

IN THE MATTER OF DES MURPHY, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS' ACT 1974

Mr. R J C Potter (in the chair)
Mr. J N Barnecutt
Mr. M C Baughan

Date of Hearing: 24th January 2002

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 ("OSS") by Rosemary Jane Rollason solicitor and partner in the firm of Messrs Field Fisher Waterhouse of 35 Vine Street, London, EC3N 2AA on the 10th May 2001 that the Respondent, Des Murphy of Brighton, East Sussex, and formerly of Green Lanes, London, N4, solicitor, 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.

On 15th November 2001 Miss Rollason made a supplementary statement containing a further allegation. The allegations contained in the original and supplementary statements are set out below.

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

- (i) failed to deliver an Accounts Report in respect of his firm, Murphy's, for the accounting year ending 31st August 1998 until 14th February 2000.

- (ii) failed to notify The Law Society of a change in his practice address contrary to Section 84(1) of the Solicitors Act 1974;
- (iii) failed on three occasions to produce his firm's books of account for inspection, contrary to Rule 34(1) of the Solicitors Accounts Rules 1998;
- (iv) failed to maintain books of account in respect of his firm after 24th October 1997;
- (v) in November 1997, obtained a loan in the sum of £10,000 from the ex-husband of Ms DF, his client, which he failed fully to repay and in so doing acted, contrary to Rule 1 of the Solicitors Practice Rules 1990, in a manner likely to compromise or impair:
 - (a) the solicitor's duty to act in the best interest of the client; and
 - (b) the good repute of the solicitors' profession;
- (vi) on various occasions between 10th September 1997 and 9th December 1998, failed to provide the minimum level of supervision required for his office, contrary to Rule 13(1)(a) of the Solicitors Practice Rules 1990;
- (vii) during a period of absence between 20th April 1998 and 27th April 1998 when his office remained open to the public or open to take telephone calls from the public, failed to provide the minimum level of supervision for his office contrary to Rule 13(1)(a) of the Solicitors Practice Rules 1990;
- (viii) in mid 1998, represented a client in court whilst being aware that the client had misled the court as to his true identity;
- (ix) failed to exercise proper supervision of his trainee, Samantha Marshall Leigh, when he:
 - a) directed her to represent clients in open court despite being aware that she did not have rights of audience;
 - b) directed her to advise clients being questioned at police stations despite being aware that as a trainee solicitor she was not qualified to do so.
- (x) failed to deliver to The Law Society an Accountants Report in respect of his firm Murphy's for the accounting period ending 29th February 2000.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London EC4M 7NS on 24th January 2002 when Rosemary Rollason solicitor and partner in the firm of Messrs Field Fisher Waterhouse of 35 Vine Street, London, EC3N 2AA appeared as the Applicant and the Respondent was represented by Jeremy Chipperfield of Counsel instructed by Messrs Christmas and Shehan solicitors of 78 Grand Parade, Green Lanes, London N4 1DX.

At the opening of the hearing the Respondent sought an adjournment. He was not ready to proceed and wished to supply the Tribunal with further exhibits. The Tribunal had on the morning of the hearing been handed the Respondent's statement together with a number of exhibits.

The Respondent had first become aware of the hearing date in October of 2001. The allegations ranged over a period of two years. There were 28 separate incidents with which the Respondent would have to deal. He had no access to an office nor to a photocopier which made the preparation of his case difficult and had had to go back to Ireland owing to illness in his family. It was thought that the remaining documents could be produced by the end of lunchtime. It would be difficult to conclude the hearing on the same day. It was thought that the Applicant would call two witnesses (although Miss Rollason said she would be calling only one witness who would be very "short"). It was accepted that the allegations relating to regulatory matters had been admitted.

Miss Rollason told the Tribunal that she was in difficulty having been supplied with a large number of documents on the morning of the hearing. There had been a flurry of activity in the days before the hearing.

It was suggested that progress might be made if the Tribunal were to adjourn for one hour to enable Miss Rollason to consider the documents and for discussions to take place. The Tribunal adopted the course of adjourning for one hour. Upon the return of the Tribunal a further adjournment was sought by the Respondent.

The Chairman of the Tribunal pointed out that the Respondent had made a number of admissions. He went through each allegation in turn to establish with a certainty which allegations were admitted and to narrow the issues on the allegations that were denied.

After doing so the Tribunal were satisfied that the issues had been narrowed and the case could properly proceed to the substantive hearing.

