respondent and the Bureau wrote to him on the 5th July 1995 requiring substantive reply within 7 days. The same was not forthcoming. On the 8th August the complainants wrote with a copy letter from the Legal Aid Board dated the 3rd August to the effect that no report on case or claim for costs had been submitted by the respondent to the Legal Aid Board. The Bureau wrote again to the respondent on the 25th August requiring response and to which response was made by letter of the 27th September. Inter alia the respondent made the following submissions:-
  - (a) That he had acted with frankness and good faith in the matter.
  - (b) The complainant firm were not clients and there was no undertaking given to them concerning legal aid costs.
  - (c) There was a possibility of a claim against the complainant firm in relation to negligence.
  - (d) The respondent accepted that a claim for costs had not been made to the Legal Aid Board, copy of the taxed bill and Allocatur would therefore have to be obtained from the Court for submission to the Board.

- (e) The respondent said that he did not owe the complainant firm any duty to see that the legal aid costs were paid or to tax.
  - (f) There was considerable delay by the court in taxing the bill.
26. The complaint was considered by the Conduct Committee on the 13th December 1995 when it was resolved to refer the conduct of the respondent to the Disciplinary Tribunal. The respondent by letter of the 24th January appealed against this decision which appeal was dismissed.

### **Breach of Undertaking**

27. On the 10th June 1994 Mitchell Dodson & Co. of Whitely Bay wrote in complaint against the respondent. The complainants acted for a Mr. C and the respondent had acted for his wife Mrs C in connection with matrimonial proceedings. The Undertaking, the subject of complaint, was given in connection with the sale of the former matrimonial home on the 11th March 1994. The respondent in a faxed letter had undertaken to place the net proceeds of sale upon deposit at an agreed building society in the joint names of Graham & Company and Mitchell Dodds & company, to be held in that account until either an agreement had been reached between the respective clients or an ancillary relief order made. The complainant firm sent three letters requesting details of the bank or building society account into which the moneys had been deposited, assuming that they had been deposited, but it had no response to those letters. They were concerned at the breach of undertaking and failure to respond.
28. On the 20th June 1994, the Bureau wrote to the respondent in relation to this complaint asking that immediate contact be made with the complainant firm to clarify the position. The respondent had in fact written to the complainant firm on the 10th June confirming sale of the matrimonial home but saying that he had not been told of a suggested building society. On the 14th June the complainant firm wrote to the respondent, pointing out the earlier correspondence and the respondent's failure to reply. They pointed out also the breach of the undertaking.
29. On the 20th June 1994 the Bureau wrote to the respondent asking that the matter be expedited. In a telephone call of the 9th September with the Bureau, the respondent said that he had not had a copy of the undertaking and that the proceeds were held in client account though not in the joint names of his firm and that of the complainant's firm. The complainant firm on the 2nd December wrote to the Bureau to say that the matter had not been resolved and enclosed copies of the further correspondence. The respondent still held the money resulting from the sale of the matrimonial home despite requests from their erstwhile client's new solicitors (a Mr. Stainsby) to transfer those funds either to his client account or to that of Messrs. Mitchell Dodds & Co.,
30. In March 1995 the complainant firm wrote to the effect that the respondent had now accounted in respect of moneys from the sale of the new matrimonial home and these had been placed in the joint names of themselves and Mr. Stainsby (See above). The complainant firm were looking for a further undertaking from the respondent in relation to the payment of interest. Such undertaking was given by letter of the 31st

January 1995. Further correspondence ensued as to the form acceptable to the complainant firm. In this regard the Bureau wrote again to the respondent in August 1995, the complaint firm having calculated a sum in interest that would be acceptable.

