

IN THE MATTER OF RICHARD GEORGE HUNT, solicitor

AND

IN THE MATTER OF THE SOLICITORS ACT 1974

Mrs H Baucher (in the chair)
Mr A H Isaacs
Mr G Fisher

Date of Hearing: 9th September 2003

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 (the OSS) by Margaret Bromley solicitor of TLT Solicitors, 1 Redcliff Street, Bristol BS99 7JZ on 10th July 2001 that Richard George Hunt of Cromer, Norfolk, 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 20th November 2001 Ms Bromley, the Applicant, made a supplementary statement containing further allegations against the Respondent and on 29th October 2002 the Applicant made a further supplementary statement containing further allegations. The allegations set out below are those contained in the original and the two supplementary statements. The allegations were that the Respondent had been guilty of conduct unbecoming a solicitor in that:-

1. He failed to comply with the orders of Norwich County Court of 12th July 1999, 2nd May 2000 and 7th June 2000;

2. The evidence before the Tribunal in relation to 29 separate allegations was extensive and is summarised below. The Respondent admitted the facts on which the allegations were based but in his written submissions he denied he had intended consciously or deliberately to mislead. The allegations and summary of relevant facts and the relative paragraphs of the Respondent's submissions are as follows:-

Allegations 1, 2 and 23 relating to Mr. L (The Respondent made no written submissions)

3. Mr. S L terminated the Respondent's retainer in March 1999 and requested him to hand over his files to another firm BA. The Respondent delayed in doing so and only did so after proceedings in the Norwich County Court were issued by new solicitors acting on behalf of Mr. S L. Even then files were handed over late or incomplete and one file had never been supplied.

Allegations 3, 5, 6, 7 and 10 relating to Mr. PRS. (the Respondent's written submissions [395-403])

4. The Respondent acted for PRS in connection with recovery of a debt claimed to be due to PRS. Proceedings were issued in May 1991 claiming a sum plus interest. The claim was admitted to the extent of some £680 but the claim of about £19,000 for interest was disputed. The matter was not progressed and in December 1992 there was a threat that an application would be made to strike the claim out. The Respondent did not progress the matter and an unsuccessful attempt was made for the proceedings to be struck out for want of prosecution in November 1994. The Respondent did not advise PRS in writing or it appeared at all regarding the strength of his case. The Respondent acted without obtaining instructions and he did not inform PRS what he was doing or explain the progress of the case or its lack of progress.
5. The Respondent wrote letters to his client which omitted material information and implied that proceedings were being actively pursued when they were not. When the defendants offered to settle the case on payment of £680 with each side bearing their own costs the Respondent did not inform PRS of the offer. The claim was later struck out for want of prosecution in May 1998 but in December 1998 the Respondent told PRS it was still being progressed. As the settlement offer was not accepted the defendant's solicitors claimed costs of £2,437.62. The Respondent did not properly inform PRS or LG who acted for the administrators of PRS's Individual Voluntary Arrangement and he wrote a letter explaining the position which was incomplete and inaccurate.
6. Following a complaint by PRS, the Respondent delayed in replying to the OSS and gave explanations which were inaccurate and incomplete.

Allegations 4, 5, 7, 8, 9 and 10 - Mr. G (the Respondent made no submissions)

7. The Respondent acted for G in relation to possible claims for personal injury. Limited legal aid certificates were obtained. The Respondent failed properly to progress matters, allowed the limitation period to expire and failed to keep G informed despite numerous requests to do so. The Respondent failed to inform G about his eligibility for legal aid and delayed handing on files on the apportionment

by G of new solicitors. The Respondent failed to respond in time to a Statutory Demand for delivery up of files and he wrote to the OSS letters which lacked candour and provided an inadequate explanation of the position.

Allegations 12, 14, 16, 17, 23, 24 and 25 Mrs. CS deceased

8. The Respondent was the executor of Mrs. CS who died in December 1999. The principal beneficiaries of Mrs. CS's Will were Mr. & Mrs. L for whom another firm of solicitors acted. The Respondent was uncooperative with Mr. & Mrs. L's solicitors and provided to them incomplete and inaccurate information. The Respondent claimed that he was ready to obtain probate but he did not do so and he was ordered by the Court to renounce probate in favour of partners in the firm retained by Mr. & Mrs. L and to deliver the Will and documents relating to the assets. He did not fully comply with the Order or respond promptly to letters from the OSS nor did he comply with the requirements of an Adjudication Panel.

Allegations 15, 17 & 19 Mr. Wh (the Respondents made two submissions]

9. The Respondent's firm (Mrs. KC) acted in connection with Mr. Wh's divorce. After Mrs. KC left, the Respondent acted. He did not comply with his client's instructions because of this and by reason of delays his instructions were withdrawn and he was asked to hand over papers by Mrs. KC's new firm. He did not do so promptly or fully.