The application for an adjournment was refused and the Tribunal required the substantive hearing to proceed.

The Tribunal retired for 30 minutes and required the case to be opened at 12.55 indicating that the Tribunal was prepared to sit until 4.30 p.m. The Tribunal considered that would be sufficient court time, but pointed out that the Tribunal was also scheduled to sit in the afternoon of the following day should further time be necessary.

The evidence before the Tribunal included the oral evidence of Ms Marshall-Leigh and the oral evidence of the Respondent. A copy letter from Miss DF addressed to the Applicant dated 3rd January 2002 was handed up at the hearing.

The Respondent admitted allegations (i), (ii), (iii), (iv) and (x).

At the conclusion of the substantive hearing the Tribunal ordered that the respondent Des Murphy of Brighton, East Sussex (formerly of Green Lanes, London, N4) solicitor be struck off the Roll of Solicitors and they further ordered that he do 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 71 hereunder: -

1. The Respondent, born in 1952, was admitted as a solicitor in 1990. At all material times the Respondent carried on in practice on his own account under the style of "Murphy's" at 29 Kensington Gardens, Brighton, East Sussex until in about mid July

1999 when the Respondent moved the practice to a new address at 82 Queen's Road, Brighton, East Sussex. The Law Society intervened into the Respondent's practice on 29th February 2000.

Allegations (i) and (x)

2. For the year ending 31st August 1998, the Respondent had been due to submit an Accountant's Report to The Law Society by 28th February 1999, in accordance with the requirements of Section 34 of the Solicitors Act 1974. No request for an extension of time had been received.
3. The Law Society wrote to the Respondent on 24th March 1999 to inform him that the Report had been due on 28th February 1999. The Respondent replied in a letter dated 31st March 1999 stating that he had been delayed by office business due to "the loss of two members of staff."
4. The matter was referred to the OSS who wrote to Mr Murphy: his response was dated 21st June 1999. He explained that the delay was due to a volume of work and shortage of staff.
5. On 25th August 1999 the matter was considered by the Compliance & Supervision Committee when it was resolved to expect the Respondent to file the outstanding Accountant's Report for the year ended 31st August 1998 within 28 days of being notified of the Committee's decision, failing which his conduct would be referred to the Tribunal. The Respondent did not file the report within the 28 day period. The Report for the year ended 31st August 1998 was filed by the Respondent's Accountants on 14th February 2000.
6. For the period ending 29th February 2000 the Respondent was due to submit an Accountant's Report to The Law Society by 31st August 2000. The Law Society's record demonstrated that no such report had been received.
7. The Law Society Regulation Information Service had addressed a letter to the Respondent dated 5th October 2000 in which it was stated that no Accountant's Report had been received for the period in question and confirmed that, although the firm had been subject to an intervention by The Law Society, an Accountant's Report was still required for the accounting period ending on the date of The Law Society's intervention into the Respondent's practice, namely 29th February 2000. The letter pointed out that if the Respondent was unable to provide such report he was entitled to apply for a waiver.
8. The Accountant's Report had not been received by The Law Society and the Respondent had not made any request for a waiver.

Allegation (ii)

9. An inspection of the Respondent's books of account was conducted by an Investigation & Compliance Officer of The Law Society ("the ICO"). The ICO's Report was dated 29th October 1999 and was before the Tribunal.

10. On 1st September 1999, the ICO attended at the Respondent's practice address which, according to the then current Law Society records was 29 Kensington Gardens, Brighton, East Sussex, BN1 4AL. The Respondent was not present. The ICO contacted him by telephone and was informed that the Respondent had moved to 82 Queen's Road, Brighton, approximately five weeks earlier. He had not informed The Law Society of his change of premises.

