No.7331/1997

IN THE MATTER OF MICHAEL PETER ANTHONY BALDWIN

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr. J N Barnecutt (in the Chair)
Mr. J C Chesterton
Mrs. C Pickering

Date Of Hearing: 24th June 1997

FINDINGS

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

An application was duly made on behalf of the Office for the Supervision of Solicitors by Andrew Christopher Graham Hopper solicitor of P O Box 7 Pontyclun Mid Glamorgan CF7 9XN on the 10th February 1997 that Michael Peter Anthony Baldwin of the Newton Ferrers, Plymouth, PL8 might be required to answer the allegations contained in the statement which accompanied the application and that such Order might be made as the Tribunal should think right.

The allegations were that the respondent had:-

(1) been guilty of conduct unbefitting a solicitor in that he failed to disclose to a beneficiary her entitlement under the terms of a trust of which he was trustee;

(2) been guilty of conduct unbefitting a solicitor in that in providing affidavits as to his financial circumstances to a court in the context of matrimonial proceedings he failed to make full disclosure of his assets.

The application was heard at the Court Room No. 60 Carey Street, London WC2 on the 24th June 1997 when Andrew Christopher Graham Hopper a solicitor of P O Box 7 Pontyclun Mid Glamorgan appeared for the applicant and the respondent was represented by Christopher John Over solicitor and partner in the firm of Over Taylor Biggs of 1 Oaktree Place, Manaton Close, Matford Business Park, Exeter, Devon EX2 8WA.

The evidence before the Tribunal included the admissions of the respondent as to the facts (but not as to the allegations) and exhibits "MPAB1" and "MPAB2" being respectively letters in support of the respondent and an affidavit to which the former probate and trust executive in the respondent's firm had attested.

At the conclusion of the hearing the Tribunal ORDERED that the respondent Michael Peter Anthony Baldwin of the Newton Ferrers, Plymouth 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 fixed in the sum of £4,848.78.

Upon the application of the respondent the Tribunal agreed that the filing of their Order with the Law Society might be suspended for the period of twenty eight days to enable the respondent to put his clients' affairs in order. In the event of the respondent appealing the Tribunal's decision to the Divisional Court, an application for any further stay would have to be made to the Court.

The facts are set out in paragraphs 1 to 46 hereunder:-

1. The respondent, born in 1932 was admitted as a solicitor in 1974. At the material times the respondent was a partner in the firm of Woollcombe Yonge of Plymouth. At the time of the hearing the respondent practised on his own account in Newton Ferrers, Plymouth.

2. The respondent and his former wife were beneficiaries under a will trust known as the B W Trust and following the death of the life tenant, H, on the 6th November 1990, the respondent and his wife each became entitled to two shares in the trust fund representing, in round terms, some £25,000 each.

3. At the time of H's death the respondent and his former wife were embroiled in hostile matrimonial proceedings which had generated a great deal of acrimony between the parties. Both the respondent and his former wife had legal representation in those proceedings.

4. The respondent had been the sole surviving trustee of the B W Trust and he together with Mrs S had been executors and trustees of the will of H.

5. The respondent within his firm had conduct of the matters concerning the B W Trust and the estate of H. The respondent had been informed of the death of H on the same day and he immediately asked stockbrokers for a probate valuation of the B W Trust portfolio. Two or three days later he was supplied with a list showing that the Government Securities in the Trust were valued at nearly £480,000 and there were two small mortgages for just over £10,000. The respondent calculated that he and his wife were entitled as beneficiaries to a sum in the region of £25,000 each.

6. On the 21st November a firm of solicitors instructed by members of H's family expressed two areas of concern. The first was an enquiry as to whether or not H was of testamentary capacity in January 1987 when she made her will and in December 1997 when she made a codicil thereto. The second area related to the entitlement of the respondent and his wife under the will. Those matters formed no part of the allegations to be considered by the Tribunal as the enquirers were in due course entirely satisfied that H had been of testamentary capacity at the relevant times and she had taken independent legal advice as to the gifts to the respondent and his wife.

