No. 8449/2001

IN THE MATTER OF EDWARD NEWFIELD, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr. J C Chesterton (in the chair)
Mr. A G Ground
Mr. D Gilbertson

Date of Hearing: 3rd and 4th December, 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 (the "OSS") by Gerald Malcolm Lynch, solicitor formerly a partner in but now a consultant with Messrs Drysdales of Cumberland House, 24/28 Baxter Avenue, Southend-on-Sea, Essex, SS2 6HZ on the 16th August 2001 that Edward Newfield, solicitor of South Road, Faversham, Kent, 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:-

(1) Had acted in breach of the Solicitors Accounts Rules 1991 in that he has failed to maintain books of account as by Rule 11 of the said Rules required;

(2) Acted in breach of Rules 7 and 8 of the Solicitors Accounts Rules 1991 in that he withdrew or allowed to be withdrawn from clients accounts and transferred to office account moneys other than in accordance with the provisions of the said Rules and thereby utilised the same for his own benefit;

(3) Had failed to exercise any or any proper supervision of employees and in particular his accounts department entrusted with implementation of the Solicitors Accounts Rules aforesaid;

(4) Contrary to the provisions of Rule 1 of the Solicitors Practice Rules 1990 had failed in his duty to ensure that a Court was not misled as to relevant facts of matters before it;

(5) Had represented to HM Land Registry that he was a practising solicitor during the time when he was in fact suspended from such practice. [This allegation was withdrawn by the Applicant with the consent of the Tribunal after the Tribunal's ruling on the preliminary issues];

(6) By virtue of each and all of the aforementioned had been guilty of conduct unbefitting a solicitor.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London, EC4M 7NS when Gerald Malcolm Lynch appeared as the Applicant and the Respondent appeared in person.

The evidence before the Tribunal included the oral evidence of his Honour District Judge Diamond, Mr Baxter, Mr Smith, The Law Society's forensic accountant, and the Respondent. The following documents were handed up:-

(a) an order of Medway County Court,

(b) a letter to Mr Baxter from the Respondent dated 10th December 1996,

(c) a letter from Mr Sparks of Counsel to the Respondent dated the 30th October 1997, and

(d) a copy of the reporting accountant's check list.

The Respondent admitted allegations (1) and (2) (breaches of the Solicitors Accounts Rules) but he denied allegations (3) and (4) (supervision of staff and misleading of the court).

At the conclusion of the hearing the Tribunal ordered that the Respondent Edward Newfield of South Road, Faversham, Kent, solicitor be struck off the Roll of Solicitors and they further ordered that he do pay 95% of the costs of and incidental to the application and enquiry (to include the costs of the Investigation Accountant of The Law Society).

Preliminary Matters

1. At the opening of the hearing the Respondent wished to raise preliminary issues:-

The Tribunal having knowledge of the status of the Respondent

2. The Respondent pointed out that allegation (5) referred to his suspension from practice. The Respondent considered that he would be prejudiced by the fact that the Tribunal presiding on the 3rd December 2002 was aware that he was suspended from practice as a solicitor and although such knowledge could not be avoided in connection with allegation (5), it would not be right for the Tribunal dealing with the balance of the allegations to have that knowledge. In the submission of the Respondent, the Tribunal should sever allegation (5) and as the division of the Tribunal currently sitting was aware of the Respondent's status it should deal with allegation (5) only and the balance of the allegations should be adjourned to be considered by a differently constituted division of the Tribunal on another occasion.

3. Mr Newfield said that the prior knowledge of previous disciplinary Findings and sanction ran contrary to English Law. Mr Newfield submitted that allegation (5) dealt with a minor matter which could and should have been dealt with separately.

4. In his skeleton argument Mr Newfield said that the inclusion of the Land Registry allegation was trite and an act of petty spite by The Law Society and was wholly prejudicial. He said the allegation had never been put to him by The Law Society nor had any explanation been sought. Mr Cook of the Land Registry accepted and appeared totally satisfied with the Respondent's actions but The Law Society had rushed to include the matter solely in order to prejudice the hearing. No other explanation could be forthcoming.

5. Mr Newfield expressed concern that not only would the division of the Tribunal dealing with the matter be aware that he had been suspended from practice by the Tribunal on an earlier occasion, but would also be aware that the Law Society had intervened into his practice. That would clearly result in any subsequent Findings being biased and would repeat the gross miscarriage of justice that occurred in 1999.

The proceedings are defective ab initio

6. None of the allegations (save for allegation (5)) arose since the date of the Tribunal hearing on 11th November 1999. All of matters now alleged were known to the Law Society at that time and could have been included in those proceedings. If the current allegations had been included in the earlier hearing the result would have been the same.

7. The previous proceedings were unfair and clearly constituted a breach of the Human Rights Act 1998. On the day of the hearing and without any previous intimation or warning the decision to intervene in the practice was taken. The Tribunal had therefore no alternative but to deal with the case by ordering the suspension of the Respondent and it was clearly prejudiced by the decision to intervene.

8. In the absence of any evidence to the contrary, it was clear that The Law Society acted at that time with the sole intention of ensuring that the Respondent lost his Practising Certificate.

9. No adjournment was sought and no explanation was given at the time of the intervention. The news of the intervention came as a surprise to all present, including The Law Society's representative who had himself been informed only on the day of the disciplinary hearing.

10. The current proceedings were contrary to the Human Rights Act 1998 in that they breached the rules of natural justice and breached the Convention Articles which ensure the right to a fair trial and operate in relation to professional tribunals.

11. The Respondent referred the Tribunal to the application for a stay made by Paul David Severs, a solicitor (Case No: 8425/2001) (the Tribunal's decision dated 19th December 2001) and relied upon arguments put forward in support of Mr Severs' application for a stay of the disciplinary proceedings, in particular that there had been an unconscionable delay in bringing the disciplinary proceedings to a substantive hearing so that to allow the substantive hearing to take place would amount to an abuse of process.

