

IN THE MATTER OF RICHARD DONNELLAN, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS' ACT 1974

Mr. A H Isaacs (in the chair)
Mr. K I B Yeaman
Mr. D Gilbertson

Date of Hearing: 7th October 1999

FINDINGS

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

1. An application had been duly made on behalf of the Office for the Supervision of Solicitors by David Roland Swift who was then a solicitor and partner in the firm of Messrs Percy Hughes & Roberts of 19 Hamilton Square, Birkenhead on 9th December 1996 that Richard Donnellan of Chipping Norton, Oxfordshire 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.
2. At the opening of the hearing Geoffrey Williams, appearing on behalf of the applicant, informed the Tribunal that he sought to withdraw allegation (vii). The respondent agreed and the Tribunal consented.
3. The allegations were that the respondent had been guilty of conduct unbefitting a solicitor in each of the following particulars, namely that he had:-
 - (i) contrary to Rule 8 of the Solicitors Accounts Rules 1991 drawn money out of client account other than as permitted by Rule 7 of the said Rules;
 - (ii) utilised clients' funds for the purposes of other clients;

- (iii) utilised clients' funds for his own purposes;
 - (iv) misappropriated clients' funds;
 - (v) practised at an office that was not properly supervised contrary to Rule 13 of the Solicitors Practice Rules 1990
 - (vi) failed to pay professional agent's fees as the same became due;
 - (vii) withdrawn;
 - (viii) failed to deliver an Accountant's Report required by the provisions of Section 34 of the Solicitors Act 1974 and the Rules made pursuant thereto;
 - (ix) contrary to Section 41 (1) of the Solicitors Act 1974 employed or remunerated a person who was disqualified from practising as a solicitor by reason of the fact that he had been struck off the Roll of Solicitors.
4. The application was listed to be heard before the Tribunal on 7th October 1999 but was preceded by an application by the respondent that the matter might be adjourned; present were Geoffrey Williams solicitor and partner in the firm of Geoffrey Williams and Christopher Green, Solicitor Advocates of 2a Churchill Way, Cardiff, CF1 4DW who appeared for the applicant and the respondent appeared in person.

The Submissions of the Respondent

5. The respondent told the Tribunal that he sought an adjournment but did not seek merely to put off the hearing.
6. Some four years had gone by since the first Investigation Accountant's visit. The respondent said that he had been "put through the mill by the system". He said the real issue behind the matters alleged against him was the criminal activity of one of his employees who had been convicted of criminal offences and at the time of the adjournment application remained in prison.
7. The respondent had been served with the applicant's bundle of documents approximately three weeks before the adjournment application, including letters which he had not seen before and a transcript of the criminal trial of his employee which he had not had an earlier opportunity to read. He had contacted a firm of solicitors and had only shortly before the hearing been told by that firm that they could not help him in the disciplinary matter.
8. The respondent told the Tribunal that he had lost everything in life, the only thing left was his good reputation. He intended to oppose the allegations. The matters alleged against him were of considerable weight and it was right that he should be represented. There was a volume of paper work and a representative should be permitted a short period of time in which to deal with it.
9. The respondent had been made very seriously ill by the matters surrounding the

disciplinary proceedings and indeed had become clinically depressed.

10. The respondent had enjoyed an unblemished professional career until the events complained of and had not practised since the Law Society intervened into his practice. He said that he did not intend to practise for the time being.
11. The respondent wished to call a witness and subject him to cross examination. The respondent's accountant had sought to exercise a lien over the respondent's documents against his unpaid account. The respondent did not intend to pay, claiming that the accountant had been negligent.
12. The Office for the Supervision of Solicitors had apparently made no progress in the matter and indeed "had gone quiet" for some twenty one months. It was the respondent himself who reminded the Office that matters remained outstanding indeed the respondent had threatened legal action against the Law Society.
13. The respondent had found it difficult to get representation as Legal Aid was not available for Tribunal matters and the respondent was impecunious. He believed he had a realistic chance of gaining representation as members of his family were members of the legal profession, although he believed one was prohibited from acting as he had been briefed in the prosecution of the respondent's dishonest employee.
14. The respondent invited the Tribunal to make directions and set down a time table. It was hoped that given a little time certain matters might be agreed and it would not be necessary for the applicant to call witnesses.