Allegation (iii)

11. The ICO's Report further confirmed that when he telephoned the Respondent on 1st September 1999, the Respondent stated that his books of account were with his reporting accountant in London. The ICO agreed to postpone the meeting until 8th September 1999.
12. On 7th September 1999 the Respondent informed the ICO by telephone that he had not made ready his books of account for inspection. The ICO explained that it would nevertheless be useful for the meeting planned for 8th September to take place.
13. On 8th September 1999 the Respondent informed the ICO that he had first opened a client bank account on 24th October 1997. He admitted that his client bank account statements had not been sent to the reporting accountant and that a number of client bank account statements had been mislaid. He agreed that no entries had been made in the books of account in respect of client bank account transactions for the period October 1997 to 8th September 1999.
14. The Respondent agreed to contact his bank, obtain the missing bank statements and send the information to his reporting accountant in order that the books of account could be written up.
15. The ICO agreed to postpone the inspection again to 11th October 1999. He explained to the Respondent that if he failed to produce his books of account on the third occasion the ICO would be obliged to report the position.
16. On 11th October 1999 the Respondent informed the ICO that, although he had requested the missing client bank account statements at the time of the previous visit, the statements had still not been received. The ICO asked the Respondent if he had sent the client bank account statements, paying in books and cheque book stubs that were in his possession to the reporting accountant. The Respondent replied that he had done so on 8th October. The Respondent agreed that the position regarding the writing up of his books had not changed despite the four and a half weeks allowed to him since the ICO's first visit on 8th September 1999.

Allegation (iv)

17. The ICO further confirmed that the Respondent had also agreed that his books of account in respect of client bank account transactions had not been written up since 24th October 1997, contrary to Rule 32 of the Solicitors Accounts Rules 1998.
18. In view of the lack of book keeping records it was not considered practicable for the ICO at the inspection to attempt to calculate the Respondent's liabilities to clients, nor

could he express an opinion as to whether sufficient funds were held on client bank account to meet liabilities to clients.

Allegation (v)

19. The ICO's Report referred to a loan obtained by the Respondent in the sum of £10,000 from Ms DF.
20. Ms DF had known the Respondent for some years both as her solicitor and socially. She had been employed part time at his firm for a short period assisting with office duties with the consent of the benefits authorities.
21. It was stated by Ms DF that in late 1997 the Respondent asked her to lend him £10,000. She trusted him to repay the money because he was a friend and because he was her solicitor and because he had previously repaid an earlier loan she had made him. The money which constituted the loan was provided by Ms DF's ex-husband. Ms DF confirmed that it was money which was "ear-marked" for her as she was planning to move house and would have expenses. Her ex-husband did not know the Respondent and was not his client.
22. Ms DF stated that the loan was made by Mr F by means of two cheques respectively dated 8th and 14th November 1997 each in the sum of £5,000. Mr F gave the cheques to Ms DF who provided them to the Respondent.
23. Mrs DF's position was that an oral agreement was in place that the Respondent would repay the loan by ten monthly payments of £1,075 starting in January 1998.
24. One monthly repayment of £1,075 had been made by the Respondent. Ms DF stated that the Respondent also bought her a computer on hire purchase which cost approximately £2,300. The remainder of the loan had not been repaid. Ms DF had obtained a judgment against the Respondent in the Brighton County Court.
25. Ms DF's statement was before the Tribunal: she had decided not to attend the hearing and give oral evidence and be cross-examined.
26. In evidence the Respondent said that he had suffered from cash flow difficulties from time to time caused in the main by the delays and/or the irregularity of payments from the Legal Aid Board.
27. Ms DF had been a person experienced in business who had offered advice to the Respondent from time to time. He had asked her if she had been aware of a source from which he might obtain a loan. She had introduced the Respondent to Mr F, who she said was her former partner, although it later transpired that Mr F was Ms DF's ex-husband.
28. Mr F had made a loan to the Respondent several years before the loan, the subject of the allegation, which had been repaid.
29. The Respondent believed Mr F had been prepared to lend him £10,000 because the Respondent was a solicitor, was trusted, and because the earlier loan had been repaid.