12. There had been no explanation why the current matters had not been included in the earlier disciplinary proceedings.

13. In the matter of Mr B (allegation (4)), the hearing at Medway County Court (at which His Honour District Judge Diamond presided) took place 5 years and three months prior to the hearing. The OSS did not begin to investigate the matter until more than a year later. The delay was unconscionable, although the Respondent accepted that there was nothing that would prevent him from conducting his defence.

14. The Respondent submitted that the delay in conducting the hearing of the allegations against him was such as to constitute a breach of his right to a hearing within a reasonable time as protected by Article 6 (1) of the European Convention on Human Rights. The Respondent agreed that there had been no delay from the time when the matter was placed in the hands of the Tribunal. The matter had been "hanging around" the OSS for a period of two years. He accepted that the earliest date upon which time would begin to run for the purposes of his argument was the beginning of the investigation by the OSS. In fact the complaint had been withdrawn at one stage and then persisted with by the OSS.

15. The European Court of Human Rights had consistently held that in cases where the subject matter of the proceedings was of great significance to the person concerned particular diligence on the part of the authorities was required.

16. The disciplinary proceedings were of great importance to the Respondent. His livelihood and ability to practise his profession were at stake. The European Court of Human Rights had further held that particular diligence was to be expected from the authorities where the hearing in question concerned the defendant's employment, particularly where reinstatement was a possibility; see Obermeir v. Germany (1991) 13 EHRR 290 and Bucholz v. Germany (1981) 3 EHRR 597.

17. The respondent's reputation was at stake. The effect of being accused of misconduct on the reputation of the person concerned was a relevant consideration in determining

whether the proceedings have been resolved within a reasonable time. (Harris, O'Boyle and Warbrick, Law of the European Convention on Human Rights p.223).

18. The right of the respondent to have his case heard within a reasonable time was not dependent upon his being able to show that he was prejudiced by the delay in the preparation of his defence. That had never been a requirement imposed by the European Court of Human Rights in its determination of cases of this nature. It was a criterion expressly rejected by the Privy Council in respect of an equivalent provision in the Mauritian constitution; see Darmalingum v The State [2002] 2 Cr. App. R. 445 at 451 C-D).

19. In determining whether a hearing had been conducted within a reasonable time, the European Court of Human rights had considered relevant the fact that the matter concerned had been or was to be dealt with at a single jurisdictional level. Greater expedition was to be expected in such cases than in those where the matter had passed through appeal(s); see Zimmerman and Steiner v. Switzerland (1983) 6 EHRR 17.

20. The Respondent had found it impossible to get work in the solicitors' profession. No solicitor was prepared to employ someone who had six allegations hanging over his head. It had not been possible for the Respondent to seek to end his period of indefinite suspension.

21. The Respondent's personal life had been affected. He had been subject to clinical depression and his wife had suffered great stress.

The Previous Intervention Proceedings

22. The Respondent said that he had arrived at the disciplinary hearing to be told that The Law Society on that day or the previous day had made the decision to intervene into his practice. It was clear that the intervention had clearly been timed to inhibit the Tribunal. The decision gave the Tribunal no alternative but to suspend the Respondent. He would have been suspended de facto as a result of the intervention.

23. The Investigation Accountant's Report relating to allegations (1), (2) and (3) pre-dated the previous disciplinary hearings by two to three weeks. The proper course would have been for the previous proceedings to have been adjourned in order that all allegations against the Respondent could be disposed of at once. The Respondent had been prejudiced by the actual sequence of events. All of the subject matter of the current allegations had taken place well before the previous disciplinary hearing.

The adjournment of the third day of the Hearing

24. The matter had been listed for hearing on three days, the 3rd, 4th, and 5th December 2002, but the Respondent sought an adjournment of the matter from 5th December 2002. He said he was required to conduct proceedings elsewhere and had also on that day to be at Heathrow Airport. In response to the Chairman's suggestion that the Respondent could give details of his difficulties relating to the third day of the scheduled hearing in private, the Respondent indicated that he had no objection to setting out details of the matters leading him to make the adjournment application.

25. The Respondent told the Tribunal that he worked for a company which was involved in some litigation. He was to appear as a lay representative in proceedings in the County Court on 5th December 2002. The Respondent had not informed the County Court of the scheduled disciplinary hearing. He said that a previous judge in the case had been disqualified from sitting and the Court had been able to clarify only a few days before the hearing that a new judge could sit on the 5th December.

26. The Respondent's sister-in-law was leaving by plane from Heathrow Airport on that day and neither she nor the Respondent's wife were able to drive. He was needed to take his sister-in-law to the airport.

The submissions of the Applicant on the Preliminary Issues

27. The Tribunal had a chronology set out in the Applicant's skeleton argument. There had been no unconscionable delay.

28. It was accepted that the investigation by the OSS in Mr B's matter had been delayed. The OSS had informed His Honour Judge Diamond that the OSS had a severe backlog of work and the investigation would not take place as speedily as might have been hoped. The delay so caused was not the fault of the Respondent. The delay had not been unconscionable.

29. All relevant witnesses were available to give evidence before the Tribunal and all had a recollection of what had taken place.

30. The Respondent himself had been able to deal with the matter in detail in writing and would be able to deal with the matter in detail in oral evidence. There was no question that he had been prejudiced.

31. There had been no period of delay that was so serious as to deny the Respondent his right to a fair trial as provided by Article 6 of the European Convention on Human Rights.

32. The Accounts Rules breaches could not have been included in the earlier disciplinary hearing as the OSS had at that time had insufficient time fully to investigate matters.