The Submissions of the Applicant

15. A bundle of documents together with Civil Evidence Act Notices and Notices under the Tribunal's Rules of Procedure had been served upon the respondent in good time in accordance with those Rules. Mr Williams would be content to proceed with the substantive hearing without reference to those letters which the respondent identified as being new to him. The transcripts of the criminal trial included in the bundle were transcripts of the respondent's own oral evidence and he could not have been said to have been taken by surprise by those.
16. Mr Williams told the Tribunal that he had issued a separate Civil Evidence Act Notice with regard to one bank statement. That Notice had been posted to the respondent on 17th September. That Notice had not been served strictly in accordance with the Tribunal's Rules of Procedure and the Tribunal was invited to abridge time in that respect. The statement referred to one payment out of the respondent's client account and that was a matter to which the respondent had referred at the criminal trial of his employee, so again he was not taken by surprise.
17. The disciplinary proceedings had been outstanding for a very long time. That was in part due to the illness of one of the Investigation Accountant's who had not been well enough to give evidence. Indeed it had been established that her recovery would never be sufficient to enable her to undertake that task.

18. Additionally there had been the criminal proceedings brought against one of the respondent's employees and it was considered entirely proper that that matter should have been disposed of before the disciplinary proceedings.
19. The matter had been outstanding for a long time, the respondent was well aware of the matters alleged against him and he had been aware of the date of the hearing since June 1999. Mr Williams was ready to proceed and his witnesses were available. He strenuously opposed the respondent's application for an adjournment.
20. The Tribunal was invited to pay due heed to its duty to the public and the solicitors' profession. There had been good reasons why the matter had taken so long to be listed for a substantive hearing before the Tribunal. The matters alleged against the respondent were very serious.
21. The respondent had before February 1997 indicated his intention to dispute all of the allegations. The respondent had taken no steps in his defence, no statements had been served indeed he had made no active progress on his own behalf.
22. The applicant accepted that the respondent had suffered problems with his health but no formal medical evidence had been placed before the Tribunal. In the submission of the applicant it might well be that the respondent was attempting subconsciously to put off a very difficult time in his life.
23. In the interest of saving the time of the witnesses who had attended, in the interest of the public and in the interest of the good reputation of the solicitors' profession, the applicant urged the Tribunal to proceed forthwith to the substantive hearing.

The Tribunal's Decision on the issue of adjournment

24. The Tribunal decided that the respondent had had plenty of time to prepare his case and instruct a legal representative. He had not done so. The Tribunal had carefully to balance the public interest and the interests of the solicitors' profession with the interests of the respondent. The Tribunal was firmly of the view that it would not be right to adjourn the substantive hearing of this matter. It should be heard. There had been more than enough time to enable the respondent to seek representation. It was clear that the criminal proceedings brought against a former employee of the respondent, although related, were not directly relevant to the matters with which the Tribunal would have to deal. The Tribunal refused the adjournment.
25. The respondent who was given a short period of time to think things over. In the event the respondent decided to withdraw from the proceedings.

The Tribunal proceeded to hear the substantive matter.

The substantive matter was heard at the Court Room No. 60 Carey Street, London WC2 ON 7th October 1999 when Geoffrey Williams solicitor and partner in the firm of Geoffrey Williams and Christopher Green, Solicitor Advocates of 2a Churchill Way, Cardiff, CF1 4DW appeared for the applicant and the respondent did not appear and was not represented.

The Tribunal agreed to the abridgement of time for the applicant's Civil Evidence Act Notice served upon the respondent relating to the single bank statement of National Westminster Bank dated 31st July 1995 relating to the Solicitors Reserve Account of Mr Richard Donnellan, trading as Donnellan & Company.

The evidence before the Tribunal included the oral evidence of Mr James William Bromwell, Diana Pitcher and Susan Potter. After finding the allegations to have been substantiated the Tribunal was handed a copy of the defaulter list issued by the Law Society's Compensation Fund.

At the conclusion of the hearing the Tribunal ordered that the respondent Richard Donnellan of Chipping Norton, Oxfordshire, solicitor be struck off the Roll of Solicitors and they further ordered him to pay the costs of and incidental to the application and enquiry to be subject to a detailed assessment if not agreed between the parties.

The facts are set out in paragraphs (1) to (53) hereunder:-

- (1) The respondent, who was forty five years of age, was admitted as a solicitor in 1982. At the material times he practised on his own account under the style of Donnellan & Co at the Gables, Market Square, Princes Risborough, Buckinghamshire with other offices at the Tannery, Witney Street, Oxford and 27 Bruton Street, Mayfair, London W1. On 21st February 1996 the Law Society resolved to intervene into the respondent's practice.
- (2) Following notice duly given, Mr Bromwell an Investigation Accountant of the Law Society attended at the respondent's office at The Tannery Witney Street, Oxford (an office which was open by appointment only) and the inspection was continued at the respondent's principal office at The Gables, Market Square, Princes Risborough Buckinghamshire. The Tribunal had before it a copy of the Investigation Accountant's Report dated 27th July 1995. That report revealed that the respondent's three office accounts were in debit and additionally he had a loan account also with a debit balance. The office account might be operated by Mr D Jones, a managing clerk of the firm, as well as the respondent.