7. The respondent and his wife had separated in July 1989 and his wife started divorce proceedings in February 1990. A decree nisi was granted in September 1990. In the course of those proceedings the respondent swore an affidavit on the 16th July 1990 in which he said "I have no stocks and shares, building society accounts or any other investments or assets."

8. The second affidavit to which the respondent attested in the matrimonial proceedings was dated 26th November 1990 in which he said "The details of our assets and my income are as set out in my previous affidavit sworn on the 16th July 1990, amplified by and amended by the details below and as in the exhibits attached hereto. I have no savings, no investments, no building society accounts and no hidden assets. I earn my living as a self-employed solicitor in private practice."

9. It was the applicant's case that the statement set out in the previous paragraph was inaccurate because by that time the respondent had become aware of his inheritance from H deceased.

10. In January 1991 as sole surviving trustee the respondent instructed brokers to sell all of the government securities in the B W Trust.

11. On the 20th February 1991 he wrote to the solicitors representing members of H's family who had expressed the concerns set out at paragraph 6 above in which he said "By this letter I hereby give you an undertaking both on behalf of myself personally as well as on behalf of my firm, and I sign this letter both personally and on behalf of my firm accordingly, that in dealing with the estate of H in winding up the B W Trust any monies which H had indicated should be for the benefit of myself or my family will be held and not in any way disposed of or distributed and if necessary be lodged with your firm pending the resolution of the matters which have been discussed, directly referred to in your letter of 19th February , so that the assets may be dealt with in accordance with the wishes of the beneficiaries and as H wished for all other persons or charities mentioned in her will other than myself or any member of my family".

12. The respondent's former wife was not consulted about that undertaking nor had she at that stage been informed of her entitlement under the B W Trust.

13. The solicitors and the members of the family who had raised queries were speedily satisfied and on the 8th March 1991 probate of the will and the codicil was granted to Mrs S and the respondent out of the Bristol District Registry.

14. The respondent delegated the mechanics of winding up of the B W Trust to his probate clerk although in May the respondent himself spent time approving the draft of the final statement to the beneficiaries. The statement was described as " a statement to the surviving trustee, the respondent, and for the information of beneficiaries under the terms of the will of the late H with one codicil thereto as to the distribution of the assets in the B W Trust, her late father." A copy was sent to all beneficiaries with the exception of the respondent's former wife. A statement showed that each of the beneficiaries, except the respondent and his former wife, received an interim distribution of £11,000 per share in the estate on the 8th March 1991 and the balance of £1,084 per share in May 1991.

15. The shares of the respondent and his former wife were dealt with as follows "May 1991 distribution reserved, for the respondent, transfer of Mrs A H mortgage including interest to date £8,667.60, transfer of Mr R C mortgage including interest to date £2,414.01, balance £13,086.49 giving a total for the respondent of £24,168.10." Under a separate heading: "May 1991, distribution reserved, [the respondent's former wife,] £24,168.10". It was evident that the respondent was appropriating the A H and R C mortgages to his own share and holding back his own share and his former wife's

share as he was bound to do under his undertaking to the solicitors dealing with the then current concerns of members of H deceased family.

16. On the 10th May 1991 the respondent's probate clerk requested cheques from his firm's cashier to make distributions to the beneficiaries. One requisition for a cheque described it as being a payment to Britannia Building Society (for the respondent) of £13,086.47; the other was payable to Britannia Building Society to the credit of the respondent's former wife, in the sum of £24,168.10.

17. The respondent had signed the cheques and had sent them to Britannia Building Society with the request that they open two accounts the first one in the sum of £13,086.47 to be in the name of his firm as nominees for himself and the other in the sum of £24,168.10 to be in the name of the firm as nominees for his former wife,

18. An order had been made in the respondent's divorce proceedings by consent on the 12th March 1991 giving the matrimonial home, subject to two mortgages, to the respondent's former wife. On the 1st May 1991 the decree was made absolute. On the 9th May the respondent's former wife married a wealthy neighbour. The respondent learnt of that re-marriage immediately, and on the 11th May he swore an affidavit seeking to set aside the Consent Order which had been made on the 12th March.