33. The chronology prepared by the Applicant was as follows:-

(A) The allegations arising from the report of the Investigation Accountant

Inspection commenced	20 September 1999
Report	22 October 1999
Enquiry thereunder	November 1999 to October 2000
Resolution to refer	October 2000
Dismissal of the Respondent's appeal	20 December 2000

(B) The allegation in relation to misleading the Court

Complaint lodged	6 January 1999
Investigation thereof	February 2000
Resolution to refer to the Tribunal	11 October 2000
Dismissal of Respondent's appeal thereunder	21 March 2001

(C) Allegation in relation to Land Registry

Complaint lodged (authorised for inclusion in disciplinary proceedings based upon existing resolutions)	8 February 2001

It was submitted that all these matters were under investigation at the time of a previous hearing on 11 November 1999.

(D)

Instructions to issue disciplinary Proceedings	9 March 2001
Further instructions	31 March 2001
Investigation of available evidence including use of Enquiry Agent.	
Preparation of Rule 4 Statement	July 2001
Application to the Tribunal	16 August 2001
Notices under the Proceedings Rules and preparation of bundles	28 August 2001
Respondent's general denial of all aspects of the matter	30 August 2001
Correspondence and correlation in relation to witness statements	Remaining months of 2001
Enquiries in relation to whereabouts of the prospective witness Corke	October 2001
Directions hearing	9 January 2002
Further preparation of witness statements and filing and service thereof	6 June 2002
Directions of the Tribunal as to the hearing	18 June 2002
Service of final witness statement of the Applicant	
Witness Summonses issued	October 2002
Respondent's skeleton argument delivered	12 November 2002

It was submitted on behalf of The Law Society that there has been no critical delay in the preparation of a fully defended case, proceeding on a number of allegations.

34. The allegations before the Tribunal today could not have been included in the previous proceedings before there had been a full investigation of the allegations, a formal resolution for the matter to be referred to the Tribunal and for the exhaustion of the appeal procedure at the OSS.

35. The intervention process was irrelevant to any matters relating to professional conduct. The Disciplinary Tribunal was not bound by intervention action taken by The Law Society nor the basis upon which that action had been initiated.

36. The Tribunal was invited to bear in mind the principle developed in the case of Gilchrist v. The Law Society CO/1184/2000. The Respondent could not be prejudiced as he had had full opportunity to refute any allegation both in relation to preparation for the hearing and the hearing itself.

37. The Applicant took the view that the division presiding at this hearing was perfectly able to deal with all aspects of all the allegations at one hearing.

The Decision of the Tribunal in connection with the Preliminary Issues

Article 6 of the European Convention of Human Rights

38. With regard to the Respondent's submission that there had been an unconscionable delay since 1999 in bringing the matters alleged before the Tribunal, the Tribunal noted that with regard to the allegations relating to the Solicitors Accounts Rules, The Law Society's Investigation Accountant's Inspection began on 25th September 1999 and following the internal procedures of the OSS the Respondent's appeal was dismissed on 20th December 2000. With regard to the allegation relating to the misleading of the Court, the complaint was lodged with the OSS on 6th January 1999, the complainant was notified that the OSS had a backlog of work and the Applicant accepted that there was a delay until the investigation of the matter in February 2000. Again internal procedures took place and the Respondent's appeal was dismissed on the 21st March 2001. The delay from 6th January 1999 until February 2000 was regrettable but it could not be said to have been "unconscionable". Clearly it was a matter that would require some time to investigate.

39. With regard to the Land Registry allegation, the complaint was lodged on 8th February 2001 and was authorised for inclusion in disciplinary proceedings already in existence.

40. The Tribunal accepts that all of the matters were under investigation at the time of the previous hearing but none had reached a stage where it could be put as a formal allegation to the Respondent.

41. In none of the three areas from which the allegations had been drawn did the Tribunal consider that there was delay of a nature that would render the Respondent's hearing unfair.

42. There had been no untoward delay in the progress of the Tribunal proceedings as the Applicant had received instructions to issue disciplinary proceedings on 9th March

2001 with further instructions on 31st May 2001, the Rule 4 Statement had been prepared in July 2001 and application made to the Tribunal on 16th August 2001. The matter had proceeded without delay and in fact an interlocutory hearing was conducted by the Tribunal on 9th January 2002. The substantive hearing did not take place until the early part of December 2002 because the Respondent indicated that at least three days were required for the hearing and a special (rather than a routine) hearing had to be arranged.

43. The Tribunal was satisfied that the Respondent would not be prejudiced by such delays as there might have been. It was clear that the witnesses were able to recall their evidence, a great deal of the evidence was in documentary form, and the Respondent appeared from his written submissions and documents to have a no difficulty in recalling considerable details of the surrounding events.

44. The Tribunal pointed out that where delay had occurred it could be taken into account by the Tribunal when deciding the sanction to be imposed upon a respondent: a stay of the proceedings was not the only way in which fairness to the respondent could be achieved.

45. The Tribunal has noted the Judgment of Lord Justice Rose in the matter of Gilchrist v. The Law Society, such Judgment being dated 13th February 2001. In that case it was said that the Presiding Chairman of the Tribunal did not appear to be alert to the considerable overlap in terms of time and conduct between allegations which had just been found proved (in December 1999) and the allegations which in April 1999 had been proved. It was common ground that the misconduct before both Tribunals related to approximately a two year period between 1996 and 1998.

46. In the Gilchrist case the Law Society accepted that it would have been desirable for all of the matters to be dealt with before a single Disciplinary Tribunal.

47. Lord Justice Rose went on to say that there were two exceptional reasons why in that particular case the Court should interfere with the Tribunal's decision. The first and most important was that the matters separately considered in April 1999 and December 1999 ought properly and in fairness to everyone to have been considered by a single Tribunal. Not only was there the overlap in terms of time and conduct but there were on the first occasion twelve offences of which the appellant was found guilty by the Tribunal and on the second occasion there were but five. That of itself was not determinative of what should be the appropriate sentence. All the circumstances had to be looked at. It was a matter for comment that for the first Tribunal a suspension of twelve months was thought appropriate for those twelve offences and a suspension of four years was thought appropriate for five offences relating to conduct which in many respects was of similar kind by the second Tribunal. He said that there was a second reason which gave rise to concern about the approach of the second Tribunal. That was the reference by the Chairman at the conclusion of the oral hearing to two previous appearances by the Respondent before the Tribunal.