Allegations (i) (ii) (iii) and (iv) Accounts Rules breaches. Misappropriation of clients' money

- (3) The Report went on to disclose that the respondent's books of account were not in compliance with the Solicitors Accounts Rules.
- (4) A list of liabilities to clients as at 30th April 1995 was produced for inspection which after adjustment totalled £22,404.75. The items were in agreement with the balances on the clients' ledger but the list did not include liabilities to clients totalling £6,191.69. A comparison of the total liabilities with cash held on client bank account at that date, after allowance for uncleared items, revealed a cash shortage of £23,895.79. That represented a minimum figure. The Investigation Accountant could not be precise because of the inadequacies of the firm's book keeping system. At a previous Investigation Accountant's visit, taking place only a few months before, a minimum client account shortage was ascertained and had been rectified by a transfer

from office to client account by payment of some £15,000.00. The shortage of £23,895.79 was an entirely new shortage.

(5) The minimum cash shortage had arisen in the following way:

(i)	debit balances – overpayments	£15,911.08
(ii)	debit balances – improper transfers	16,451.29
(iii)	book difference – (shortage)	<u>6,801.23</u>
		39,163.60
	unallocated receipt	<u>(15,267.81)</u>
		<u>£23,895.79</u>

- (6) The unallocated receipt referred to above was in fact the transfer from office to client account to eliminate the earlier shortage referred to above.
- (7) On 13th July 1995 the respondent made a further transfer from office to client bank account thus reducing the minimum cash shortage to £11,895.79. He told the Investigation Accountant that he would instruct his own accountant to locate and make any necessary adjustments. He saw that a balance of £5,094.56 was represented by a loan of £5,000.00 from Mr V K. The sum of £94.56 was to be rectified as soon as possible.
- (8) The Investigation Accountant reported that during the period July 1993 to 30th April 1995 overpayments varying in amount between £16.75 and £3,246.43 and totalling £15,911.08 had been made on account of thirty-one clients. Details of the two largest over payments were set out in the Report. The first related to Mr K for whom the respondent acted in connection with a property at Summertown. On 25th July 1994 the relevant account on the clients' ledger was charged with a payment of £7,512.61 when only £4,266.18 was properly available giving rise to a debit balance of £3,246.43. The respondent explained that the payment of £7,512.61 had been made in order to satisfy an undertaking previously given to the purchaser's solicitors, although Mr K had specifically told the respondent not to pay that amount. Subsequently it had been discovered that a second charge of £128,475.60 had been overlooked by all the solicitors involved. His client had disappeared upon that discovery and a claim had been lodged with the Solicitors Indemnity Fund. In the second matter the respondent acted for Ms D in connection with the purchase of a flat in London. Between 12th September 1994 and 17th October 1994 the relevant account in the clients' ledger was charged with payments totalling £1,630.00 when there were no funds properly available, thereby giving rise to an overpayment of that amount.
- (9) During the period July 1993 to 30th April 1995 improper transfers from client to office bank account, which varied in amount between £437.87 and £7,275.75 totalling £16,451.29 had been made on account of ten clients. In his Report the Investigation Accountant set out details of the two largest amounts.
- (10) The first concerned Miss G K and Miss M G K for whom the respondent acted in connection with the sale of a property at Slough. Between 6th July 1994 and 12th October 1994 the relevant account in the clients' ledger was charged (when the account was already overdrawn by £763.75) with a transfer of costs on 6th July 1994

of £1,312.00, a cheque to open a Princes Risborough office account on 2nd September 1994 in the sum of £5,000.00 and a transfer of costs of 12th October 1994 of £200.00.

- (11) The explanation given by the respondent to the Investigation Accountant had been that he had been given a loan of £5,000.00 from Mr V K a brother of Miss S G K and Miss M G K. Confirmation had subsequently been provided to support the respondent's contention but no funds were held in client bank account on behalf of the clients from which such loan could properly have been made.
- (12) The respondent had acted for Miss T in connection with a purchase of a farm in Shropshire. He said that no formal instructions had been received nor had he had any direct communication with the client. The purchase had proved abortive.
- (13) On 1st September 1994 the relevant account on the clients' ledger was charged with £1,645.00 in respect of a transfer to office bank account, when there were no funds properly available thus giving rise to an overpayment in the same sum.
- (14) The Investigation Accountant went on to report that the respondent's Accountant's Report for the year ended 30th June 1994 signed by his own accountant on 14th February 1995 was received on 17th February 1995 by the Law Society and showed the following position at the comparison dates:-

	<u>31st December 1993</u>	<u>30th June 1994</u>
Liabilities to Clients	£81,363.00	£61,993.00
Cash Available	81,363.00	61,993.00
Difference	NIL	NIL