31. The respondent wrote to the Bureau in relation to this complaint by letter of the 27th September 1995. Therein he made the following submissions:-
- (i) He was not in breach of Undertaking. The Undertaking had been "volunteered" by him. He should only have been required to have used his best endeavours to place the moneys with a building society. No agreement as to a building society had been reached.
  - (ii) The respondent acknowledged that interest was due.
  - (iii) The respondent did not have the funds to pay interest at the present time.
32. On the 16th November 1995 the respondent sent to the complainant firm moneys in respect of the interest which had accrued due. The complainants confirmed receipt to the Bureau by letter of the 20th November.
33. The respondent told the Tribunal that in his view the undertaking was conditional. The condition had not been fulfilled and so the undertaking had not taken effect in that there had been no agreement as to the building society to be appointed to hold the money.
34. The complaint was considered by the Conduct Committee on the 13th December 1995 when it was resolved to refer the conduct of the respondent to the Disciplinary Tribunal. The respondent appealed the decision by letter of the 24th January 1996 which appeal was dismissed.

#### **Complaint of failure to account**

35. On the 9th September 1994, Messrs. MacPherson Gibb Maguire Cook, solicitors of Glasgow complained to the Bureau in respect of the respondent. They acted for a Mrs D a beneficiary in the estate of MS deceased who had died in February 1993. The respondent's firm had been instructed. A payment of £5,000 on account had been made in June 1993 and in December 1993 a final account was received indicating a balance due to the client of some £326.27. The statement of account, a copy of which was enclosed, did not make allowance for accrued interest on the sums held to the account of the client. Also the client and her solicitors had not received a balance of funds from the respondent's firm despite correspondence in this regard. Considerable distress had been caused to the client by the delay.
36. On the 18th January 1995 the Bureau wrote to the respondent asking that the matter be dealt with. The respondent had referred to the Partnership dispute as being the cause of the delay. In this regard, the complainant firm on the 9th March pointed out that clients funds should be held separately from the partnership account and that payment should despite any dispute between the respondent and his erstwhile partner Mr. Bell, be paid. The Bureau sought from the respondent an update on the position



by letter of the 15th March. Response was not received and the Bureau wrote again on the 12th April. On the 25th July the respondent wrote to say that he did not accept that he had been the cause of the delay, which was due to the failure of Mr. Bell to sign a cheque. He accepted that interest was due. On the 20th July the Bureau wrote to say that they proposed to direct the respondent and Bell to release the clients funds. On the 6th September the Bureau wrote again to the respondent saying that he and Bell had failed to give a satisfactory explanation in relation to a complaint of undue delay and seeking to exercise powers under paragraph 32 of the First Schedule to the Solicitors Act 1974. The respondent and Bell were to be required to produce documents and the money held to the Law Society's appointed agent.

37. The respondent wrote to the Bureau on the 27th September 1995 in relation to this complaint. Inter alia he made the following submissions:-
- (a) He had done all he could to conclude the estate.
  - (b) The matter had been under the control of a legal executive.
38. By letter of the 16th January 1996 the respondent was advised that this complaint was to be referred to the Disciplinary Tribunal. By letter of the 24th January he appealed against that decision which appeal was rejected.

#### **Failure to pay Agent's fees**

39. On the 14th October 1994 Messrs. Tofield Swann & Smythe, solicitors of Sheffield wrote to the Bureau in complaint against the respondent. They had acted as agents for Graham & Co., then practising as Graham & Bell, in December 1992 and February 1993 in proceedings before the Sheffield County Court. Bills were rendered for their services totalling £574.34 but both bills remained unpaid. Reminder letters were sent at intervals and on the 17th May a letter was sent stating that proceedings would be taken if the accounts were not discharged. That had produced a response to the effect that the client was legally aided, that litigation continued and that the solicitors i.e., the respondent's firm had not yet submitted their account to the Legal Aid Board for payment. When submitted that account would include the agent's fees. The respondent's firm were alleging that the complainants had undertaken the work on the basis that they would be paid from the Legal Aid Fund when the matter was concluded. In October 1993, the complainant firm had written to the respondent reminding him of his professional obligation to discharge agents fees but no response was received. Further reminder letters had been sent without response. The bills had been outstanding for almost two years. Copy correspondence was annexed.
40. The Bureau wrote on the 11th January 1995 in relation to this complaint, seeking comment. Enquiries made by the Bureau revealed that in September 1994 the respondent had submitted a CLA 28 Form to the Legal Aid Board for payment in respect of this matter. The Board had demanded a full and proper bill for taxation purposes and there was further correspondence referred to between the respondent and the Board. Clearly the respondent had failed to keep the complainant firm informed of developments. In April 1995 the complainant firm wrote again to the Bureau saying that they were getting nowhere with the respondent. They had,

however, ascertained that the Legal Aid Certificate was discharged in March 1994 and the respondent had had ample time to lodge his bill for taxation. The litigation had ceased some 18 months beforehand. They had again written to the respondent requiring payment.