19. In this affidavit of the 11th May the respondent said " The court will be aware that by the order of 12th March 1991 the petitioner has, in any event, an immediately realisable net capital asset of some £200,000. In contrast, my only realisable asset is of land worth £10,000, until my other assets of approximately £100,000 can be realised at the earliest in two years' time. I have to meet the joint debts of the petitioner and myself of some £50,000 which thus leaves a potential asset figure eventually of some £50,000. Also at present, I have virtually no furniture and effects since they are still at Rowan Cottage." It was not in dispute that reference to assets worth £100,000 was a reference to the respondents' capital share in his partnership and a lump sum payable under pension policies. Again, he made no mention of either his or his former wife's interest in the B W Trust.

20. On the 6th June 1991 the respondent swore a further affidavit setting out in detail the assets he was left with after the order of 12th March 1991, and his liabilities, and again making no reference to the B W Trust.

21. On the 1st November 1991 the respondent's application to set aside or vary the earlier consent order was dealt with and by consent an order was made that the respondent's former wife should retain the house but pay the respondent £37,500 by the 1st June 1991, and allow him to have some of the furniture within seven days.

22. The respondent went to collect the furniture on 7th November when there was an unpleasant incident in which he alleged that his former wife tried to injure him with a garden fork.

23. In the meantime the solicitors advising the family of Mrs H had reported the family's disquiet to the Solicitors Complaints Bureau where the relevant committee had found nothing objectionable in the way in which the matter had been handled and that the respondent and his wife remained entitled to their inheritance.

24. In a letter to his own solicitor who had been dealing with that affair on his behalf the respondent said that he would simply wait a few months more in any event in case

there was any further reaction. He received a letter dated the 11th March 1992 from his own solicitor to advise that the time limit for an appeal in respect of the decision of the Solicitors Complaints Bureau had passed and his solicitors proposed to close their file.

25. The respondent's former wife had been unaware of the complaint and had not been told of its outcome.

26 On the 16th March 1992, at the respondent's request, one of his partners (who had been made the signatory on the Britannia Building Society accounts held by the respondent's firm as nominees for himself and his wife) drew £10,000 from Britannia Building Society and paid it into the firm's client account. The respondent drew a cheque on client account for £10,000 to pay a premium on his pension policies. On the 3rd April 1992, the remaining funds in that account, £3,934.42, were withdrawn and paid into the respondent's firm's client account and withdrawn by the respondent on the 6th April 1992.

27. On the 27th May 1992, the probate clerk, on behalf of the firm, signed a supplemental statement to the surviving trustee of the B W Trust. This showed various additions to the sum available for distribution and in May 1992 each beneficiary, except the respondent and his former wife, received a copy of the statement and a further £911 per share. The statement illogically included income from the two mortgages which had apparently been regarded by the respondent as part of his share.

28. On the 1st June 1992 the probate clerk sent a note to the respondent confirming that he had distributed the residue of the assets in the B W Trust confirming that he would retain the file until all the beneficiaries had acknowledged receipt of their share and in the meantime leaving the respondent to deal with the £3,645.17 held on the ledger to be distributed to the respondent himself and his former wife in his capacity as trustee. On the same day the probate clerk confirmed to the firm's cashier that the firm should be holding £3,645.17 which was due jointly to the respondent and his former wife.

29. The probate clerk had felt uneasy about the handling of the matter and had mentioned his worries in the course of the year to two of the partners of the respondent but he said that neither of them paid any particular attention to it or took any specific action at the time.

30. On the 3rd June 1992 the firm's client account in fact contained £2,724. On that date the respondent caused the account at Britannia Building Society in the name of the firm, as nominee for his former wife, to be closed and the funds amounting to £26,092.26 were paid into client account on 5th June 1992, giving an amalgamated fund of £28,816 the bulk of which belonged to his former wife although she was still unaware of it. A few days before, the respondent's former wife had paid the sum of £37,500 under the court order dated the 1st November 1991. On the 30th December 1992 interest was calculated and credited to client account making the total held for the respondent and his former wife under the B W Trust £30,180, all other beneficiaries having been paid out in full in May. The chief cashier of the firm mentioned that to the respondent and in December he gave instructions for the whole of the £30,180 to be placed on deposit at the firm's bank, the Royal Bank of Scotland. At that point still no distribution had been made to the respondent's former wife.