- (15) The Report was qualified to the extent that, "We have relied on Rule ARR 4(1) (A) (F) relating to the computerised accounting systems." No mention had been made of the debit balances amounting to £7,055.73 which were in existence as at 30th June 1994. In a letter addressed by the respondent to the Law Society dated 6th September 1995 the respondent disputed that there was a cash shortage. He said that the books might give rise to such figures but they did not reflect the actual situation. The respondent believed that errors and mispostings had been cured between the Law Society's monitoring visit to his firm in March and the Investigation Accountant's visit in June 1995. He went on to say that he was advised that further rectification of his records should be achieved by the employment of a large firm of Chartered Accountants and he confirmed the firm which he proposed to instruct. Where transfers, which the Investigation Accountant had described as improper, had been made the Investigation Accountant had not seen bills of costs nor had the files he inspected revealed any proper reason for the transfers. With regard to the assertion of the respondent that he had been given a loan in the matter of Miss K by the brother of those clients, the respondent passed the Investigation Accountant a letter dated 5th July 1995 couched in the following terms

"To whom it may concern, I V K lend £5,000.00 to Donnellan & Co. in September 1994 to Princes Risborough office

(signed) V K."

- (16) The cheque to open the Princes Risborough office account had been charged to the account of Mrs K on 2nd September 1994. The respondent had not established that the funds came from Mrs K. There was no evidence that the clients themselves had agreed. The respondent's explanation, contained in his before mentioned letter of 6th September 1995 addressed to the Law Society had been "the K family is extensive and there have been a dozen or more transactions involving extended family. There appears to have been confusion between the initials of V K and K K." The respondent said that no doubt after further examination by the major firm of accountants he was to instruct the matters could be made clearer. Those Chartered Accountants had never taken any steps.
- (17) In the matter of Miss T and the purchase of a farm in Shropshire, the respondent had operated what he called "general client account." In reality that was a suspense account to which various unallocated transactions had been posted. The transfer of £1,645.00 had been made as a transfer for costs when no money had been received on behalf of that client, indeed not only had the investigation not found a ledger card relating to that client and her transaction but he had not been able to ascertain that there was a file. The respondent's book keeper had not worked within the respondent's office. He had been an independent accountant who had produced computerised records. It appeared that the respondent had ready access to those records as documents were faxed to him immediately when requested.
- (18) At the end of the Investigation Accountant's inspection the respondent promised to make a transfer from office to client account of £12,000. In his letter addressed to the Investigation Accountant of 6th July 1995 the respondent said "As advised by you today the sum that now requires to be repaid to client account is now £12,000. Arrangements are being made for this to be done tomorrow. Copy of the relevant bank statement showing the transfer from office to client account will be sent as soon as possible." On 6th July 1995 the Investigation Accountant had a telephone conversation with David Jones, the respondent's managing clerk (who was a signatory on the office account). The Investigation Accountant's attendance note was before the Tribunal and was in the following terms
- "Richard Donnellan in London, David Jones to get a message to him consideration of letter. Treating credit balances as book difference on the understanding that balance of difference is rectified right away and the repayment is confirmed, the difference being £17,094.56. Jones said that a letter had now been received from K confirming the £5,000 loan. I asked for a fax to be sent and I needed to see the original. For confirmation of the repayment of the £12,094.56 I needed to see copy bank statement and the transfer slip. Jones said that he would contact Donnellan immediately."
- (19) In evidence the Investigation Accountant said that a continuation of the shortfall on client account would have been intolerable and he would have passed details of the situation to those in a position to order an intervention into the respondent's practice had he not been satisfied that moneys had been introduced to eliminate the shortfall.
- (20) On 17th July 1995 the respondent sent an office account bank statement (dated 12th July 1995) to the Investigation Accountant with the note "enclosed copy statements evidencing the deposit and transfer into client account of £12,000 'replacement funds' as directed Signed (Respondent)" The statement demonstrated that the sum of

£12,000 had been credited to the firm's office account on 12th July 1995. An office account statement dated 13th July 1995 demonstrated that the sum of £12,000 had been withdrawn from office account on that date. A client account statement dated 13th July 1995 demonstrated the receipt of £12,000 on that date. The Investigation Accountant had been satisfied that the shortfall had thus been rectified.