30. The Respondent confirmed that Mr F had never been his client.
31. The Respondent understood that Ms DF had approached Mr F for some money and his response had been "get it back from Mr Murphy." Ms DF had then pressed the Respondent for the money at a time when the inflow of work into the firm had decreased with a corresponding decrease in income.
32. The Respondent had paid back £1,000 and a figure for interest
33. Ms DF wanted the Respondent to pay the money quickly. She had become very threatening and aggressive. In May she had burst into the Respondent's office and had assaulted him and had damaged equipment. She had seized the client account paying in book in which there was a cheque representing the payment of damages to a client. Ms DF had also taken the firm's VAT books.
34. At the time when the Respondent had taken the loan he had believed, with justification, that the firm was flourishing and that the prospects were good. The loan was to meet a specific cash flow difficulty and the money was used to pay staff wages. The Respondent believed that the cash flow problem would be resolved without difficulty.
35. The Respondent did not see that any conflict of interest had arisen. Ms DF and Mr F were not married and were not living together.
36. Mr F had transferred the benefit of the loan to Ms DF – the Respondent had not borrowed money from her.
37. Ms DF had pursued the Respondent in the County Court and had obtained judgment against him.
38. The Respondent had not attended the County Court hearing: judgment had been entered by default. The Respondent had been unable to attend the County Court hearing owing to a professional commitment in Aylesbury County Court. The Respondent had written to the judge but did not know if the letter had reached its destination.
39. The Respondent had applied for judgment to be set aside and that matter remained outstanding. The case had been transferred from the Brighton to the Edmonton County Court. The Respondent had pointed out that the cheques by which the loan had been made had been signed by Mr F and it was he who had been the lender, not Ms DF as she had claimed.
40. The Respondent had entered a counter-claim in the County Court proceedings.
41. The Tribunal found as a fact that the loan had been made to the Respondent by Mr F and not by Ms DF. The Tribunal also found as a fact that Mr F had not been a client of the Respondent.

Allegation (vi), (vii) and (viii)

42. These allegations were supported by the evidence of Ms M-L who was a trainee solicitor at the Respondent's firm from 8th September 1997 until late 1998, when she left the firm. During this period the Respondent was Miss M-L's training principal.
43. Miss M-L said she had a number of concerns relating to the manner in which the Respondent operated his practice, about the inadequacy of the supervision of the office and about his supervision of her training. As a result Miss M-L left the firm in late 1998 and submitted a complaint to The Law Society regarding her training contract.
44. Ms M-L said the Respondent's office premises were originally at North Road, Brighton until approximately half way through Miss M-L's period of employment when the office was moved to 29 Kensington Gardens, Brighton. Both offices were open to the public and took telephone calls from the public. The firm advertised its services in the Yellow Pages Directory.
45. The only other solicitor employed at the firm was Miss E who had not been admitted as a solicitor for three years at the material time.
46. The Respondent refuted what Ms M-L had said. He said he had not wanted to attract any "off the street" work. The firm had not advertised its services to the general public. The Respondent had a sign "Des Murphy & Co Solicitors" at the North Road address for a short period of time only. At the Kensington Gardens address there was no sign. The Respondent said he did not want to attract the kind of clients which other solicitors in the town wished to attract. His strategy had succeeded: he gained instructions in the field in which he specialised and he did not get enquiries from the general public either by telephone or in person.

Allegation (vi)

47. Ms M-L said that during her period of employment at the Respondent's firm the Respondent frequently did not attend the office. She said he carried a pager and a mobile telephone but on occasions did not answer them and staff were left to work unsupervised at the office.
48. The Respondent confirmed that he was a practitioner in the criminal field. In such circumstances it was inevitable that he was out of the office for periods of time attending court and attending upon clients at, for instance, police stations. He agreed that he did carry a pager and a mobile phone and was therefore in contact with his office. He was of the view that he had attended at his office for an appropriate length of time to supervise and manage the office on a day to day basis.
49. In evidence Ms M-L said she customarily arrived at the office between 9.00 and 9.30 and accepted that she would not have known if the Respondent had been in the office before her arrival.
50. At the conclusion of the evidence in support of this allegation the Tribunal, bearing in mind the high standard of proof required, dismissed this allegation.

Allegation (vii)

51. Ms M-L had listed a number of occasions when the office was open to the public and open to take telephone calls from the public when the Respondent was absent from the office and there had been no supervision provided by a solicitor who had been admitted for at least three years.
52. In evidence Ms M-L said she had made the list of dates from an office diary. She accepted that the relevant cases were not necessarily within her personal knowledge.
53. The Respondent said that he had had to trawl through a great many files in order to deal with each date upon which it was alleged he had not attended the office.
54. Ms M-L had provided some 28 dates. The Respondent had in his written statement dated 24th January 2002 dealt in detail with each of these dates. In one example, namely 10th November 1997, Ms M-L had noted from the diary that one of the Respondent's clients was to appear at Huntingdon Magistrates Court. The Respondent produced a letter, an attendance note and a letter of instructions to Messrs Copleys solicitors of Huntingdon asking them to attend as his agent and Messrs Copleys report of their so attending was also produced.
55. The Respondent accepted that he had been away from the office from the 20th to the 27th April 1998 owing to a family emergency having first checked that there were no appointments booked in the diary for that week. The Respondent said he was convinced that he had arranged with another solicitor in Brighton to provide the appropriate cover as he had done on previous occasions but was not in a position to prove it.
56. At the conclusion of the evidence in support of this allegation the Tribunal, bearing in mind the high standard of proof required, dismissed this allegation.