31. On the 25th March 1993 the respondent with some assistance from the firm's chief cashier attempted to calculate what was left in the B W Trust. He took the figure paid

in closing his former wife's building society account on the 3rd June 1992, £26,092.26 and added half the supplementary distribution which should have been made in May 1992, £1,822.59, to arrive at a total of £27,914.85 entirely due to his former wife. He calculated the total in the client account, including interest to that date at £31,364.98. He wrote a requisition for a cheque payable to himself for that amount.

32. The chief cashier did write out a cheque on client account dated 25th March 1993 in favour of the respondent in the sum of £31,364.98 but she decided to give it to one of his partners for signature together with the relevant cheque requisition saying nothing but apparently indicating her worries by her facial expression. The partner decided not to sign it nor to raise it personally with the respondent but to raise it with his partners.

33. A routine partnership meeting was scheduled for the following day and the question of the H estate had been added as an agenda item. When that agenda item was taken the partner passed the cheque and the requisition to the respondent and asked him "What's this?" The respondent said "That's mine", and signed the cheque. There followed an unpleasant altercation with the other partners seeking to persuade the respondent that he could not take the cheque. In the course of that argument the respondent made what the Learned Judge described in his judgement (following litigation on the respondent's partnership dispute) as two very foolish remarks, one being to the effect that his former wife had cheated him in the divorce and the other to the effect that H would not have wanted her to have had the money. Eventually he gave in and wrote "cancelled" on the cheque. At some stage he asked if he could take his share of the £31,634.98 out and the partners agreed.

34. There was to be another partnership meeting on the 29th March. Before then the respondent made his own calculations as to his own share. He added the amounts due to himself and his former wife under the statements prepared by the probate clerk and arrived at a total of £51,981. He divided that by two to get his own share of £25,990. He deducted £13,000 for the amount he had received via Britannia Building Society, less interest, and reached a sum of £12,990. For safety's sake he decided to take £12,000. That calculation ignored completely the two mortgages appropriated to the respondent's share in the first statement. If he were to withdraw £12,000 the remaining cash would be insufficient to pay his former wife and she would in effect have had to take the mortgages. The respondent claimed that he had made inquiries of a bank who were prepared to take assignments of the mortgages. But no enquiries as to title had been made and it became apparent later that one mortgage was secured by deposit only.

35. The respondent decided to take £12,000 for himself and without telling his partners anything further he prepared a requisition for the chief cashier asking for a cheque in his favour from client account for £12,000, "part balance of distribution due." The chief cashier filled out the details on the cheque and gave it to the respondent who signed it and paid it into his account at the Royal Bank of Scotland on the same day.

36. At the partnership meeting on the 29th March 1992 the only matters to be discussed were the admission of a prospective new partner and the B W Trust. The Partners at this meeting were now aware that the respondent's former wife did not know about her legacy even though H had died in 1990. It was agreed that the new partner to be admitted should take over the will trust matter.

37. Either at the meeting on 26th March or at the meeting on 29th March 1992 the respondent indicated his intention to open a trustee account in his name and pay the

sum of £31,364 into that account so that distribution could be made to his former wife without involving the firm.

38. On the 30th and 31st March 1992 the respondent was in court in Exeter and on the 31st he spoke on the phone to the new partner asking him not to write to his former wife yet. On the 31st March his partners drafted and signed a letter to give to him. In that letter the partners expressed their disquiet over the respondent's conduct in the winding up of the will trust and H's estate. They set out their understanding of the position and said that their concerns were that:-

    1. The respondent's former wife had never been told of her entitlement under the estate following H's death some two and a half years previously although all other beneficiaries had been informed.

    2. The respondent's former wife had never been paid anything from the estate

    3. As partners they were all potentially open to criticism.

    4. The respondent apparently paid himself almost all his entire entitlement without consultation with any partner even though his former wife had not received any payment whatsoever.