48. Lord Justice Rose went on to say that it was appropriate for the Court to interfere in the Tribunal's decision and conclude that a total suspension of five years on a man of

fifty years who was a successful criminal solicitor, not well versed in administration, was excessive. He substituted for the four year period of suspension ordered by the December 1999 Disciplinary Tribunal a two year suspension to run as was ordered by the Tribunal consecutively to the earlier period of one year. That was to say that the total period of suspension imposed upon the appellant should be three years rather than five years.

49. The case currently before the Tribunal can be distinguished from that of Mr Gilchrist. The two disciplinary hearings have taken place some time apart. The first at the beginning of November 1999 and the second at the beginning of December 2002. In the current matter the Investigation Accountant's inspection did not take place until the autumn of 1999 and his report was not dated until the 22nd October 1999. Enquiries relating thereto were not completed until October of 2000. Clearly it would not have been possible for the Solicitors Accounts Rules breaches allegations to have been included with the earlier disciplinary matters. If there had been a delay in the earlier matters to wait for the conclusion of the investigation into the Accounts Rules breaches, that would have been contrary to the interest of the public and the good reputation of the solicitors' profession.

50. The complaint relating to misleading the Court was made in January of 1999. The investigation did not take place until February of 2000 after the date of the earlier disciplinary hearing.

51. The complaint relating to the Land Registry allegation had not been made until after the earlier disciplinary hearing had taken place. The subject matter of the complaints before the Tribunal in 2002 was different from that alleged in November 1999 save that similar breaches of the Solicitors Accounts Rules were alleged, but the breaches in 1999 related to an inspection carried out by a Law Society MIU Officer in June 1997. The Accounts Rules breaches allegations before the Tribunal on 3rd December 2002 related to an investigation leading to a report dated 22nd October 1999. There was, therefore, no overlap.

52. With regard to the Respondent's submission that the Land Registry allegation should be severed from the other allegations because the Respondent would be prejudiced by the fact that the division of the Tribunal currently presiding over the matter would in respect of all allegations have prior knowledge of the fact that the Respondent had a previous disciplinary history, the Tribunal is of the view that it is right that a professional Disciplinary Tribunal should deal at one time with all allegations made against a solicitor respondent even though those allegations deal with a wide range of professional misconduct. The Tribunal is an experienced and expert professional Disciplinary Tribunal well able to reach a proper unbiased opinion in the matter regardless of the previous disciplinary proceedings. As it was, the Tribunal was aware only that the Respondent had been suspended from practice. Such suspension was in fact a mater of public knowledge through Gazette publication. The members of the Tribunal had not read the Findings of the earlier division of the Tribunal and the members of the Tribunal were not apprised of the details of the subject matter nor the form of the allegations found to have been substantiated against the Respondent. The Tribunal was well able to put out of its mind the fact that the Respondent had appeared before the Tribunal on an earlier occasion, and had been sanctioned, before

addressing its mind to the substantiation or otherwise of the allegations currently made against the Respondent. Even in cases where there is a lay jury, matters of a similar type can be the subject of a direction by the judge. This professional tribunal was even better able to exercise the necessary mental gymnastics than could a lay jury.

53. The earlier Tribunal's direction as to the nature of the sanction it would impose was not fettered by the knowledge of the Law Society's intervention into the Respondent's practice. That event would not have prohibited the Tribunal from imposing the minimum sanction or, indeed, no sanction at all.

54. The Tribunal would proceed to deal with the substantive hearing forthwith.

55. The Tribunal refused the Respondent's application for an adjournment on the third day of the hearing because the Respondent as a solicitor had a duty to his professional Disciplinary Tribunal to give it proper priority. The Disciplinary Tribunal hearing had been fixed in advance of the County Court hearing which the Respondent wished to attend and the proper way for dealing with the clash of dates would have been for the County Court to be notified that the Respondent was to be engaged before his professional Disciplinary Tribunal on the date when the County Court case was proposed to be listed. The Tribunal considered that an arrangement to drive a member of the Respondent's family to an airport was not a matter of sufficiently high priority to permit the adjournment of a disciplinary hearing, particularly when the hearing had been fixed a long time beforehand. A person could be conveyed to an airport by another person or indeed by a taxi or public transport. The adjournment application was refused.

Withdrawal of Allegation (5)

56. After some discussion the Tribunal intimated to the parties that upon reading the papers which contained both the facts in support of allegation (5) and the facts in support of the other allegations it considered that matter to be of relatively little significance in the overall scheme of things and in any event on the face of the documentation alone the Respondent might well have an answer to the allegations.

57. The Applicant accepted the Tribunal's view and sought the consent of the Tribunal to withdraw that allegation. The Tribunal did consent to the withdrawal of allegation (5) which was no longer, therefore, before the Tribunal at the opening of the substantive hearing.

The agreed facts are set out in paragraphs 58 to 81 below:-

58. The Respondent was at all material times sole principal of the firm of Newfield & Co. carrying on business at 6-7 Elwick Road, Ashford, Kent and thereafter at 80A Preston Road, Faversham, Kent. The Respondent had been admitted as a solicitor in December 1976, having previously practised as a barrister. The Respondent had been suspended from practice since 11th November 1999.

59. Pursuant to statutory notice given to the Respondent, an MIU Officer of The Law Society attended at his premises to begin an inspection of his books of account on 20th September 1999. The MIU Officer prepared a report dated 22nd October 1999 which was before the Tribunal.

60. The MIU report revealed that there were two accounting systems which related to the two areas of work undertaken by the firm.

61. The 'Legal Services Department' consisted of all aspects of legal work, other than debt recovery, and represented approximately 30% of the firm's turnover. The Respondent was responsible for this department and maintained a manual book-keeping system together with client and office number 1 bank accounts.