Allegation (viii)

57. The Respondent's client had been arrested in Liverpool and charged with a minor public order offence in early 1998. He made contact with the firm by telephone and Miss M-L had spoken to him. She wrote him a letter and sent him a legal aid form. She informed the Respondent and a file was opened.
58. The client had identified himself as "Jake Brown." He telephoned the office a few weeks later and spoke to Miss M-L. He said there was a problem with his name. Miss M-L said she asked for an explanation. The client said that he had panicked in the police station and given the name "Jake Brown" when his real name was GO.
59. Miss M said she had advised the client that this was a serious matter potentially involving perverting the course of justice. She explained to the client that the court would have to be informed. She wrote a note explaining the position and informed the assistant solicitor and informed the Respondent when he was next in the office. She said she mentioned the matter to the Respondent several times as she felt she was not competent to deal with it. Ms M-L's evidence was that the Respondent was aware of the circumstances before he attended the court hearing with the client. His response to Miss M-L had been "don't worry." Ms M said she refused to have any

further dealing with the matter. The Respondent represented the client at the North Sefton Magistrates Court in the name of Jake Brown, despite being aware that his real name was GO.

60. In evidence the Respondent said that he had been confronted by Ms M-L and his assistant solicitor, Miss E, on the evening before the trial at Sefton, with the words "Will you tell him or shall I?" He said Ms M-L had looked embarrassed and had told him that the client had given a false name. The Respondent had found Ms M-L to be resentful at being a trainee and considered that she had kept matters to herself which she should not have done. This particular matter had been symptomatic of her attitude.
61. The Respondent had been concerned and angry. He had contacted a barrister for advice. The position, which the Respondent recognised, was that his firm had potentially placed a client in jeopardy. The advice given to the Respondent was that the false name was only important where the defendant had something to hide from the Court.
62. The Respondent had been sure that the client did not have a criminal record: he had given a false name at a time when the police were being particularly difficult.
63. The Respondent had taken the view that a person was entitled to call himself anything he liked.
64. The reason why the client had given a false name to the police was understandable and wholly innocent but the consequences of telling the Court when the client's defence was by way of an attack on the credibility of the police were likely to be adverse to the client. The magistrates might have given inappropriate weight to what otherwise had been an innocent act.
65. The Respondent had advised the client that if he was convicted he would have to give the Court his real name but until then the Court was not misled as to his identity because the client was the person who had been arrested and had attended Court.
66. The Respondent accepted that his judgement on the day might have been faulty – he had driven to Liverpool from Brighton that morning having left at a very early hour and was tired.

Allegation (ix)

67. In evidence Ms M-L cited two occasions when she considered the Respondent had failed to exercise proper supervision of her as his trainee.
68. She stated that he directed her to represent clients in open court despite being aware that she did not have rights of audience. In evidence Ms M-L stated that this was an occasion at Portsmouth County Court when the hearing took place in chambers. She accepted that as a trainee solicitor she did have a right of audience in chambers.
69. The second example related to her attendance with a client at Hove County Court. Ms M-L said she had attended court with the client as his McKenzie Friend and then had been granted rights of audience by the Judge.

70. Ms M-L further stated that the Respondent directed her to attend and advise clients who had been detained for questioning in a police station on one date in 1997 and on four dates in 1998.
71. In the light of Ms M-L's own evidence, which indicated that she had undertaken precisely the type of work that a trainee might be expected to do and she had not been compelled to take any inappropriate step, the Tribunal dismissed allegation (ix).