39. They insisted upon the following course of action:-

    1. Full and frank disclosure of the circumstances being made to the respondent's former wife.

    2. She was paid what she was owed (concern having already been expressed that a shortfall arose if the respondent's former wife did not want to take the mortgages)

40. The letter went on to say that the partners sympathised with the respondent's past matrimonial difficulties but his personal affairs could not be allowed to influence the conduct of partnership business. They regarded the matters as so serious that they could well have an adverse effect on the partnership business not to mention their professional reputations. The letter was accompanied by an accurate chronology of events.

41. On the 22nd April the respondent saw the new partner and expressed the wish that the letter to be sent by the firm to his former wife should not contain photocopy statements. He indicated that if they were not enclosed his former wife would probably not raise a query. After consulting with two other partners the new partner did send a letter to the respondent's former wife which did include statements and a cheque drawn on office account but the letter itself did not refer to any dates. It set out the sums of money due to her.

42. The next partnership meeting took place on the 28th April when the respondent was due to go to America for a holiday almost immediately afterwards. At that meeting the respondent was handed a letter, that letter confirmed the other partners' concerns in the will trust matter and said that they did not feel that they could any longer continue with the respondent in partnership and it was their intention to dismiss him from the partnership. They gave the respondent time to consider his position by suggesting that there should be a further meeting upon the respondent's return from America. He was

however, suspended from the partnership forthwith. They set out in detail the breaches both of the partnership deed, of trust and of the Solicitors Conduct Rules which they believed were applicable.

43. The respondent's former wife had contact with the new partner while the respondent was in America and had expressed her unhappiness at the situation which had arisen.

44. On the respondent's return from the United States he immediately instructed solicitors to act on his behalf in the partnership matter. The partnership dispute eventually became the subject of litigation before his Honour Judge Weeks in the Chancery Division of the Bristol District Registry. The Tribunal had before it a copy of the Learned Judge's judgment which although, of course, was concerned with partnership matters, had taken into account the history of the respondent's dealing with the estate of H deceased and the will trust as well as the affidavits filed on behalf of the respondent in his matrimonial proceedings.

45. In his judgment the Learned Judge said that he did not think it necessary to engage in semantic problems with definitions of honesty. He found that the respondent was not dishonest in the sense that he intended to take his wife's share and use it for his own benefit. However, he found he had no real intention of paying his wife her share in the foreseeable future. He believed that the respondent had been driven by two factors, the first was his feeling towards his ex-wife who had been engaged in a bitter divorce with him and who, he thought, had treated him badly, to say the least. The respondent could simply not bring himself to pay her money which he knew was due to her. The other factor was the non-disclosure in the affidavits. The Learned Judge said "As time went by it became more and more impossible for him to reveal the existence of this fund, especially as he had accused his wife of non-disclosure".

46. The Learned Judge went on to say, "In my judgement Mr Baldwin's conduct falls so far short of the standards of probity required of a solicitor that it was a breach of the term implicit in all partnerships between professional men, namely that each should conduct the partnership business in a proper, professional manner. It was also a breach of the Practice Rules which require independence and integrity and of the Accounts Rules which require trust money held by a controlled trustee, which Mr Baldwin was, to be kept in a trust account unless it is paid out in execution of the trust. It has been submitted to me that the breach was neither grave nor persistent. Having regard to the emphasis placed by the Master of the Rolls in Bolton v Law Society 1994 1 WLR 522 on the importance of public confidence in the profession I cannot treat these breaches as other than very serious, i.e. grave. They also seem to me to be persistent in the sense of continuing over an appreciable time, because there were several opportunities when (the respondent's former wife) could and should have been told of her entitlement, and could and should have been paid her share. I do not think that it is necessary that the breaches should be of different kinds in order to be persistent."

The submissions of the applicant

47. The respondent had been guilty of misconduct both in his personal capacity and as a solicitor trustee in the manner in which the will trust had been administered.