62. The 'Debt Recovery Department' represented approximately 70% of the firm's turnover. Mr C, an unadmitted member of staff, was the manager of that department and had been given full responsibility for the same. Mr C maintained a computerised accounting system together with client and office number 2 bank accounts.

63. The Respondent told the MIU Officer that both sets of books and records were not up to date. The manual records had not been written up for six months and the computerised records had not been maintained for two to three months.

64. The firm's former bookkeeper, Mrs S, had left the firm in June 1999 and she had not been replaced. It had been the Respondent's intention to relocate the firm from Ashford to Faversham at the end of September 1999 when he would employ another bookkeeper in the Faversham area.

65. The Respondent agreed that the manual bookkeeping records had not been written-up since 31st May 1999 and he could not, therefore, present the MIU Officer with a fully reconciled statement of client liabilities as at the date of the inspection.

66. The MIU Officer discussed the maintenance of the manual records on the telephone with Mrs S on 28th September 1999. Mrs S said that she had been responsible for the manual clients' ledger and the client number 1 bank account. Mrs S also said that the records were incomplete from 31st May, 1998 as she was waiting for the opening balances from the previous accounting period to be given to her by the firm's accountants. From 1st June 1998, she had maintained the client number 1 cash book on loose-leaf analysis paper and had reconciled this on a monthly basis to the client number 1 bank statements. She said that she had not posted any of the bank account entries to any individual client's ledger cards and that she had instead maintained manual workings of the clients' ledger balances.

67. Mrs S said that the reason for her not maintaining a proper clients' ledger was due to the fact that there were considerable adjustments and transfers to be undertaken from at least May 1997 and that she had not been in a position to identify and deal with these.

68. The MIU Officer telephoned Mr H, the firm's Accountant, on 27th and 29th September 1999 who confirmed the following:-

(a) that the last complete set of books and records were those for the accounting year ended 31st May, 1997.

(b) that he had not been able to complete the financial accounts of the firm for the year ended 31st May, 1998, as the office ledgers of both sets of books were "totally incomplete".

(c) that in July 1998 when he had been re-appointed to act for the firm, he found that the books and records of the firm were "totally inadequate"

(d) that Mrs S had prepared client number 1 account bank account reconciliations but he was not certain whether these had been completed on a regular monthly basis.

(e) that he had received copies of the clients' ledger balances at the dates at which he had submitted reports to the Law Society. He felt that these balances had only been prepared on a six-monthly basis to coincide with his examination of the clients' ledger.

69. The Respondent told the MIU Officer that although Mr C was responsible for the Debt Recovery Department, he did not have any mandate to operate the client bank accounts. The MIU Officer examined the computerised records of this department and identified that monthly cash sheets had been prepared by Mr C until 30th June 1999. Thereafter no client bank account transactions had been recorded.

70. The MIU Officer could not identify that any client's ledger accounts had been maintained since the computer system for the Debt Recovery Department had been introduced by Mr C in June 1996. The Respondent had said that he was unaware of the accounting aspects of the system and had left its implementation, maintenance and control to Mr C.

71. Mr C was asked by the MIU Officer whether the computer system contained a clients' cash book and a clients' ledger. Mr C said that the computer system did not contain an accounting ledger as such. He further said that any listing of client matter balances had to be completed manually by his reviewing each client file and identifying and extracting the relevant client ledger balance. Mr C further said that the computer system was a standard debt collection computer software package which had been modified to meet the needs of the firm's Debt Recovery Department.

72. The MIU Officer asked Mr C whether the computer system produced a client cash book reconciliation in respect of the client number 2 bank account to which he replied that it did not. In addition, Mr C said "I do not get involved with the bank reconciliation". Mr C did not know what the position would be if the ledger balances did not reconcile to the money held in client bank accounts. He said that was his responsibility but Mr K (an accounts clerk employed by the firm) was responsible for the bank reconciliation and it was for him to resolve any differences.

73. Mrs S told the MIU Officer that she had no involvement with the computerised records of the Debt Recovery Department. She said that Mr C denied her any access to the client number 2 bank accounts and to the computerised records that he maintained.

74. Mrs S said that she had shown Mr C's wife how to prepare manual client ledger accounts for the debt recovery clients but, to the best of her knowledge, these had not been properly maintained by Mrs C and were incomplete.

75. The MIU Officer telephoned Mr H, the firm's Accountant, on 27th and 29th September 1999 who confirmed the following:-

    (a) that no client bank reconciliations had been prepared by the firm in respect of the client number 2 bank accounts other than at the two dates each year that he undertook his examination of the clients' ledger.

    (b) that Mr C had produced lists of client ledger balances as at the two dates that he would report on to The Law Society and that, to the best of his knowledge, client ledger balances were not produced at any other dates.

    (c) that at 31st May 1999 being the last client number 2 bank account reconciliations that he had audited Mr C had given him a list of client ledger balances and that the accountant had had to reconstruct the client bank reconciliations. The accountant further said that he could not remember whether there were any differences arising in the comparison of the two.

76. The MIU Officer in his examination of the clients number 2 bank accounts maintained by Mr C, identified that Mr C had, as part of his duties of managing the Debt Recovery Department, operated the clients number 2 bank accounts. In particular, Mr C was solely responsible for the transfer, via the firm's 'bankline' facility with National Westminster Bank plc., of clients' monies to the office number 1 and number 2 accounts in respect of sums purported to represent costs and disbursements. The Respondent agreed that he had given Mr C the authority to transfer monies from client to office bank accounts from at least June 1997.

77. In view of the absence of any proper up to date books and records, the MIU Officer asked the Respondent's accountant for sight of his working papers in an attempt to ensure that the proper client account reconciliations had been undertaken on the dates that he had reported to The Law Society. The papers had been returned to the firm and could not be traced.