- (21) Subsequently it came to light in a further bank statement dated 31st July 1995, relating to the firm's client account, that the sum of £12,000 had been withdrawn on 17th July 1995. The sum had thus been retained in client account for a period of four days only. That withdrawal had been made on the same day that the respondent had written to the Investigation Accountant to say that the monies had been deposited.
- (22) When giving evidence at the criminal trial of Mr Jones in 1999 the respondent's position had been that Mr Jones had dealt with the matter. The Investigation Accountant took the view that he had been misled and dissuaded from taking steps to achieve an intervention into the respondent's practice.
- (23) On 13th February 1996 another Investigation Accountant of the Office attended at the respondent's offices in Princes Risborough to inspect his books of account. The Investigation Accountant's Report dated 19th February 1996 was before the Tribunal. The applicant explained that it was this Investigation Accountant who was not available to give oral evidence owing to her ill health, but he relied upon the document as he had served it with a Civil Evidence Notice upon the respondent and had not received any counter notice. That Report revealed again that the office bank accounts might be operated alone by Mr Jones, described as the firm's conveyancing executive. The respondent had told the Investigation Accountant that Mr Jones also operated the client accounts using the respondent's signature. It was understood that Mr Jones had been excluded from membership of the Institute of Legal Executives on 3rd May 1988. At the time of the Investigation Accountant's inspection Mrs Pitcher had been an assistant solicitor employed by the respondent but she had handed in her notice and would be leaving at the end of March. At the time of the Investigation Accountant's Report there were debits on the firm's office accounts.
- (24) The list of liabilities to clients as at 31st January 1996 was produced for inspection. The list was in agreement with the balances on the clients' ledger and totalled £84,061.74. There was no cash available, resulting in a shortage equivalent to the liabilities. The respondent had agreed that that was the position demonstrated by the books but he did not agree the existence of an actual cash shortage.

- (25) The cash shortage had arisen in the following way:-

(i)	debit balances	(a) overpayments	£46,244.74	
		(b) improper transfers		
		from client to office		
		bank account	<u>29,238.26</u>	75,483.00
(ii)	unallocated transfer from client to office bank account			3,525.00
(iii)	book difference – shortage			<u>5,053.74</u>
				<u>£84,061.74</u>

- (26) The respondent said that he was not in a position to rectify the cash shortage.

- (27) Overpayments varying in amount between £0.13p and £35,422.43 and totalling £46,244.74 had been made during the period 25th July 1994 to 31st January 1996 in respect of twenty six individual accounts in the clients' ledger.
- (28) In the matter of Mr and Mrs C F H, the respondent had acted for them in property transactions. On 22nd November 1995 the relevant account in the clients' ledger was charged with a client bank account payable of £36,130.46 when £26,186.00 stood to its credit thus giving rise to a debit balance of £9,944.46. Further client bank account payments of £637.39 charged on 6th December 1995, £23,821.05 and £178.95 on 4th January 1996, £978.97 on 8th January 1996 and £499.00 on 11th January 1996 (taking into account a client bank account receipt of £637.39 on 6th December 1995) increased the shortage to £35,422.43 – the position at the inspection date.
- (29) The respondent had explained that on 19th June 1995 a client bank account payment of £28,500.00 had been made on Mr C F H's verbal instructions to a third party, D F, and that this had been overlooked and had not been taken into account when the completion statement was prepared. No documentation was produced in respect of the payment and the respondent added that D F had promised to return the money as soon as it was able
- (30) On 26th October 1995 the ledger account had been charged with a transfer of £5,200.00 from client to office bank account with the narrative 'Office Fees'. No bill of costs nor written intimation was produced and this amount was not recorded on the completion statement. The respondent said that no bill of costs had been drawn although it should have been rendered to reflect the complexity and amount of work involved which would justify a fee of £5,200.00. He agreed that on the basis that no bill had been drawn and no written intimation could be produced the transfer was improperly executed as it was in breach of the Solicitors' Accounts Rules, but he did not agree that the transfer was improper as he was entitled to at least that amount in fees but had failed to do the paperwork.
- (31) The respondent acted for Mr M A K in a property transaction. On 25th July 1994 the relevant account in the clients' ledger was charged with a client bank account payment of £7,512.61 when £4,266.18 stood to its credit, giving rise to the debit balance of £3,246.43 in existence at the inspection date.
- (32) When interviewed by the Investigation Accountant in June 1995 the respondent explained that the payment of £7,512.61 had been made in order to satisfy an undertaking that he had previously given to the purchaser's solicitors, although he said that Mr M A K had specifically told him not to pay that amount.
- (33) During the period 27th July 1995 to 22nd January 1996 improper transfers totalling £29,238.26 had been made from client to office bank account in respect of eight clients when either no funds or insufficient funds were held on their behalf, thereby giving rise to a shortage of £29,238.26.
- (34) The largest improper transfer had been made on 18th December 1995 when an account in the clients' ledger headed 'S A' was charged with a client bank account payment of £5,287.50 when no funds stood to its credit, thereby giving rise to a debit balance of

that amount. The funds were lodged in the overdrawn National Westminster Bank office bank account. Further client bank account payments of £4,112.50 on 17th January, 1996 and £3,600.00 on 22nd January 1996 respectively were charged to the account culminating in a debit balance of £13,000.00 – the position at the inspection date. The amounts of £4,112.50 and £3,600.00 were also lodged in the National Westminster Bank office bank account.