48. The applicant accepted that the matrimonial proceedings between the respondent and his former wife deteriorated in the later stages engendering much bitterness between the parties if not enmity. Both parties had acquired assets under the terms of the will of H deceased. Those assets were never disclosed. The respondent's former wife only

heard of her benefit from the respondent's firm when his partners took the conduct of the file away from him. In the submission of the applicant the most serious aspect was that the respondent had lied on oath in the matrimonial proceedings. He held assets which had not appeared in his affidavit of means. It was accepted that in his affidavit of the 16th July 1990 the stated position was accurate. His inheritance did not arise until November. Shortly after he became aware of the position, and indeed was aware of the approximate value of the inheritance, the respondent reaffirmed his earlier statements as to his assets. On the 11th May 1991 the respondent swore an affidavit in the matrimonial proceedings setting out details of his only realisable assets which did not include his inheritance.

49. On the 6th June 1991 in a further affidavit as to his assets made by the respondent in the matrimonial proceedings his assets were listed in detail. No disclosure of his inheritance was included.

50. At that stage the respondent had made three affidavits where he had every opportunity to disclose his inheritance but he had been guilty of non disclosure.

51. The applicant accepted that the respondent might have been reluctant to disclose the inheritance whilst any question remained outstanding as to the testamentary capacity of H deceased or the propriety of the bequest to the respondent and his former wife. That matter was resolved in the respondent's favour fairly quickly. The respondent was bound in the affidavits filed with the court to make full disclosure and he could have included any element of uncertainty he felt following the enquiries made by the family of H deceased. Equally full disclosure of the position of both her potential inheritance and the family's enquiries should have been made to his former wife, one of the named beneficiaries.

52. If the matter were dealt with without the veneer of the matrimonial proceedings there could be no doubt that it was entirely improper for a trustee to keep back a benefit from a beneficiary.

53. In the submission of the applicant the allegations were made out.

The submissions of the respondent

54. The main element of the case was that the respondent as trustee kept back benefit from the beneficiary. Without the pressures of acrimonious matrimonial proceedings the situation would never have arisen. The respondent allowed intense personal difficulties to override his judgement.

55. The respondent had written letters to the Solicitors Complaints Bureau in which he had fully accepted that he had made errors of judgement and he had expressed his deep regret. He genuinely allowed his proper judgement to be clouded and had continued to try to rationalise what in fact was irrational.

56. Hitherto the respondent had led an exemplary life. He had been a naval officer for twenty six years attaining high rank and had served as a naval attaché. The law had been a second career and he had been highly regarded in the area in which he practised.

57. Upon qualification he had begun to work with the firm from which he had been expelled and had become a partner after fifteen months. He undertook practice of a general nature, he was a duty solicitor and assisted at police stations. He had been

engaged in the judicial review of decisions made by local authorities and had been concerned with work involving homelessness and matrimonial law. He had been appointed as next friend by the local authority for children in care. He also undertook conveyancing, dealt with trusts and the whole ambit of legal services. He had undertaken voluntary work under the Citizens Advice Bureau scheme and was honorary solicitor to some Plymouth organisations. He had been part time chairman to Social Security Tribunals and a trustee of a local charity. He had been appointed trustee and executor in about one hundred estates. He had been made joint senior partner in the firm in 1982. He had become the sole senior partner on the retirement of his fellow senior partner in 1989.

58. The respondent had been married to his wife in 1954 and they had three children in their thirties. The respondent's matrimonial difficulties had begun after he retired from the Navy. When matrimonial matters came to a head the respondent had suffered an extremely turbulent two or three years. He had been distressed by the fact that his children had sided with their mother.

59. The crisis in the respondent's personal life had been mirrored by difficulties at work. He was a sole senior partner being somewhat older than his partners. He felt that he had no one to talk to. The younger partners were described as being "hungry for work" and the culture of the firm had changed. What had been a professional firm was becoming very commercially oriented, for instance the other partners wanted to open a conveyancing shop and that had been an anathema to the respondent. The respondent had taken it very hard when after a new partnership deed had been drawn changing the partners' voting rights, that change was then utilised to evict the respondent as senior partner.

60. In the matter of the will trust, the respondent had had conduct of the trust affairs and had considerably increased the value of the trust fund. The bequests under the late H's will had been made properly to the respondent and his former wife, H having taken independent legal advice.

61. Upon the death of H the respondent was very familiar with the nature of her estate and he speedily generated all the appropriate letters.