78. At meetings held on 8th and 15th October 1999 with the MIU Officer, the Respondent confirmed the credit balance on the Clients Debtco – PAC (Payments on Account) bank account at 31st August 1999 as being £1,172.28. The Respondent had not known that this account had been opened and its existence had only been brought to his attention by Mr C at the end of September 1999 when Mr C was handing over to the Respondent the books and records of the Debt Recovery Department.

79. The MIU Officer identified that the Clients Debtco – PAC bank account had been opened on 30th January 1997. Mr C had said that the account had been opened in order to credit to it receipts from clients in respect of their payments on account of costs. The Respondent agreed with the MIU Officer that there was little merit in this client bank account being in existence without a suitable clients' ledger to record the receipts and payments of clients' monies being transacted. On 15th October 1999 the MIU Officer calculated that the clients' monies received and credited to this bank account during its existence amounted to £64,861.64.

80. The MIU Officer identified an incorrect transfer of £5,000 of clients' monies from the Clients Debtco – PAC account to an office account on 8th August 1997.

81. That round sum transfer had taken place when the combined office bank accounts had been overdrawn by £29,038.23. The firm's overdraft facility was at that time believed to be £20,000. Although the MIU Officer was not able to compute the total liabilities to clients as at the inspection date, that transfer of £5,000 did represent a shortage on client account of that figure.

The Evidence in the Contested Matters

Allegation (3) - That the Respondent failed to exercise any or any proper supervision of employees and in particular his accounts department entrusted with implementation of the Solicitors Accounts Rules.

82. The Applicant relied to some extent upon the findings of the MIU Officer relating to the fact that Mr C had been responsible for the Debt Recovery Department of the firm which had provided the majority of the firm's turnover. Mr C had operated the computerised debt recovery accounts system. He had denied access to the Respondent's former bookkeeper. Mr C had been responsible for transfers of client money via the firm's bankline facility with National Westminster Bank plc.

83. Mr C had opened the Client Debtco – PAC bank account without the Respondent's knowledge or without, the Respondent said, his prior knowledge or approval.

84. During the course of the MIU Officer's inspection the Respondent agreed that Mr C did not have the authority to transact client bank account transactions and the Respondent had not properly supervised Mr C. The Respondent had told the MIU Officer that he had never given the bank instructions to open the Clients Debco – PAC account and had not seen any correspondence from the bank in respect of the opening of the account. In his oral evidence, the Respondent said that he had apparently signed the documents required to open the account but he had no recollection of doing so and had presumed that they had been placed before him for signature by Mr C.

85. At meetings with the MIU Officer in October 1999 the Respondent agreed that he had not properly supervised Mr C and had allowed Mr C solely to maintain the firm's client number 2 bank accounts and related client matters. The Respondent had said:-

> "I believe that I properly supervised Mr C in general terms and would give him specific instructions in relation to the firm's accounts and he always assured me that he would carry them out. I was not aware at the time that my instructions were frequently ignored".

86. Mr C was not a person authorised under the Solicitors Accounts Rules to withdraw funds from client bank accounts.

87. The Respondent said that he had not been aware of Mr C's dishonesty until the MIU Officer showed him incontrovertible evidence. The Respondent accepted that Mr C had been dishonest but said that the majority of that dishonesty appeared to have been towards the Respondent himself and was to the tune of £250,000. The clients of the firm had not suffered loss. The destruction of the accounts by Mr C had made it impossible to reconcile payments such as disbursements and costs for which invoices had not been retained. Mr C had produced weekly reports of his accounts showing the up-to-date position. The Respondent had come to realise that these had been falsified.

88. When the Respondent employed Mr C he was aware that Mr C was an experienced business manager and had run his own businesses including a Debt Recovery Agency. Mr C had set up and controlled the Debt Recovery Agency and ran every aspect of it.

89. The Respondent ran a busy small general practice with emphasis on criminal work and conveyancing. He had to attend the Police Station two to three days a week on a regular basis as he was on up to three separate Duty Solicitor Schemes, and frequently attended the Magistrates Courts and the Crown Courts.

90. The Respondent felt confident that Mr C could run the office. The Respondent attended the offices at Ashford every day, apart from one holiday in 1999 when he employed a locum. He spoke to Mr C either in person on the internal office telephone at least 20 times a day, and Mr C would frequently consult with the Respondent about cases in which he was having problems.

91. Mr C was assisted in running the office by Mrs A, an experienced PA who became effectively the human resources manager.

92. The Respondent's evidence was that Mr C was truculent and overbearing. His personality was such that he was a difficult person upon whom to impose supervision. In order not to have a confrontation which would have been disruptive in the office, the Respondent did not firmly address the question of Mr C's behaviour. Because the Respondent was frequently out of the office he could not have supervised Mr C in any other way. When eventually Mr C's conduct became intolerable the Respondent dismissed him. That had been before the Respondent had any inkling of his dishonesty.

93. The Respondent carried out the degree of supervision a normal prudent employer would expect to exercise in respect of a person in a senior management position of trust.

94. Mr C was a director of the service company holding the lease of the office building. Mr C's father was the lessor.

95. It had transpired that the Respondent's trust in Mr C's management skills had been misplaced. Members of staff had described Mr C as domineering and overbearing in his attitude towards members of staff. Mr C had made it plain to junior members of staff that it was he who employed them and not the Respondent. One member of staff described Mr C as "vain, overbearing, sexist, racist and abusive in his behaviour. His language was generally obscene and he shouted at everyone in sight, and often burdened us with his crude and obscene jokes when in a good mood". That member of staff had been particularly badly treated by Mr C and had commenced proceedings in the Employment Tribunal. She received an award of compensation against Mr C personally, but it had not been paid. It was said that Mr C was clever and manipulative: he lied convincingly. He was solely responsible for the debt recovery accounts. He would not let anyone near them. The accounts were protected by a password known only to Mr C.

96. In evidence the Respondent said that he exercised what he at the time believed to be a level of supervision of Mr C which was commensurate with the level of trust which he reposed in him and Mr C's level of experience. The reality proved to be that Mr C was a dishonest man with a personality which rendered him very difficult to supervise.