- (35) The respondent explained that he had no client with the name, SA. He added that he had been expecting funds from a prospective South African client but nothing had materialised. The respondent admitted that the transfers were all improper as there were no funds properly available in client bank account out of which they could have been made but he said that they had been made by Mr Jones and that he did not know anything about them until about a week or ten days prior to the inspection.
- (36) On 30th June 1995 a transfer of £3,525.00 had been made from the client to the office bank account but not allocated to any individual client's ledger account. The respondent could not identify the client involved.
- (37) The respondent told the Investigation Accountant that the payment of £12,000 from client account on 17th July 1995 had been made to C D Ltd to repay the unsecured personal loan of £12,000.00 which had funded the partial rectification of the earlier cash shortage. He said that the loan had been from a client Mr A M or one of his companies, and that he believed C D Ltd was one of Mr M's companies. He explained that the amount had been repaid as he did not think there was a shortage as at 30th April 1995.
- (38) The respondent had written to the Chief Investigation Accountant at the Office on 15th February 1996. Concerning his clients Mr & Mrs M. The letter was in the following terms

“The above clients of this firm who instructed us in the purchase of (a property in Leicestershire). the purchase price of the property was £73,750.00 of which £70,000.00 was provided by the Nationwide Building Society by way of mortgage.

Most unfortunately we were unable to complete on 24th January as there were insufficient funds held on client account.

Urgent steps have been taken to attempt to rectify the position or at least find out the cause of the cash shortage. On the attendance at this office of your Investigation Accountant (Named) on Tuesday 13th February this matter was brought to her immediate attention. Notwithstanding the fact that she has not concluded her investigations, it is clear that there is a cash shortage of at least £70,000.00.

It has been indicated to us that notwithstanding the fact that the Notice to Complete has run out the purchase may be saved as the vendor developers are anxious for the money and would rather avoid having to re-market the property.

This must surely be a matter for the Compensation Fund.

The writer is anxious to assist in minimising the damage to the clients and to the fund and with a view to mitigating such loss we have agreed to pay the client's rent and additional expenses incurred since due completion date for the time being.

The writer wonders whether this sort of affair is a matter that should also be referred to the SIF and would be grateful if you would kindly telephone so that the writer might discuss the matter further.

The client's current address is

Yours faithfully

(Signed) Donnellan & Co."

Allegation (v) failure to supervise an office contrary to Rule 13

- (39) In evidence the Investigation Accountant confirmed that it was that letter which provoked the Law Society's intervention into the respondent's practice. The intervention took place on 21st February 1996.
- (40) The respondent's employee David Thomas Jones was on 13th July 1999 in the Crown Court at Aylesbury tried and convicted upon indictment of twelve counts of theft and sentenced to forty months imprisonment (concurrent) in respect of each offence.
- (41) The respondent gave evidence as a prosecution witness at the trial. The Tribunal had before it transcripts of the respondent's evidence. The respondent had employed Mr Jones to undertake conveyancing. In answer to one question the respondent said "well as a matter of practicality because most of the financial transactions were conveyancing transactions David (i.e. Mr Jones) was doing most of the banking and I allowed him to write cheques on the client account where appropriate signed in the firm name and would be cleared by the bank". In answer to a question by the Learned Judge the respondent said that Mr Jones signed either in the firm name or in the respondent's name and then went on to explain that the respondent himself was the authorised signatory on the account. The respondent said that he could not remember precisely how that began but he thought he had just said "well you can go and sign that because you are going to the bank anyway."
- (42) The respondent had also said that he did not concern himself with a routine inspection of any of the bank statements at Princes Risborough in the sense that he checked every line, he saw bank statements infrequently because they were sent off to the book keeper.
- (43) The respondent had confirmed that he had employed Diane Pitcher at the Princes Risborough office and as a result he attended there less and less.
- (44) On 18th November 1994 Messrs Lightfoot solicitors of Princes Risborough complained to the Solicitors Complaints Bureau (the Bureau) that the respondent had failed to supervise and/or ensure management of his offices in accordance with Rule 13 of the Solicitors Practice Rules 1990.

- (45) On 26th January 1995 the Bureau wrote to the respondent seeking an explanation. On 8th March the respondent replied indicating that the respondent attended each day but the reply did not address the management of the respondent's offices which were not managed in accordance with Rule 13 (i)(b) of the Solicitors Practice Rules 1990.
- (46) The respondent attended at his offices in Princes Risborough about once every three weeks. When he did attend, it was for short periods only. During the course of his oral evidence at the trial of Mr Jones the respondent had said that a person who was not a qualified solicitor was signing his name on client account cheques. He said that they had slipped into that arrangement because it was easier and it was practicable if he was not around to sign the cheque and the transaction had to go through.
- (47) During the course of his evidence at Mr Jones' trial the respondent said he had employed Diane Pitcher and had said to her "keep an eye on the money and the accounts please."