The Submissions of the Applicant

72. The Respondent had admitted the allegations dealing with regulatory failures namely (i), (ii), (iii), (iv) and (x). It was important that solicitors should comply with the rules and regulations relating to practice as a solicitor. In particular the Respondent had not kept his firm's books of account up to date and had not filed Accountants' Reports. He had not produced his firm's books of account for inspection on three occasions and had failed to notify The Law Society of a change in his practice address.
73. With regard to allegation (v) and the loan of £10,000 from Ms DF, Ms DF had suffered as a result of the Respondent's failure to repay the loan because the money had been "ear marked" for her. It was accepted that the loan had been actually made by Mr F but it was submitted that the Respondent had obtained the loan by means of his relationship with Ms DF. The Respondent had failed to advise either Ms DF or Mr F to seek independent legal advice before accepting the loan. In the submission of the applicant the Respondent had failed to act in the best interests of Ms DF, his client, and had acted in a manner that was likely to compromise or impair the good repute of the solicitors' profession. The applicant did not address the Tribunal in connection with allegations (vi), (vii) and (ix) as the Tribunal dismissed those allegations after hearing the evidence.
74. With regard to allegation (viii), regarding the Respondent's representation of a client calling himself "Jake Brown" before the Magistrates in Sefton knowing that the client had given a false name, the Respondent had made admissions concerning his representation of that client in his letter addressed to the OSS dated 28th February 2000. The Respondent stated that the client denied the offence alleged and had explained to the Respondent that the reason the client had given a false name to the police and to the Court had been in order to protect his career prospects as a journalist. The Respondent stated he considered credibility to be an important issue and that he believed that the client's defence could be jeopardised if he revealed his deception to the Court. The Respondent had stated that he represented the client on the basis of advice that the client should reveal his true identity to the Court in the event of a conviction. The Respondent had also stated that the client had not misled the Court as the client was the person detained and arrested and who attended the Court. It was the Applicant's submission that the Respondent had indeed knowingly misled the Court as to his client's true identity.

The Submissions of the Respondent

75. The Respondent had admitted allegations (i), (ii), (iii), (iv) and (x) relating to regulatory failures. The Respondent regretted those failures and apologised to the Tribunal. He had allowed his professional work and his duty to look after the

interests of his clients to be put first. He believed he had in fact taken on too much. No client had lost any money and indeed one client had been overpaid by mistake, such overpayment having been met by the Respondent from his own pocket. By the time the Investigation Accountant visited the Respondent's firm the Respondent had stopped conducting civil work and had already asked civil litigation clients to transfer their files to other solicitors.

76. With regard to allegation (v), the loan received from Mr F, the Respondent had taken the loan in good faith believing that he would be able to repay it without difficulty.
77. With regard to allegation (viii) the Respondent had been placed by a member of his staff in a most difficult position at the eleventh hour. He had to deal with the consequences after a long drive and an early morning start when perhaps his judgement was not as good as it might have been. The Respondent had taken the advice of Counsel. The advice had not been clear cut. The Tribunal was invited to consider the way The Law Society's Guide to the Professional Conduct of Solicitors dealt with that type of situation where the matter was not entirely clear cut. The Respondent accepted the Tribunal's decision that he had misled the Court as to his client's true identity, but the Tribunal was invited to bear in mind that the Respondent had made the client give an undertaking that if he were convicted he would disclose his true name to the Court.
78. The Tribunal was invited to consider that the Respondent's behaviour on this isolated occasion was an aberration and did not reflect a course of conduct on the part of the Respondent. Indeed the Tribunal had in the papers been referred to another matter where the Respondent's client had given a false name and address at Ashford Magistrates Court. In due course the client (who had been one of a number of people arrested) had notified the Respondent that he had given a false name at the time she had been arrested because she had outstanding warrants which she feared the Court might discover. In that case the Respondent had without hesitation informed the client that he would have to withdraw as her solicitor unless she was prepared to inform the Court and the Crown Prosecution Service of the true position.
79. The Respondent apologised to the Tribunal for his error. As a result of the matters before the Tribunal and The Law Society's intervention into the Respondent's practice he had found himself unemployed. In due course he had found work in North London at a modest salary. That had necessitated long distance commuting every day and the travelling difficulties had so adversely affected the Respondent that he had been compelled to give up that job. He had gone to the firm in question because it had been the only firm that would take on his clients' caseload.
80. The Respondent had suffered considerably from a financial point of view and his former wife had ceased to allow the Respondent to see his son because he was unable to pay maintenance. She had threatened to go abroad if the Respondent did not pay maintenance.

The Findings of the Tribunal

The Tribunal found the admitted allegations (i), (ii), (iii), (iv) and (x) to have been substantiated.

During the course of the hearing after hearing the relevant evidence the Tribunal dismissed allegations (vi), (vii) and (ix).

The Tribunal found allegation (v) not to have been substantiated.

The Tribunal found allegation (viii) to have been substantiated.