Breach of Practice Rule 1: failure to ensure the Court was not misled

97. On 6th January 1999 District Judge Diamond at Medway County Court wrote to the OSS to report that at an ancillary relief application certain matters had been brought to the Judge's attention. The Respondent had acted for Mr B and in preparation of an affidavit during January and February 1996. It appeared that the Respondent had advised his client to make no reference to a severance payment received by Mr B from the Fire Brigade in September 1995 in the sum of £42,000.00 and expenditure by Mr B of part of that money upon an interest in a property at Rainham.

98. In cross examination of Mr B at the ancillary relief proceedings he said, according to the note kept by the Judge,

> "I spoke to Mr Newfield. He has said don't mention the large sum. I said to him it would come out in Court. He said then say that what you did was under legal advice".

99. The Respondent was not present at Court on that occasion. A member of the Respondent's staff had been sitting behind Counsel, Mr Sparks.

100. Judge Diamond had enquired whether there was anything on the solicitor's file relating to the severance payment and had been advised that nothing relevant could be found.

101 The Judge had reserved the taxation of the matter to himself in order that he might peruse and consider the Respondent's file. Although the Respondent did not seek

taxation of his costs for about one year, the Judge did indeed deal with the taxation himself, check the file and enclosed with his letter to the OSS copies of attendance notes and correspondence which he considered relevant to the report which he made.

102. In evidence Mr B said he had been separated from his former wife owing to irreconcilable differences and divorce proceedings began shortly thereafter. He had at first instructed a firm of solicitors with whom he became dissatisfied. He had met the Respondent through a friend and shortly after that meeting Mr B had instructed the Respondent to represent him.

103. Mr B believed that the Respondent would have been aware of his severance pay from fairly early on in their dealings with each other.

104. In May of 1995 Mr B suffered a heart attack at a time when he was very depressed with his whole situation. He said that he was generally in a confused state of mind.

105. Mr B had been asked by his wife's solicitors to file an affidavit of means. That was prepared for him by the Respondent. Mr B believed there had been considerable delay between the affidavit being prepared and his actually swearing it. He said that he had to be served with an order to make him swear it. He blamed his poor state of mind for that delay.

106. Mr B had received severance pay of £42,000 in September 1995. He said the affidavit had been prepared before he received that money.

107. Mr B did not have a clear recollection of the advice given to him by the Respondent with regard to the severance pay and could not remember the exact words he used in Court. He did, however, remember that just before the hearing which he recalled was in September 1996 he mentioned to Mr Sparks, his barrister, that his previously filed affidavit mentioned nothing about the severance pay and he was going to have to mention it in Court if asked.

108. During the course of cross examination Mr B mentioned the severance pay and he said that he could remember the look of shock on everyones' faces. Mr B said he had no wish to deceive anyone and his affidavit had been incorrect only because of tardiness on his part.

109. In evidence His Honour Judge Diamond recalled the matter and confirmed that his recollection had been fully represented in his letter reporting the matter to the OSS.

110. The Tribunal had before it an attendance note prepared by the Respondent dated 28th February 1995. That attendance note was as follows:-

> "No telephone
> T.V. Licence £22.00 per quarter
> Council Tax £43.00 per quarter
> Car Tax (?)
> £16.00 balance on Co-operative Bank
> £2,000.00 in Nationwide Building Society – living off that at the moment

19th March living in house
Taking children to football every other week
Health and Safety training course £700.00
Drive there
At Lordswood once a week
CSA £88.00 per month
£28.00 per quarter medical fees – prescription charges
£10.00 premium bonds
Depends on examination on whether obtain employment
Two bedroomed house. No-one else there
Buy clothes for children; trainers and clothes
before Christmas; jumpers and jeans, etc
£130.00 school trip
Tendered £69,000.00
I am not working/retired
£240.00 rent £587.00 pension
£10.00 petrol per week
B registration Escort – say £500.00
£40.00 per week for food and drink
£20.00 per week cigarettes
£10.00 per week clothes and general household bits and pieces
£2.50 for papers

Gas	£5.00 per month but only of payment
Electricity	£21.00 per month
Insurance	£10.30
Car insurance	£24.90
Health insurance	£4.80
Endowment	£32.35"

111. The Respondent had received by fax a manuscript letter from Mr B dated March 1996 which was as follows:-

"Dear Mr Newfield

With respect to my affidavit I am a little concerned with having no reference to me buying a share of a house, as the court may think I am trying to deceive it. Maybe I am a little panicky! but I wonder if I will be examined on my lump sum and to where it has gone. I took your advice on it now being property but I wont be in a position to deny having had it as the pension fund have told me they would have to inform a court if asked. Sorry for the confusion.

I look forward to hearing from you

Thanks

K B

PS ref paragraph 4 my pension is from London Pensions Fund Authority".

112. The Respondent responded to Mr B's letter on the 12th March 1996 as follows:-

"Dear Mr B

Thank you for your fax.

We deliberately didn't include the reference to buying the house in the Affidavit of Means as we are simply dealing with your current income and expenditure position.

We have no doubt that Mrs B's solicitors will serve Interrogatories which are questions, but our view is that we should let them find out what they can rather than gratuitously supply them with information which is not necessary and does not require to be included in an Affidavit.

Subject to the above, we would be grateful if you could change paragraph 4 in biro with regard to your pension from the London Pensions Fund Authority and initial the alteration and have the Affidavit sworn and returned to us.

We assure you that should any criticism arise in that you have not disclosed details of the house purchase, we will assure the Court that this was not included in the Affidavit on our express advice.

Yours sincerely

E Newfield".

113. In his oral evidence the Respondent said that he had in February 1996 discussed with Mr B his outgoings. He had been concentrating on the current position and had not taken into account any future monies which he might receive. The Respondent had said he did not understand that there was any certainty as to the lump sum to be received by Mr B.