Allegations 11, 12, 14, 22 and 24 - Mr. W

10. In 1988 Mr W purchased a building plot the solicitors acting being P&H. In a dispute relating to a right of way the Respondent (then a partner in a firm E&T) acted and he continued to act when he was a partner of Hunt & Co. He gave no, or no adequate information regarding costs for which Mr W might be liable. Proceedings were threatened against P & H in February 1992 who referred the matter to their indemnity insurers, the SIF. The matter was not progressed with the SIF but in July 1994 the Respondent issued a writ against P&H which he did not serve. Mr W pressed for information and wanted a settlement on his claim. In February 1995 Mr W requested the Respondent to send all papers relating to the matter to LP. Mr W refused to comply saying he was due £8,500 in respect of costs but he sent no bill. Mr W allowed the Respondent to continue to act but he did not provide to LP a full report on the matter which they had requested on behalf of Mr W.
11. The Respondent did not reply to a letter from Mr W asking to see a copy of P&H's defence to the proceedings, Mr W being unaware that the writ had not been served. In October 1996 the SIF made a payment on account of £25,000. Mr W pressed for information and urged the Respondent to write to the SIF. The Respondent failed to keep Mr W informed and was slow to write pressing the claim with the SIF. In November 1998 the SIF made a further payment on account of £26,550.
12. There was little progress until 12th September 2000 when the SIF pointed out that the writ issued in July 1994 was issued two weeks after expiry of the limitation period. The Respondent did not inform Mr W of the letter from the SIF nor of the conflict of interest which arose as a result. Without informing Mr W or LP the Respondent

obtained the advice of Counsel in August 2001 which confirmed that the writ was issued out of time. Mr W was not informed though the Respondent had written to him after receiving such advice.

13. In September 2001 Mr W complained to the OSS who required the Respondent to release his files. He delayed in doing so claiming incorrectly that he was still instructed by Mr W. In November 2001 Mr W was informed by the Respondent of Counsel's advice of August 2001 that the writ had been issued out of time and that he should instruct another solicitor. Mr W indicated that he did not think the Respondent had acted deliberately or maliciously but had been overworked or had some personal problem unknown to Mr W.

Allegation 26 - Mr F and Mrs T - the Respondent made no written submissions

14. The Respondent delayed for about 2½ months in carrying out a direction made by the Compliance Board Adjudication Panel that he compensate Mr F and Mrs T by paying them £1,500.

Allegations 11, 12, 20 and 24 - Mr D

15. The Respondent acted for Mr D in a property matter. He did not inform him as to the basis for his costs charge. The Respondent did not keep his client properly informed as to progress of the matter which was complicated and protracted. Mr D lost patience and instructed another firm. The Respondent submitted a bill which was challenged. He requested a remuneration certificate which the Respondent failed to obtain despite an order that he do so made by the Adjudication Panel of the OSS which became final on 25 April 2002.

Allegations 11, 12, 14, 15, 18 - Miss C and Allegation 13 - Mrs C

16. The Respondent was asked to act in relation to a personal injury claim when in 1995 Miss C (then aged 12) was severely injured when a T-shirt she was wearing caught fire. The Respondent accepted instructions but failed to provide to Miss C or her parents any letter confirming instructions or giving information regarding costs. The Respondent said he had completed a Legal Aid application but he made little or no progress with the matter but from time to time said it was in hand. Miss C in about March 2000 asked the Respondent to transfer the file to another firm HS as she was dissatisfied with the slow progress of her case which she had been given to understand by the Respondent might well involve substantial damages. The Respondent delayed in supplying the papers some of which have apparently been lost or mislaid.
17. The Respondent informed Miss C's new solicitors and the OSS that he had prepared a witness statement for Miss C but this was never found and the manuscript note Miss C had prepared in about 1999 and delivered to the Respondent had been lost or mislaid. The Respondent's time records did not disclose that he had devoted any or any significant time to the case between October 1995 and the date when his retainer was terminated in March 2000. In particular he failed to apply for legal aid to which Miss C was as the time entitled and which she now would not be. Numerous requests for the full file and relevant documents were unanswered and unsatisfied.