Mrs Pitcher's evidence before the Tribunal

- (48) (i) Mrs Pitcher denied that the respondent had made the above remark. She had discussed the question of supervision with the respondent and had told him that she had been worried. She had been worried about the suggestion that her name should go on the bank mandate.
- (ii) Mrs Pitcher said she had endeavoured to speak with the respondent about specific concerns she had about Mr Jones's work but the respondent had been unconcerned and uninterested.
- (iii) Mrs Pitcher had booked some holiday and had been away from the office the week being 19th February 1996. On the last day of her holiday, 23rd February 1996, the respondent telephoned her to say that there was going to be an intervention.
- (iv) It had appeared to Mrs Pitcher that the respondent had set up and was operating a London office. During a telephone conversation which Mrs Pitcher had with Mr Daultrey at that office he had described himself as a solicitor of more than twenty years standing. Mr Daultrey had told her that he had to have offices in a prestigious area because of the nature of his clients. In August 1995 Mrs Pitcher had been shown draft proposed letterhead for the London office on which Mr Daultrey's name was printed with the description of "assistant solicitor". The actual note paper was not printed in that manner.
- (v) When David Jones was admitted to hospital in November 1995 he had told Mrs Pitcher that all of the London transactions would be operated through the Princes Risborough bank account. He told her that Steven Daultrey would notify her if any money was paid into client or office account. She had asked Mr Jones about payments out of bank accounts in connection with London matters and Mr Jones had informed her that Steven Daultrey did not have cheque books relating to Princes Risborough accounts. She could not recall Mr Daultrey having informed her about any payments out of the accounts

while Mr Jones had been away. On other occasions when she had spoken to Mr Daultrey on the telephone he had identified himself as “Steven from the London office”.

Mrs Potter’s evidence before the Tribunal

- (49) Mrs Potter, a former secretary at the Princes Risborough office, in her evidence
- (i) confirmed that Mr Jones seemed to have complete control of the office including the finances and the accounts. He had been heavily involved in dealing with the firm’s accounts. She had been told by Mr Jones to type a series of sixteen fee notes which were all to be dated with the same date and to be numbered in sequence with a new series of bill numbers. She was told not to produce top copies but only to file copies of each invoice. They had related to various matters and Mr Jones had told her that they were to be “dummy bills”.
 - (ii) confirmed that she had overheard a telephone conversation between Mr Jones and Mr Daultrey to the effect that Mr Jones had managed to “reduce the deficit on client account” from £115,000.00 to £86,000.00 and that with a little more time he could get it down to £55,000.00.”
 - (iii) With regard to Mr Daultrey, Mrs Potter said she had met him on three occasions and he had been introduced to her as a person who would be undertaking international commercial contract work in the London office. When she asked Mr Jones about the status of Mr Daultrey she had been told “he is another solicitor”. When she had asked the respondent if Mr Daultrey was a solicitor he had replied “no, he is a David type”. It had been clear to Mrs Potter that Mr Daultrey was running the London office of the firm. He seemed to be in charge of the London office in the same way that David Jones had been in charge of the Princes Risborough office, although Mr Daultrey was not able to sign cheques. Mrs Potter had the impression that Mr Daultrey was an employee of the firm. On one occasion in September 1995 he telephoned Mrs Potter to say that his wife needed money to buy food. He asked for £400.00 in cash to be paid into an Abbey National account so that he and his wife could draw on that sum immediately. Mrs Potter herself was given the £400.00 cash from the office which she paid into the Abbey National account bearing the number given to her by Mr Daultrey. The cash had been given to her by Mr Jones.

Allegation ix – Employment of a struck of solicitor

- (50) The respondent had between January 1995 and February 1996 without the written consent of the Law Society employed or remunerated Steven Daultrey at his offices at 27 Brunton Street, Mayfair, London W1. Steven Daultrey was known also as Steven Richard Daultrey. His name had been struck off the Roll of Solicitors on 3rd June 1982 and had not been restored to the Roll of Solicitors. A copy of the Tribunal’s Findings and Order had been placed before the division of the Tribunal dealing with the allegations made against the respondent and it was noted that the allegations established against Mr Daultrey had been that he had failed to comply with the

Solicitors Accounts Rules, had utilised money held and received by him on behalf of certain clients for the purposes of other clients and had made untruthful and misleading statements to his clients.