41. Further correspondence took place between the Bureau and the complainant firm. That firm by letter of the 1st August wrote to the Bureau inter alia confirming that there was nothing in the correspondence to indicate that they had ever agreed to wait for payment until the outcome of the proceedings. This was confirmed by the respondent in a letter he had written to them of February 1993 asking that the complainant firm should not press for payment at that stage. There was no implied condition that the complainant firm had to wait for payment until after taxation of the bill of the respondent.
42. The Bureau wrote again to the respondent on the 21st August reminding the respondent of his professional obligation to pay agent's fees. There was no evidence that there was a condition as to payment.
43. By letter of the 27th September 1995 the respondent wrote to the Bureau in relation to this complaint saying inter alia:-
  - (a) The file was with the costs draftsmen to prepare a bill of costs for taxation.
  - (b) There was an implied term that the complainant firm would wait for payment until after taxation.
44. On the 13th December 1995 the Conduct Committee decided to refer the conduct of the respondent to the Tribunal, the respondent having failed to produce any sufficient evidence to show that the complainant firm had agreed to await the outcome of taxation before receiving their fees. The fees should be paid within 14 days. The respondent appealed this decision by letter of the 24th January 1996 which appeal was dismissed.

#### **Delay in registration of Charges**

45. On the 18th January 1995 pursuant to statutory notice given, the Investigation Accountant of the Law Society inspected the books of the respondent. The books of account were in compliance with the Solicitors Accounts Rules 1992 in all material respects. However, the Investigation Accountant noticed that in respect of eight matters where the respondent had acted, the necessary registration with H.M. Land Registry of charges had not taken place. The eight matters were detailed in a schedule to the Investigation Accountant's Report.
46. On the 27th March 1995 the Bureau wrote to the respondent drawing his attention to this failure and also to the fact that Stamp Duty remained outstanding in two of the matters. The respondent's explanation was sought. No reply was received and the Bureau wrote again on the 18th April 1995 and again on the 20th July.

47. The respondent replied by letter of the 27th September. He hoped to complete the matters within two weeks. The clients had not been prejudiced.
48. On the 13th December 1995 the Conduct Committee decided that the conduct of the respondent be referred to the Disciplinary Tribunal. By letter of the 24th January 1996, he appealed against that decision which appeal was dismissed.

**Failure to observe direction for compensation for inadequate professional services**

49. A Mrs Y was a client of the respondent. Initially she had instructed the respondent's partner Mr. Bell to act in the sale of property. There was an allegation of failure to respond to enquiry and further complaint that there had not been produced an adequate financial account following completion. The matter was the subject of investigation by the Bureau and an assessment was produced herein on the 16th November 1995. This assessment was sent to the respondent and his observations invited.
50. The matter was considered under delegated powers by an Assistant Director of the Bureau and on the 25th January 1996, the Assistant Director expressed herself satisfied that there was inadequate professional service. She determined that the respondent's firm should not be entitled to any costs in respect of the matter save as set out in paragraph 2 of the award and directed the refund of £200 plus v.a.t. to the client. Further direction was made that the respondent's firm should within 28 days prepare a financial statement showing all moneys received in the matter. The Assistant Director's decision was notified to the respondent by letter of the 31st January 1996. There was no appeal against this. Further correspondence was addressed by the Bureau on the 8th March and the 26th March pointing out that payment was overdue. On the 16th April the respondent wrote to the Bureau asking time for payment to be extended to the end of April 1996 due to lack of funds. Payment had not been made. On the 22nd May and in view of non payment, the respondent was advised that the matter would be referred to the Conduct Committee. Disciplinary Proceedings in regard thereto had been resolved upon. It was further resolved that the Disciplinary Tribunal be asked to direct that the money payment should be enforceable as if made in an award of the High Court.
51. By virtue of the number of complaints and their nature a letter requiring explanation with warning of the consequences was addressed by the professional Conduct Manager of the Bureau to the respondent on the 26th April 1995. This referred to all of the matters referred to above together with certain other matters which were not before the Tribunal. The letter was delivered to the respondent by representatives of the Bureau Messrs. Simpson & Baker who on the 26th April were visiting the respondent to discuss the various complaints. An attendance note was made at the time to which full reference will be made at the hearing for its terms and effect. In large part the respondent repeated the explanations hereinbefore referred to but in addition made the following points:-