18. No satisfactory explanation was given to the OSS as to the conduct of this case.

Allegations 21 and 22 estate - of RGC deceased

19. A partner (RS) of the Respondent at his previous firm E & T acted for the executors of RGC who died in 1993. In February 1994 RS indicated that his fees for his work obtaining probate and administration came to approximately £1900 and the Firm had earned commission on a life policy of approximately £1000. By October 1994 RS had billed and been paid about £2,200 plus the insurance commission of c£1,000. Following RS' retirement from practise at the end of 1996, the Respondent took over the handling of the matter.
20. In March 1997 the Respondent submitted a draft bill to SC (a son of the deceased whose brother AC was the co executor with RGC's widow Mrs. C) indicating costs of about £15,000 including VAT. The amount was questioned by Mrs. C but a bill for this amount was rendered in April 1998. The clients required a remuneration certificate which fixed fees at £5,500 later reduced to £5,333 plus disbursements and VAT made up as to £2,333 for work to 31 October 1994 and £3,000 for work done after that date. The Executors complained that the decision of the Remuneration Committee had not been implemented and an OSS Sub-Committee directed immediate compliance as the Respondent had not sought formal taxation of his bill. After some delay he did comply but the Executors later claimed he had not refunded the full amount.
21. The Executors also complained that the Respondent had not handed over documents and that numerous letters had been unanswered. The OSS served a notice requiring the solicitor to release his papers. Further correspondence ensued resulting in the Respondent repaying a further c£1,400 to the estate.

Allegation 29

Accounts Rules Breaches

22. The Respondent maintained a client account which was entitled "Hunt R G Temporary". This ledger card appeared to relate to a number of different clients. The ledger appeared to cover the period 1990 to 2001.
23. The Respondent was asked about this account in the course of an investigation by Ms B of the OSS. His explanation was that the system related to an old procedure which was used by Emmet & Tacon of which practice the Respondent was a former partner. The Respondent explained that he never agreed with the system and that all client transactions were posted on one ledger according to each fee earner. He went on to explain that he could not work out which matters the postings related to.
24. The Respondent ceased to be a partner of Emmet & Tacon on 31st December 1992 when he left to practise on his own account as Hunt & Co. Mr Wy joined him in partnership on 1st July 1994. It was clear that the ledger account had continued to be used on both the office and client side on a regular basis after 1st January 1993.
25. The Annual Accountants Report of Hunt & Co for the period ending March 2000 was qualified for, inter alia, the following reasons:

“A miscellaneous/temporary client account is kept for each fee earner and is used for one-off client transactions. It is possible that more than one clients’ monies could be held in such an account and this is a breach of the 1991 Accountant's Report Rules”

26. The Respondent acted for Mr TM in a boundary dispute. On the conclusion of the matter, a Court Order included the provision that there should be payment of the Claimant’s costs in the sum of £320. On 6th April 2001, the sum of £320 was received by the Respondent and paid into his office account. There was no evidence of any bill having been raised and sent to the client, or of the client being given any written intimation of costs.
27. In the course of the investigation by Miss B the Respondent was asked about this matter. His explanation was that his understanding was that because there had been an order of the Court for the amount of costs, he was entitled to put the money straight into office account. He went on to say that he would be remedying the situation by preparing a bill. No evidence had been provided of any bill being raised and sent to the client.

The Submissions of the Applicant

28. In the submission of the Applicant having heard the agreed facts the Tribunal would have gained a good overall impression of the Respondent’s shortcomings. The Applicant put this matter as one at the most serious end of the scale even though there was on the part of the Respondent no financial impropriety.
29. The Respondent’s shortcomings involved a number of clients over a long period of time. He had been guilty of persistent failures of a serious kind.
30. There were aggravating features including the Respondent’s attitude to criticism and his aggressive and confrontational approach. He appeared not to have accepted responsibility for his own short comings. Through his behaviour the Respondent had caused lasting damage both to his clients and to his staff.
31. Having said that, the Applicant accepted that the Respondent should be given credit for having recognised the reality of the situation by the time the matter came to the disciplinary hearing.
32. The Respondent’s behaviour could only cause immeasurable damage to the solicitors’ profession. The picture which emerged was one of a horrifying story of repeat shortcomings on the part of a solicitor. Similar complaints had been repeated again and again and that in itself took this case to a serious level.
33. The Law Society had imposed conditions on the Respondent’s Practising Certificate in 2001 but the Respondent had failed to take any steps to deal with the situation until he had been forced to do so.
34. The overall behaviour of the Respondent had fallen far short of the standards of probity and integrity required of members of the solicitors’ profession. Clearly the most serious allegations were those concerned with the misleading of clients particularly in the cases of Mr S and Mr W.

35. Despite those serious allegations the Tribunal was invited to look at the matter in the round. The Respondent had pursued a wholly unacceptable standard of practice which operated to the prejudice of his clients, members of the public and caused damage to the reputation of the solicitors' profession.