62. At the same time that the respondent suffered from problems with his partnership, the respondent had arranged for his own elderly mother to move to Devon to a residential home. She had been very unhappy and had died by her own hand a week after she had moved into the home.

63. The respondent had been concerned by the disquiet felt by members of the family of H deceased. He had very properly and readily agreed not to make a distribution to his former wife or himself until that matter had been formally resolved.

64. The respondent accepted that he should have notified the solicitor acting for him in his matrimonial affairs of his inheritance. However H had died only twenty days before he made the first affidavit in respect of which the applicant complained and at that time the solicitors acting for the family of H deceased had already queried the position. It had not crossed the respondent's mind to mention that matter to his solicitor.

65. Having not mentioned the matter then it was difficult later when the next affidavit was drafted. The respondent had good reasons why he should not mention the inheritance. He had given an undertaking not to make a distribution until the enquirers had been

satisfied. He accepted that he should have obtained his former wife's authority but again the respondent said that he did not give the matter thought. He had put it out of his mind completely.

66. In November 1991 the difficult situation surrounding the matrimonial proceedings grew worse. The respondent had paid a visit to his wife and she had attacked him.

67. In the back of his mind the respondent had decided to put the money to one side. He had had his share: he was left with his former wife's share. He had to send it to her. He wanted to take the money from his firm and put it into an account, his intention being to account to his former wife when he felt able so to do. The Tribunal was referred to the judgement of His Honour Judge Weeks in the Chancery Division in Bristol when he made a finding that in that respect the respondent had not acted dishonestly and he had not taken the money for himself. Indeed it had been accepted by all concerned that the respondent would not have appropriated monies which did not belong to him.

68. It was a sad aspect of the matter that the respondent's partners had not been more kindly disposed towards him. The partners had been notified of the difficulties encountered by the respondent but had taken no steps to support or assist him. After the probate executive had drawn what he perceived to be difficulties to the attention of two partners they had done nothing to help. In the submission of the respondent it was incumbent on those partners to take some steps to assist being entirely aware of the respondent's emotional problems.

69. Indeed the respondent's partners had found grounds to dismiss the respondent from the partnership but in subsequent litigation the Learned Judge found that they had not acted fairly. They had found no room to give help, assistance or forgiveness. The matter represented an entirely isolated incident and could never be repeated.

70. The consequential damage to the respondent was immense. The respondent had suffered enormously in terms of emotional trauma and had suffered a devastating effect, indeed he had been almost ruined.

71. The respondent had come to accept the advice of leading Counsel and his own solicitor that he should undertake some work. He tried to practise on his own account with a view to accounting for all monies earned to his partners. At the time of the partnership dispute hearing he had built up what had become a moderately successful practice. He remained a committed solicitor undertaking a range of work involving crime, probate, trust and domestic conveyancing. He remained involved with the police call out scheme and chairman of the Social Security Appeals Tribunal.

72. The respondent was sixty four years of age and it was a mark of his character that he had not given up but had tried all he could to rejuvenate himself.

73. In the quite extraordinary circumstances surrounding this matter the Tribunal was invited not to take any steps that would prevent the respondent from practising as a solicitor.

74. In the submission of the respondent at his age and at the state of vulnerability in his new practice a suspension would have the same effect as a striking off order. The Tribunal was invited to give consideration to the imposition of a financial penalty. In

imposing that penalty the Tribunal was invited to take account of the enormous losses suffered by the respondent. His financial situation was not good.

75. The respondent had done nothing deliberate. He himself had reported the problems at the time when he had become aware of the significance of what had happened. The nub of the matter was that the whole of the circumstances in which the respondent found himself had been clouded by the existence of the intense matrimonial problem. The respondent appreciated the position in which he found himself and assured the Tribunal that there could never be a repetition. It was an extraordinary accumulation of unrelated dramatic circumstances playing upon the respondent which were incapable of being replicated.

76. At the time of the hearing the respondent's partners had not met their contractual obligations to him and it was not unlikely that further proceedings would have to be instituted by the respondent against his former partners.

The Findings of the Tribunal

The Tribunal Found both of the allegations to have been substantiated. The Tribunal found this a sad and difficult matter on two counts:-

(1) The Tribunal recognised that the respondent had a successful career as a naval officer and had enjoyed a long and successful career as a solicitor. The Tribunal noted the letters written in support of the respondent.