- (a) he was under treatment for depression and had made little profit in the previous year. He was in litigation with his bank who had denied him overdraft facilities.
- (b) Relations with Bell and the executive Harrison were strained. In relation to the Hammond estate, he hoped to have funds to allow distribution to the beneficiaries within the week.
- (c) A postal strike may have contributed to non-response to Bureau correspondence.
- (d) In the Y case he accepted that service had fallen short of 100%.

At the meeting it had been made clear that the Bureau expected a full response in writing to the various complaints and this was provided by letter dated the 31st May 1995 dealing in general with the respondent's personal and professional position, difficulties that he had undergone and referring to the various complaints.

52. At the time of consideration of the matter by the Conduct Committee the respondent wrote a letter to the Complaints Committee dated the 27th September 1995. Inter alia he made the following submissions:-

- (a) he felt that he was on the mend in relation to his depression.
- (b) His professional circumstances continued to cause difficulty.
- (c) He had great difficulty in dealing with letters of complaint from the SCB as they undermined his confidence and represented a set back.
- (d) He did not regard himself as dishonest or dishonourable.

53. On the 25th September 1996 Messrs. Singleton Winn, solicitors of Newcastle upon Tyne wrote to the Bureau (by then the Office for the Supervision of Solicitors) in complain against the respondent. They had been instructed by a Mr M in respect of a criminal injuries compensation claim.

54. On the 12th June 1996 the complainant firm wrote to the respondent requesting the delivery of the file and enclosing Mr M's authority to so do.

55. The file was not delivered. Further letters were written by the complainant firm to the respondent dated the 22nd July, 1st August and the 19th September 1996 but no response had been made.

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

56. There had been many substantial matters in which complaint about the respondent had arisen which supported the allegations, including that of conduct unbecoming a solicitor, which had been placed before the Tribunal.

**The Submissions of the Respondent**

57. It was submitted that the matters which had brought the respondent before the Tribunal resulted from the "fall-out" from the dissolution of the Graham & Bell Partnership, in which he was a partner with Mr E.A. Bell, in August 1993. He had provided a history of the dissolution to the Bureau. Despite instructing a solicitor in the dissolution from the outset, it had not been concluded.
58. The partnership bankers continued litigation against the respondent. In those proceedings he had on numerous occasions asked his solicitor to apply for Legal Aid, to no avail. Furthermore, he had failed to keep him advised as to the progress, resulting in an "unless order" to produce his statement which had not been previously requested. There were hearings of which the respondent was unaware.
59. The respondent continued to operate the business without the overdraft facilities and his financial circumstances had been parlous, resulting in County Court judgements for income tax, rent for the business premises, and seemingly continuous threats of possession proceedings for his home (being some twenty months in arrears with the mortgage). The Sheriff's Officer had been to the business premises for walk-in possession in respect of the rent and a threat to enter occupation the next day was painfully, but thankfully, avoided by setting in motion a loan on the respondent's pension. The Inspector of Taxes had sought an oral examination of his finances at the local County Court on 21st November 1996. It might be that the respondent's home would have to be sold.
60. An enormous part of the respondent's depression had followed continuous and corrosive self criticism. Complaints had the appearance, to him, of being ferocious and unrelenting and had seemed like an objective reinforcement of the self criticism resulting in self judgment, "Yes, you are right, your criticism of yourself is right" and inertia. He had not been able effectively to deal with most of the complaints, and the fact that they had resulted in disciplinary proceedings made him feel deeply ashamed. The respondent had never envisaged that in his professional life he would have to appear before the Disciplinary Tribunal. Not being able to put his case directly and in person to the Bureau added to a sense of hopelessness of there being a foregone conclusion to the complaints.
61. From the time of the dissolution there had been two visits from the Law Society Monitoring Unit Accountants, two from Investigation Accountants and one Bureau staff.
62. The respondent had been subject to s12(1)(e) of the Solicitors Act 1974 as a result of an estate which was initially dealt with by the former Partnership. It was judged that the respondent had not supplied a sufficient explanation, but he submitted that a full explanation had been provided. Once again he felt deeply ashamed. Recommendations were made to the Assistant Director of the S.C.B. that within three months of the decision he practise either in an approved partnership or employment, which were successfully opposed. A condition, instead, being set that accountant's reports be at six-monthly intervals.