Allegation (vi) – Non payment of agent’s fees

- (51) By letter of 13th October 1995 Messrs Johnson & Gaunt solicitors of Banbury wrote to the Bureau in connection with an unsatisfied judgement obtained in respect of agency work carried out for Messrs Donnellan & Co. They explained that in May 1995 they had accepted, at very short notice, agency instructions from the respondent to represent a client of his at Banbury Magistrates Court. That firm conducted the trial as the respondent’s agents and thereafter rendered an account to him in the sum of £698.25 plus VAT of £122.19. Because the account had not been paid Messrs Johnson & Gaunt commenced County Court proceedings and on 23rd August 1995 signed judgement in default. That judgement remained unsatisfied and on 25th September 1995 they sent a statutory demand by recorded delivery to the respondent. That was returned to Johnson & Gaunt by the Royal Mail on 29th September 1995 marked “ not called for, no answer, not collected after leaving B739.”
- (52) The Bureau’s letter addressed to the respondent dated 15th November 1995 did not attract a response.

Allegation (viii) Non delivery of Accountant’s Report

- (53) The last Accountant’s Report delivered by the respondent for his firm was that relating to the year ended 30th June 1994 which had been due on or before the 31st December 1994. It had been received on 17th February 1995. No other reports had been delivered by the firm.

The Submissions of the Applicant

- (54) The respondent failed to display the probity, integrity and trustworthiness required of a member of the solicitor’s profession. He had abdicated responsibility for the supervision of a clerk formerly in his employment, David Jones, who at the time of the disciplinary hearing was serving a prison sentence. The respondent’s failures had disastrous consequences. The respondent had virtually allowed David Jones to operate the client account by signing cheques in the respondent’s own name. At the time when that arrangement had been put in place David Jones had already been excluded from the Institute of Legal Executives. He had previously been sent to prison and it was those activities which led to his exclusion. He was at the time of the hearing serving a second term of imprisonment.
- (55) There was no doubt that the respondent’s accounts were wholly unsatisfactory. It was clear that he had failed to exercise a proper stewardship of clients’ funds.
- (56) The respondent had clearly misled the Investigation Accountant as to the rectification of the shortfall of £12,000.00. If the Investigation Accountant had been told the truth, then he would have recommended the Law Society immediately to intervene into the respondent’s practice. The respondent’s letter confirming that he had made the payment into client account was economical with the truth.

- (57) The respondent had written to the Law Society explaining that his client account held insufficient monies to complete a conveyancing transaction but his apparent explanation was wholly unacceptable. The respondent had misapplied monies belonging to one or more clients for the purposes of other clients who were not entitled thereto.
- (58) The applicant had put the case against the respondent as one of misappropriation of client funds. His abdication of responsibility resulted in a failure to keep proper books of account and look after clients' money and supervise his offices and the staff in them. The respondent in addition had failed to pay the fees of a firm instructed by him to act as agents. The respondent had remunerated in connection with his practice as a solicitor a former solicitor who had been struck off the Roll contrary to Section 41 of the Solicitors Act 1974. The Tribunal was invited to bear in mind that such an offence attracted a mandatory penalty set down by the Solicitors Act 1974.
- (59) The applicant invited the Tribunal to regard the respondent's behaviour to be deplorable. The allegations were wide ranging and dealt with serious matters. The consequences of the respondent's behaviour were clear. The respondent's practice had collapsed and he had brought shame on the rest of the solicitors' profession. He had totally and abysmally failed to discharge his duties as a solicitor. He had failed to protect clients' funds. He had allowed an employee to manipulate his client account and had employed a person who was a solicitor who had been struck off the Roll without the permission of the Law Society.

The Findings of the Tribunal

The Tribunal found the allegations to have been substantiated.

The applicant placed before the Tribunal details of payments made out of the Law Society's Compensation Fund. The sum of £92,729.01p had been paid out by the Compensation Fund. The total claimed had been in the region of £1,278,000.00 although it appeared that a single claim of £1,000,000 was not likely to be pursued.

The Tribunal noted that allegation (iv) adds little to allegations (ii) and (iii).

The Tribunal considered the respondent's behaviour to have been disgraceful. He had totally failed to exercise the probity, integrity and trustworthiness required of a member of the solicitors' profession. His behaviour had been cavalier and reckless. He had failed to exercise a proper stewardship of clients' monies. He had employed an unadmitted clerk with a criminal record who had been excluded from the Institute of Legal Executives and given him a free rein in an unsupervised office even permitting him to sign the respondent's own name on client account cheques.

The remuneration of a struck off solicitor in connection with his practice by the respondent attracted a mandatory penalty but the Tribunal in making a striking off order must make it plain that the allegations substantiated against the respondent, apart from the breach of Section 41 of the Solicitors Act 1974, convinced the Tribunal that the respondent was not fit to be a solicitor. They ordered him to be struck of the Roll of Solicitors and further ordered him to pay the costs of and incidental to the

application and enquiry to include all of the costs of the Investigation Accountants of the Law Society such costs to be subject to a detailed assessment unless agreed between the parties.

DATED this 23rd day of November 1999

on behalf of the Tribunal



A H Isaacs
Chairman

*Findings filed with the
Law Society on the*
15 DEC 1999