The Submissions of the Respondent

36. Owing to factors which included pressure of work, bad health and lack of staff and support the Respondent allowed his practice to get on top of him in the last few years so that he was no longer keeping abreast of his files or his clients' affairs or providing a proper service. There were a number of instances where the Respondent did not accept the Applicant's analysis of the files. He did accept the broad thrust of her criticism, save in the following areas.
37. The Respondent strongly contested allegations that he consciously or deliberately misled clients, third parties or the OSS. The Respondent accepted that the result of his actions on the occasions identified by the Applicant was to cause people to be misled as to what was going on, but he did not deliberately set out to mislead anyone. The cause of their being misled was the Respondent's failure to stay on top of his files and be sufficiently aware of what was going on.
38. The Respondent had taken decisive steps. He had successfully sought an extension of time before the placing of conditions on his Practising Certificate before the Master of the Rolls (at no small expense) to bring the situation back under control and to mitigate the effect on clients and staff. He had (with co-operation from the Law Society) handed his practice over as a going concern and had completely retired from practice.
39. The Respondent worked part-time at various activities unconnected with the law. He did not have any intention of returning to legal practice. He no longer held a Practising Certificate.
40. By late 1994 the Respondent was senior partner of a two-partner firm with Mr Wy. He was in overall charge but primarily running the Cromer office and Mr Wy ran the Sheringham office. The Respondent's work was primarily litigation based and his partner's was largely non-contentious.
41. Running the administration of the firm and conducting an increasingly heavy litigation practice made it necessary for the Respondent to work very long hours. He regularly arrived in the office at 5am and spent from then until 7am dealing with office administration for the firm as a whole. From 7am he would deal with his own client files and practice until it was time to go to Court. He then spent most of his working day in Court. He spent Sundays in the office trying to keep abreast of his practice and the administration of the firm generally.
42. As the Respondent's administrative burden increased, so did the complaints of slowness. On numerous occasions the Respondent stopped taking on new work. His problem was saying "no" to existing clients and thereby accepting too much work.

43. The Respondent's difficulties were exacerbated by health problems. The Respondent had had surgery on his back and a knee.
44. The Respondent had allowed himself to get badly behind with paperwork to the extent that it affected the amount of time he could give to any individual file when a new development occurred. This resulted in delay in dealing with correspondence.
45. Sometimes the Respondent did not move litigation forward as fast as he should have done and he did not keep up with court-imposed time limits. Further the Respondent did not always keep properly abreast of the latest developments in a particular matter.
46. The Respondent accepted that clients' affairs were not looked after to the standard they had a right to expect and he did not always keep them accurately informed as to what was happening.
47. The Respondent accepted that he wrote letters to clients and other parties on occasions that did not explain properly what was happening or that gave them incorrect information. He accepted that to that extent some clients and third parties were misled, he did not seek to minimise these matters but wished to emphasise that on no occasion did he deliberately set out to mislead his clients or anyone else. He did not realise that that was the effect of the information he was giving them. To the extent that they were misled it was done unintentionally and was a direct result of the Respondent's inability to cope with the increasing pressure of work that he was facing. Some of the clients were of very long-standing, and many of them were friends and had remained so. The Respondent very much regretted that he failed to provide them with the service they deserved but he would never deliberately have acted against their interests.

Mr PRS

48. With regard to the matter of Mr PRS there were two separate elements to the claim. After progressing the action in the interlocutory stages the Respondent agreed that from 1994 he did not press the matter as he should have done and did not keep Mr PRS sufficiently informed about what was going on.
49. In mid-1997 the Defendant died unexpectedly, which undoubtedly rendered the claim more problematic.
50. Subsequently the Defendant's solicitors offered to settle on the basis of the capital sum alone, with the interest claim being dismissed. The Respondent accepted that he failed to follow this up, with the result that the Defendant's solicitors made an application to strike out for want of prosecution. The Respondent accepted that he failed to keep his client properly informed of these developments, although he was well aware of the Defendant's death and by this time had to an extent dropped out of the picture as he had entered into an IVA in mid 1997.
51. The application to strike out was heard on 8th May 1998 and was partly successful. The interest claim was struck out but the capital claim was not. It was referred for hearing at a small claims arbitration.