(2) The Tribunal recognised that the respondent's breaches occurred in circumstances which afforded substantial mitigation which they explored in detail. The respondent's marriage which had endured for many years was brought to an end in acrimonious and painful circumstances. There was no doubt that the respondent felt deeply aggrieved at the way that he had been treated by his former wife. At much the same time the death of his elderly mother had occurred in particularly distressing circumstances. Again at the same time the respondent's relationship with his partners and his position within his firm had changed in circumstances in respect of which he believed he was entitled to feel aggrieved.

Notwithstanding these substantial factors the Tribunal was in no doubt that the respondent had been guilty of conduct unbefitting a solicitor in failing to disclose to a beneficiary, his former wife, her entitlement under the terms of a trust of which he was trustee. A trustee is burdened with clear moral and legal obligations not only to those who appoint him as trustee but to those who are beneficiaries. A trustee has a clear duty to behave in a way which is entirely open and above board and in a way which is right, proper and fair. A solicitor who is a trustee is entirely and undeniably aware of what he is bound to do. It was the view of the Tribunal that the failure to make disclosure in these circumstances was not only a serious breach of trust but also meant that the respondent was using his power and position as a trustee and a solicitor to disadvantage a person by whom he felt he had been aggrieved. Any solicitor who was unable to handle a matter with the appropriate objectivity should not allow himself to retain the conduct of it. The respondent was a mature and experienced solicitor and his behaviour in that respect was to be deprecated. Any person dealing with a solicitor trustee was entitled to expect him to behave with the utmost probity and the failure on the part of a solicitor to meet that expectation must be expected to damage the good reputation of the solicitors' profession in the eyes of the public.

Equally the Tribunal was in no doubt that the respondent's provision of affidavits as to his financial circumstances to a court in the context of matrimonial proceedings in which he failed to make full disclosure of his assets and his wife's assets (of which she had no knowledge) was a very serious matter and a clear case of conduct unbefitting a solicitor. The respondent was a solicitor and an officer of the court. In swearing the affidavits he did he breached his duty to the court. He deposed on oath as to facts which he knew not to be true. The affidavit made on the 26th November 1990 had been made shortly after the death of H deceased. The Tribunal found it hard to accept what the respondent said in this connection namely that with the proximity of the two events, an error could have occured but the Tribunal found itself entirely unable to accept that an erroneous omission could have occurred in the affidavits of the 11th May 1991 and the 6th June 1991. In the May affidavit the respondent was placing material before the court in support of the suggestion that the court had been misled by his former wife. This was contemporaneous with the creation of the Britannia Building Society account into which the inheritance of the respondent and his former wife were placed. The respondent knew perfectly well that at the same time as he was accusing his former wife of dissembling he was doing the self same thing in affidavit evidence. On the strength of his dissembling, a Consent financial order in divorce proceedings was set aside and replaced with one £37,000 to his greater advantage.

Even having due regard to the considerable mitigating circumstances which the Tribunal have referred to above the Tribunal was unable to resile from its Finding that the respondent had dishonestly failed to disclose material facts in affidavits as a device to serve his own ends and operate to the detriment of his former wife. This, and from a solicitor, struck at the heart of the means by which the Courts attempt to assess the rights of parties in matrimonial proceedings.

The solicitors' profession expected its members to act in all things with the highest degree of probity and integrity. In order to protect the interests of the public and the good name of the solicitors' profession the Tribunal was required to take the gravest view of such behaviour and impose a sanction commensurate with that view.

Whilst it gave the Tribunal no pleasure, bearing in mind the difficult circumstances in which the respondent found himself, his age and his history as a successful naval officer and solicitor for many years, the Tribunal took the view that it was right that he should be Struck Off the Roll of solicitors and accordingly they made such order further ordering the respondent to pay the costs of and incidental to the application and enquiry in a fixed sum.

DATED this 25th day of August 1997

on behalf of the Tribunal

J N Barnecutt
Chairman

Findings filed with the Law Society on the 12th day of September 1997