With regard to the admitted allegations the Respondent had clearly abrogated his responsibilities as a solicitor for keeping careful records of moneys held on behalf of clients and had failed to lodge with The Law Society Accountant's Reports which would serve to demonstrate to that regulatory body that clients' moneys were being properly, fairly and honestly handled. On the face of it the failure to produce books of account to The Law Society's Investigation and Compliance Officer on three occasions was a serious matter.

The Tribunal noted that the Respondent had moved his practising address without first notifying The Law Society in breach of the requirement that new addresses are notified to The Law Society.

The Tribunal found the evidence offered in support of allegations (vi), (vii) and (ix) to have been unsatisfactory and flawed. Ms M-L, contradicted herself in some areas of evidence and in other areas gave evidence which did not support the allegations made. Ms M-L had relied upon her own interpretation of, for instance, diary entries, without taking any step to verify that her interpretation was correct. The Tribunal dismissed these allegations.

The Tribunal found allegation (v) not to have been substantiated. The Tribunal was deeply troubled about the facts and the circumstances of the loan and the fact that the Respondent had failed to advise either Mr F or Ms DF to obtain independent legal advice before concluding the loan transaction. In the absence of any evidence from Ms DF that the loan moneys belonged to her and the very considerable doubt which the evidence cast on the way in which the loan had been made, the Tribunal was not satisfied to the requisite standard, that is, beyond reasonable doubt, that the loan had been made to the Respondent by a client. If as the Respondent stated the loan had been made by Mr F, the Tribunal had no evidence as to the status of Mr F or his sophistication in financial affairs and was unable to formulate any view whether the Respondent in accepting a loan from Mr F had taken advantage of him. In these circumstances the Tribunal found that allegation not to have been substantiated.

The Tribunal considered allegation (viii) to be the most serious allegation of conduct unbecoming a solicitor made against the Respondent. The Tribunal found that allegation to have been substantiated. The Tribunal accept there was some disparity in the evidence as to whether the Respondent had been made aware of the client's giving of a false name either very shortly before the Magistrates Court hearing or some time in advance of it. The Tribunal preferred the Respondent's evidence that he had been told of the client's deception on the evening before the hearing. The Tribunal consider that that is a mitigating factor as was the early start and the long drive to the Magistrates Court. The long drive did, of course, give the Respondent plenty of time for mature reflection.

The Respondent, an experienced criminal advocate, made a decision to permit his client to proceed in the perpetuation of a falsehood which on the face of it was extraordinary. Not only was there the basic misleading of the Court, a most serious matter on the part of a solicitor who is himself an officer of the Court and bound by strict rules of conduct, but the consequences could have been singularly serious. Both the Respondent and his client were left potentially liable to a charge of attempting to pervert the course of justice. The Court might have been denied the opportunity of learning of previous convictions of the client or, indeed, if the client had been convicted then that conviction might have been attributed to a person whose name was that assumed by the client. The Respondent was perhaps fortunate that the only consequence of his seriously misguided behaviour was the institution of professional disciplinary proceedings.

The Tribunal did not consider it right that a solicitor who had knowingly and intentionally misled the Court as to a defendant's true identity be considered to remain a member of the solicitors' profession.

The Tribunal ordered that the Respondent be struck off the Roll of Solicitors.

The Tribunal considered submissions made as to costs and recognised that four of the ten allegations made against the Respondent had not been substantiated. The Tribunal considered a submission that the Respondent should pay only a proportion of the Applicant's costs in those circumstances but noted that the Respondent had played very little part in the disciplinary proceedings which had been served upon him in May of 2001 and he had lodged a statement and a substantial bundle of exhibits with the Applicant and the Tribunal on the morning of the hearing itself. In effect the Applicant had been denied any proper opportunity of considering the Respondent's submissions and had been left with little choice other than to pursue the whole of the case in the way in which she had originally formulated it. In those circumstances the Tribunal considered it right that the Respondent should pay the whole of the costs of and incidental to the application and enquiry. The Applicant had been able to notify the Respondent of the figures involved, but he had not had an opportunity to give those figures detailed consideration. In the circumstances the Tribunal in awarding the whole of the costs of and incidental to the application and enquiry, to include the costs of the Investigation and Compliance Officer of The Law Society, against the Respondent ordered that such costs should be subject to a detailed assessment if not agreed between the parties.

DATED this 12th day of March 2002

on behalf of the Tribunal

R J C Potter
Chairman