52. Thereafter the Defendant's solicitors made a formal admission as to the capital sum, no agreement as to the costs was reached. Those costs well exceeded the size of the sum remaining in dispute. The matter was again, allowed to slip.
53. The Respondent did not have a clear recollection but considered it likely that he admitted to Mr PRS that he had let the matter slip and that it should have gone to Court, as both were true.
54. The Respondent had failed to explain to Mr PRS that part of the claim had been struck out for want of prosecution following the Defendant's death and that the only part remaining was the capital claim and the dispute as to costs. The Respondent certainly did not set out to deceive him and could only assume that, after the passage of time and due to the pressure of work he had simply forgotten the full circumstances of what had happened, or what he previously had told Mr PRS.
55. The same was apparent from the letter that the Respondent wrote to Larking Gowen (the administrators of Mr PRS's IVA) on 5th October 1999 in which he failed to make clear the full circumstances. What the Respondent said in that letter was true as far as it went but he failed to explain the context of the District Judge's finding that the case could no longer be proved following the Defendant's death was the application to strike out for want of prosecution. The Defendant's death and the consequent inability to try the matter was the prejudice following the Respondent's inordinate delay in not progressing the litigation. In failing to explain that, the Respondent accepted that he misled Larking Gowen as to the reasons for Mr PRS being in the position in which he found himself. The Respondent did not set out to deceive them but succeeded in doing so by his failure to have a proper grip on what had previously occurred.
56. The Respondent regretted what had occurred. The net result was that, due to Mr PRS's insolvency and his IVA, the Respondent never received any fees for any of the work undertaken on behalf of Mr PRS. The Respondent paid the capital sum of £687 due to Mr PRS out of his own pocket and he was ordered to pay Mr PRS £5,000 by way of compensation for the costs ordered against him. The Respondent paid that sum as well to Larking Gowen.

Mr W

57. The Respondent took steps via the Land Registry to perfect the title and attempted to clear the rights of way, some successfully and some not, and acted for Mr W in connection with disputes with a neighbour. The Respondent instituted proceedings against the solicitors who had undertaken the conveyancing work for Mr W (Purdey & Holley).
58. Purdey & Holley were represented by SIF and the Respondent conducted protracted negotiations with them concerning Mr W's loss. The claim against the solicitors could not be quantified until problems with the title and rights of way were regularised. To the extent that the Respondent was successful in resolving those problems the claim for negligent conveyancing reduced commensurately.

59. The Respondent had enjoyed a considerable measure of success for Mr W. He resolved parts of the title and rights of way problems and he obtained interim payments from SIF totalling in excess of £50,000.
60. As the problems in the Respondent's practice increased the Respondent delayed unacceptably in progressing Mr W's claims.
61. There came a point when SIF proposed an arbitration. After that SIF by letter of 12th September 2000 for the first time took a limitation point, alleging that the writ issued by the Respondent years before had been issued two weeks outside the limitation period.
62. This point took the Respondent by surprise and he delayed unacceptably in responding and dealing with it, or in informing the client about it. The Respondent did not deliberately attempt to conceal it from Mr W and said nothing misleading to him about it. He simply did not deal with the file at all following the initial acknowledgement of SIF's letter. The Respondent regretted his failure to deal with this matter properly. His health was deteriorating and he was losing control of his practice.
63. When complaint was made in August 2001 the Respondent took the step he should have taken months earlier and obtained Counsel's opinion on the limitation point. Counsel confirmed SIF's allegation that the claim was indeed statute barred before the writ was issued. The Respondent obtained this advice at his own expense.
64. Mr W was going away on holiday when the Respondent got Counsel's opinion, and the Respondent gave Mr W a copy of it when he returned in September 2001 and told him that he must seek alternative advice.
65. When the SIF matter had been referred to other solicitors the Respondent continued to be retained by Mr W to deal with other matters, including conveyancing and a dispute with a neighbour.
66. The Respondent did not actively mislead either Mr W or the OSS in any respect in these matters. He failed to keep Mr W fully and promptly informed of events and the Respondent accepted that he could and should have given the OSS a fuller explanation. At not stage did the Respondent actively or deliberately mislead anyone.
67. The Respondent paid the compensation of £1,500 awarded to Mr W by the OSS Panel.

The allegations re Miss C

68. The Respondent had taken initial steps to progress the matter. Miss C was an infant and the acrimonious divorce proceedings between her parents hampered the progress of the matter. When Mrs C began to instruct the Respondent in place of Mr C, she did not supply information necessary for an application for Legal Aid to be made. The Respondent accepted that as a result of all these difficulties he failed to send a client care letter to Mr C detailing his firm's fees and terms of business and he accepted that he might not have kept Miss C as fully informed of what was going on with her claim

as he should have done. The circumstances were extreme and it was difficult to get instructions. The Respondent denied that he misled Miss C - he certainly had no intention of doing so.