63. The respondent apologised to the Tribunal, the profession and to any clients who might have been embarrassed, placed in a poor light or distressed as a result of his actions or inactions. The Tribunal was asked to accept that behaviour or conduct arising from ill health ought not to be regarded as conduct which was unbecoming.
64. The respondent had suffered from depression. Medical reports had been placed before the Tribunal.
65. The Tribunal in reaching its decision might be concerned for the future. The respondent invited the Tribunal to consider the following. The respondent stopped taking his medication in May/June 1996, although he continued to have appointments with his medical advisor. The decision to cease medication was his after being prescribed Lithium combined with an anti-depressant. Lithium could be prescribed where depression had been prolonged. It seemed the last resort to the respondent so he decided to stop the medication, and if that was not successful, Lithium could be tried.
66. The respondent had rediscovered some enthusiasm, self confidence and energy. He was in between changing solicitors to resolve the partnership dissolution and bank litigation, with the assistance of Legal Aid. A new solicitor would be formally instructed after the Tribunal decision.
67. Combined with self confidence there had been a developing ability to make decisions, such as change solicitors, obtain a pension loan, negotiate with the landlord, write a statement for the Tribunal and seek taxation of bills of costs.
68. The decision of the Assistant Director of Office for the Supervision Solicitors in relation to conditions formerly on his practising certificate was described by the respondent as a "huge boost".
69. By design new clients' instructions had been greatly reduced; the respondent's office was now open to the public between 2.30 p.m. and 5.00 p.m.; the public was not in jeopardy.
70. It was not the respondent's intention to be a sole practitioner. Lengthy discussions did take place (over twelve months) to merge with another sole practitioner, but did not come to fruition, ending in February/March 1996. New partnership discussions took place with an assistant solicitor between April and June 1996.
71. The Tribunal was asked to deal with the respondent in a way that might give him further encouragement for the future.

The Tribunal FOUND all of the allegations to have been substantiated. There had been a long list of complaints about the respondent. The Tribunal was aware that he had suffered from depression and accepted the respondent's assurance that no further matters would come to light in respect of which complaint might lie relating to the period when the respondent had been most severely depressed.

The delays specified in this Finding caused inconvenience and anxiety to third parties, in particular to other solicitors and the clients instructing them and served only to undermine the confidence of the public in the solicitors' profession.

Although the Tribunal had some sympathy for the respondent, there had been a long catalogue of failures on the part of the respondent which added up to a serious overall situation.

The Tribunal noted that there had been no allegation of dishonesty made against the respondent. It appeared that his books of account were in good order.

The Tribunal considered it best in the interests of the respondent himself and those dealing with him that he be suspended from practice for an indefinite period of time. The determination of that period only to be determined on a successful application made to the Tribunal at which time the Tribunal would expect to have before it strong evidence that the respondent had recovered from his depression and was in every respect fit and well and able to be a proper member of the Profession. The Tribunal further ordered that the respondent pay the costs of and incidental to the application and enquiry such costs to be taxed if not agreed. The Tribunal also made a Direction that the decision of the Assistant Director of the Solicitors Complaints Bureau be treated for the purposes of enforcement as if it were an Order of the High Court.

DATED this 2nd day of January 1997

on behalf of the Tribunal



D J Leverton  
Chairman