69. The Respondent did ask Miss C to write down what she could remember and he went through her statement with her in detail. He also made his own notes. It was from those and Miss C's notes that the Respondent prepared the statement which was typed up on the computer. The Respondent also received a hand-written statement from Miss C's mother. Nothing said or done during any meeting with Miss C and her mother amounted to misleading either of them. The Respondent certainly had no intention of doing so.
70. The Respondent maintained two files under the same number relating to his claim, one in Mr C's name and one in Mrs C's name. The Respondent's time recording was not punctilious.
71. In due course Messrs Hansall Stevenson were instructed in place of the Respondent. He delivered to them the T-shirt he had purchased, the other articles of Miss C's clothing and all original papers. The Respondent delivered everything contained in a box personally to the offices of Hansall Stevenson in February/March 2000. The balance of the papers were then sent to Hansall Stevenson by Document Exchange. The Respondent was later informed that the papers he delivered had been lost.
72. It had proved impossible to print further copies of the statements as there had been changes in the Respondent's computer system. There had been a break-in at the Sheringham office and the hard drives of the computers had been stolen. The relevant archives could not be retrieved.
73. The Respondent accepted that the problems he suffered in the practice meant that Miss C did not receive the service she was entitled to and she suffered delay and frustration as a result. The Respondent regretted that.
74. The Respondent received no remuneration at all for the work he carried out in connection with this matter. The Respondent had paid £2,000 compensation awarded to Miss C by the OSS Review Panel.

The allegations re Mr and Mrs L and Butcher Andrews

75. Mr and Mrs L were at no stage clients of the Respondent. They were major beneficiaries of the estate and the Respondent accepted he should have kept them and their solicitors fully in the picture. He also accepted that he should have got on with the administration of the estate more quickly than he did.
76. The Respondent's letter to Mr and Mrs L of 14th January 2000 stated "I have got to the stage now where I can apply for a Grant of Probate.
77. That statement was perfectly true. When the Respondent wrote that letter the Inland Revenue Account was complete and ready to be sent off and all other steps were completed. When he wrote the letter the Respondent genuinely intended to do what

he said and proceed to apply for a Grant of Probate. The Respondent never got round to doing it and the file became 'buried' with others that he failed to progress.

78. Butcher Andrews in their letter of 31st May 2000, said "We refer to our telephone conversation when you confirmed that you expect to receive a Grant of Probate next week". The Respondent could not recall the precise terms of the conversation referred to, he accepted that he probably said something to that effect.
79. By that stage the Respondent had the Inland Revenue Account and all remaining documentation required for an application for a Grant of Probate ready and waiting to be sent off. At that time, Norwich District Probate Registry were turning round applications in straightforward Probate applications in a matter of five to six days. When the Respondent had that conversation with Butcher Andrews he fully intended to send off the application immediately, in which case he would have received a Grant within a week. There was nothing misleading in what he said, save that he may have led Butcher Andrews to assume that he had already sent off the application. He did not expressly say anything to that effect and he genuinely intended to send it off without delay. He did not intend to mislead Butcher Andrews.
80. Butcher Andrews did request that the Respondent and his partner renounce their executorship so that Mr and Mrs L could apply for Probate themselves as residuary beneficiaries. That led to further delays as, rightly or wrongly, the Respondent formed the view that he should on behalf of the estate (for whom he acted) refuse to co-operate with the request to hand over the papers to a third party whether an interested party or not. An application was made to the Court and an order appointing Butcher Andrews as Personal Representatives in place of the Respondent and his partner was made. They were ordered to deliver up all the papers. That in turn caused further delays and difficulties not least because papers continued to come in in the Respondent's and his partner's name, and led to Butcher Andrews' complaint to the OSS.
81. The Applicant's third allegation that the Respondent misled the OSS in a telephone conversation of 13th February 2001 evidenced by their letter of 22nd February 2001 was factually correct. The letter stated "In our telephone conversation on the 13th February you said your reply was waiting typing".
82. To the best of the Respondent's recollection the file was on his desk awaiting typing, with the letter from the OSS attached to it and what the Respondent said was true. Due to the time that has passed the Respondent was unable to recall what subsequently happened or why the letter from the OSS did not receive the response which he intended to send.

Mr D

83. The Respondent accepted that he was guilty at various stages of delay in progressing Mr D's affairs and failed to keep his client fully informed of developments.
84. When the Respondent received a request from Mr D for a Remuneration Certificate he delayed in dealing with that request.

85. The OSS sent the application forms to apply for the Remuneration Certificate while the Respondent was away on holiday in October 2001. Due to his absence on holiday and pressure of work and other problems the Respondent failed to submit the application on his return and the OSS Adjudication Panel awarded Mr D £500 compensation and ordered the Respondent to apply for the Certificate.
86. The Respondent sent the £500 on 4th March 2002 and said that the Remuneration Certificate was “being completed and will be forwarded forthwith”. When he said that he had already got the papers out in order to respond to the OSS and consider what needed to be done for the application and he intended to complete the formalities straight away. The letter of 4th March reflected the Respondent’s genuine intention at the time and was not intended to be misleading in any way. The Respondent’s good intention was overtaken by the pressure of other matters and the file being buried by others.
87. When pressed by the OSS the Respondent had the file out and he began to do what was necessary to complete the application. He genuinely thought at the time that he had completed the job and sent it off. However he had fully to accept that he did not do so and could only conclude that he had allowed the file to become buried by other pressing matters.
88. When the OSS chased the Respondent again on 20th March he genuinely thought he had completed the task, but was forced to accept that he had not. Once again he had failed to get on with it. The Respondent very much regretted his failure to respond to the OSS’s proper demands and to make the application that should have been made on Mr D’s behalf. The Respondent did not actively or intentionally set out to deceive or mislead the OSS in any way.

The OSS and RGC’s estate

89. The Respondent accepted the history of this matter described by the Applicant. While the files were at the OSS the C family accountant on 13th May 1998 requested a Remuneration Certificate. The Respondent could not respond to the request until the papers were returned to him in about late June. Thereafter the application was submitted, the family made comments and a provisional assessment was made, against which the Respondent appealed. The Respondent then decided to elect to proceed to a solicitor and client taxation.
90. The first allegation that the Respondent misled the OSS arose from a telephone call during which the Respondent said that he had prepared Notices of Taxation and would shortly arrange lodgement of the papers. It was true that he had prepared the Notices of Taxation, which he believed he did in about May 1999. They did not appear on the C estate files as they were prepared for an application for a Solicitors Act Taxation under the High Court Taxation Rules. Those Rules were superseded by the changes arising out of the Woolf reforms and the documents which the Respondent had prepared were more than likely thrown away as they were out of date. He certainly intended to lodge the papers for taxation shortly after he spoke to the OSS but that did not happen.

91. There was a professional negligence claim by Mr SC on behalf of his mother (which eventually came to nothing) and complications arising out of the Remuneration Certificate (which were ongoing even in September 2001). Those matters together with the changes to the taxation procedure meant that despite the Respondent's intention to do so he did not progress the application for taxation at that time. At the time of the telephone call he certainly intended to do so and therefore he denied that he said anything intentionally misleading in the course of it.
92. The second allegation arose from the Respondent's letter of 1 February 2000, in it he stated that he had served Notice of Commencement of Taxation Proceedings.
93. The Respondent prepared the Notice of Commencement at the end of January 2000. The original Notice was dated 31st January 2000. That date was subsequently altered.
94. At the time of writing his letter of 1st February 2000 the Respondent must have believed that the Notice of Commencement had, in fact, been served.
95. If the comment in the Respondent's letter of 1st February 2000 was misleading, that was wholly unintentional.
96. In his letter the Respondent also responded to an enquiry as to why he had not made papers available to Mr SC, a son but not an executor. He explained that his instructions had originally always come from the executors, Mrs C and her other son Mr C, but that the request to pass over the papers had only been made by Mrs Cl. The Respondent had tried to contact Mr C to get his authorisation but had received no reply. In those circumstances he did not consider it proper to take instructions from Mr SC, a third party, or provide him with papers without proper authority from both executors. There was therefore nothing actively misleading in the letter of 1st February.
97. The third allegation arose from the Respondent's letter of 22nd February. The Respondent had said "The writer, to try to get to the bottom of matters, has applied for a Solicitors' Taxation". That was true. He had already served his Notice of Commencement of Assessment. The Notice was required to give the Respondent to it twenty one days to respond with any points of dispute, and that period had not expired when the Respondent wrote the letter. It was not open to the Respondent to lodge the application with the Court until the expiry of that period on 10th March. He had therefore taken all steps then open to him in the application in accordance with the Rules and he did not understand why this was said to have misled the OSS. At the very most it amounts to no more than a technical quibble about the use of the word "applied" as opposed to, say, "given notice" and the Respondent considered it unfair to accuse him of deliberately or intentionally misleading the OSS as a result.
98. The Respondent did not have authority from Mr TC to send papers to his brother, Mr SC. The Respondent did not understand what was objectionable about that letter or how it could be said that the Respondent misled the OSS by writing it. The Respondent denied these allegations.
99. The fourth allegation arose from the Respondent's letter of 13th March 2000. The Respondent said he had repaid the balance to the executors. That statement was true.

The Respondent had repaid it. The Respondent said he required the file for the purposes of the taxation. That statement was also true at the time he made it. The only point of criticism could be that in the event, having served the Notice of Commencement the Respondent did not ever proceed with the taxation. However at the time he wrote this letter he fully intended to do so. The intention was simply swallowed up in the pressure of other matters and all the problems. The Respondent had made no active or deliberate attempt to mislead the OSS.

The allegation of breaches of the Solicitors Accounts Rules

100. A bill had been prepared and delivered to Mr M after the issue had been raised by Miss B. The Respondent accepted that there were breaches of the Solicitors' Accounts Rules but there were never any suggestion of impropriety on his part or that any client lost money or was in danger of doing so.

General

101. Since 1st September 2002 the Respondent had been fully retired and had ceased to practise as a solicitor in any capacity. He was working on a part-time basis in a variety of capacities, sufficient to keep him busy and bring in a little extra income. Although he did not wish to retire as a solicitor so early and certainly not in such unfortunate circumstances the Respondent recognised the release from the burden and stress of trying to keep the practice running which was a very great relief. His state of health has markedly improved since his retirement.
102. Details of the Respondent's financial situation were placed before the Tribunal.
103. The Respondent very much regretted the circumstances that led to the disciplinary proceedings and had brought about his premature retirement. He asked the Tribunal to bear in mind all the circumstance that led to the position in which the Respondent found himself and the nightmare that the last few years had been for him. The Tribunal was invited to bear in mind the present financial position of his wife and himself and the considerable costs he had already had to bear as a result of what went wrong.

The Findings of Fact by the Tribunal

104. The Tribunal found all of the admitted facts to be proved, and all of the allegations to have been substantiated including a finding that where the Respondent misled Mr PRS and Mr W (allegations 3 and 14) and he did so deliberately or recklessly. In so doing the Respondent behaved at best recklessly and at worst dishonestly. Another matter (allegation 24) where the Respondent had misled the Tribunal made no finding that he had done so deliberately.
105. On 19th June 1998 allegations were substantiated against the Respondent namely that he had
- (i) failed to discharge his personal liability for the payment of Agents' fees;

- (ii) failed to comply with a Direction by the Professional Regulation Subcommittee of the Compliance and Supervision Committee of the Law Society.
106. On that occasion the Tribunal ordered that the Respondent be suspended from practice for an indefinite period of time to commence on 19th June and he was ordered to pay the Applicant's costs.
107. On that occasion the Tribunal pointed out that a solicitor is liable for the payment of Agent's fees. The Respondent had left his Agent to deal with a problematical matter whilst he was on holiday. He should have counted himself fortunate that his Agent had demonstrated competence and common sense and had done the best job possible in difficult circumstances. There was no excuse for the Respondent's failure to pay her and Counsel's fees incurred.
108. The Respondent, having been rebuked by his own professional body, then chose flagrantly to ignore its direction. The Tribunal regarded such behaviour as serious professional misconduct. The Tribunal ordered that the Respondent be suspended from practice for an indefinite period of time and made it plain that the Tribunal would be very unlikely to look favourably upon an application to determine that period of suspension from practice until it could be satisfied that the Respondent had complied in every respect of the direction of professional regulation case work subcommittee and the order for costs of those proceedings.
109. At a hearing on 25th June 1998 the Tribunal granted the Respondent's application for the determination of the indefinite period of suspension imposed upon him. When doing so they ordered him to pay the costs of the Law Society in responding to his application and pointed out that the earlier Tribunal had clearly deplored the Respondent's refusal to comply with the direction made by his own professional body. The Tribunal would not tolerate such behaviour on the part of a solicitor. At a hearing on 25th June the new division of the Tribunal accepted that the Applicant had complied with the direction, albeit late, but was not impressed by the Applicant's arrogance and lack of contrition. They hoped that he had learned a lesson and would not behave in such manner again in the future.
110. At the conclusion of the hearing on 9th September 2003, the Tribunal expressed dismay at the catalogue of allegations found to have been substantiated against the Respondent.
111. The Tribunal had taken into account the mitigation put forward on behalf of the Respondent, including the pressures to which the Respondent had been subjected. The Respondent had been trying to hold things together and had taken constructive steps to try to minimise the effects of his unfortunate situation on his clients. The Respondent accepted that he had caused prejudice and distress to his clients. He was able to maintain his practice intact and had ensured that it had been passed into competent hands which served to benefit the clients. The Respondent recognised that he had been assisted by The Law Society in achieving the transfer of his practice.

112. There had indeed been an accumulation of serious failures and the Tribunal had found the Respondent to be guilty of two instances of deliberately misleading clients. The Respondent's conduct had to be viewed as being at the most serious end of the scale. Such behaviour on the part of a solicitor causes inconvenience, distress and anxiety to those who have contact with him and serves seriously to damage the good reputation of the solicitors' profession.

113. In the light of the Tribunal's Findings and having regard for the cumulative effect of the Respondent's conduct the Tribunal considered it right, in the interests of the protection of the public, that the Respondent should be Struck off the Roll of Solicitors. It was further right that he should pay the costs of and incidental to the application and enquiry, such costs to be subject to a detailed assessment unless agreement could be reached between the parties.

DATED this 8th day of December 2003
on behalf of the Tribunal

H Baucher
Chairman