114. There had been an order made in the Medway County Court on 20th February 1996 requiring Mr B to file and serve his further affidavit of finances and in response to the petitioner's affidavit (sworn in December 1995) within 14 days of service of the order upon him and a penal notice was endorsed on that order. The Respondent asserted that the affidavit drawn for Mr B, which he swore in March 1996, did not refer to the lump sum because the Respondent had not been aware of it nor had he been aware that Mr B had utilised part of it in the purchase of a property. The Respondent said he had advised the client that he need not include the possible receipt of the lump sum because it was a matter in the future. The Respondent had not appreciated that the lump sum had been received by Mr B.

115. The Respondent had not been notified by Mr B of any change of address. Although Mr B had indicated that if and when he received a lump sum he wished to by a property, the Respondent had naturally believed that he would be instructed to

undertake the conveyancing. He had not been put on notice in the first place because he had not received conveyancing instructions and in the second place because Mr B had not notified his change of address. The Respondent had continued to write to Mr B at his former address and had not been made aware of his new address for a considerable length of time.

116. Mr B's wife had sworn an affidavit on 18th December 1995 making reference to Mr B's entitlement to a substantial payment from the Fire Brigade.

117. On 17th April 1996 the solicitors acting for Mr B's wife raised specific questions as to any payment. The Respondent prepared a reply dated 26th June 1996 in which no reference was made to the lump sum payment.

118. The Tribunal had before it a copy of Mr B's bank statement indicating a receipt on 18th September 1995 of the sum of £42,687.94 representing the Fire Brigade lump sum payment.

119. A letter addressed to the Respondent by the solicitors acting for Mr B's wife dated 15th February 1996 raised in terms Mr B's receipt of the severance money. The Respondent replied on 16th February saying that he had no instructions relating to any severance pay.

120. The solicitors acting for Mr B's wife wrote to the Respondent on 6th September 1996 making reference to the lump sum and supplying evidence that Mr B had made a payment of £27,000 representing part of the lump sum payment to him and an investment by him in a property at Rainham. In evidence Mr B explained that he had made the payment of £27,000 to his former partner for her share in the property.

121. The Respondent said if Mr B had told him that he had received a lump sum payment and the amount of it, the Respondent would have included the details in the affidavit.

Submissions of the Applicant

123. The facts spoke for themselves. In the submission of the Applicant, the Tribunal should find the allegations to have been substantiated. The Respondent had admitted breaches of the Solicitors Accounts Rules on the basis of strict liability. The Applicant did not allege the Respondent had been dishonest in connection with these allegations.

124. The Respondent had been guilty of a reckless disregard for compliance with the Rules relating to the practice of a solicitor and in connection with his duty to ensure that the Court was not misled. The Respondent had been guilty of a serious abrogation of his duty as a solicitor. He had allowed his employee, Mr C, to operate the bankline facility, the computer connection with the firm's bank. It was unbelievable that the Respondent had not been aware that a bank account had been opened by a member of staff until it had been brought to his attention. It appeared in fact that Mr C had been given carte blanche to handle clients' money.

125. At least in the matter of the transfer of £5,000 from a client to an overdrawn office account, it followed that the Respondent had gained a benefit. It was not suggested that he had deliberately gained such benefit but that was the inevitable outcome.

126. The Respondent had not been aware that reconciliations required by the Solicitors Accounts Rules had not been carried out. That was a basic rule and failure to comply with it represented a highly unsatisfactory state of affairs.

127. The Applicant accepted that Mr C was a difficult person to supervise. Proper supervision of unadmitted staff was, however, a fundamental requirement in a solicitors' practice. The Respondent had not fulfilled the requirement nor met his duty to supervise.

128. With regard to the matter of Mr B, the Respondent did know that a lump sum was due to Mr B. It was as wrong for a solicitor not to ensure that correct information was placed before the Court as it was deliberately to mislead a client. Of course, it would not amount to professional misconduct if a solicitor had made a mistake. Despite many reminders, the Respondent took no step to arrange for his client to make a corrective affidavit.

129. Such behaviour on behalf of the Respondent did amount to conduct unbefitting a solicitor.

The Submissions of the Respondent

130. The general practice accounts which included all work other than debt recovery were dealt with by Mrs S, an experienced bookkeeper who had worked for the Respondent from about 1996. The accounts were manually maintained and received clear Accountant's Reports up to and including June 1999. Mrs S had left in spring 1999 as she felt her position was being undermined by Mr C but the entries were being maintained by Mr K another bookkeeper in the practice. They might have been slightly behind. The MIU Officer accepted that the breaches, if any, were minor.

131. The debt recovery accounts were the sole province of Mr C. Mr K did not have access to them.

132. A clear Accountant's Report had been delivered in June 1999 for the whole of the practice.

133. The Respondent was not aware of Mr C's dishonesty until the incontrovertible evidence was shown to him by the MIU Officer. Mr C's dishonesty was in the main directed at the Respondent to the tune of £250,000 and not to clients. Whilst there had been many claims on the Compensation Fund (nearly all in respect of the accounts controlled by Mr C) that had been due to the closure of the practice and the freezing of the bank accounts. If Mr C had stolen clients' money the Respondent had seen no evidence of that apart from the £5,000 wrongly transferred from the client account to the office account. The destruction of the accounts by Mr C had made it impossible to reconcile payments such as disbursements and costs for which invoices

had not been retained. These made up the vast majority of the claims to the Compensation Fund.

134. Mr C produced weekly reports of his accounts showing the up to date position. The Respondent had come to realise that these were completely falsified by him to conceal both his own thefts from the Respondent and the reconciliation of the client account balances.

135. Mr C had been an experienced and capable manager. The Respondent had no reason not to place his trust in him. A solicitor often out at court had to rely on staff to undertake tasks during his absence. The Respondent had signed all cheques drawn on client account but the number of cheques required was too large to allow him to check the provenance of each and every one. That was a common state of affairs. It did not amount to an unsatisfactory lack of supervision.

136. With regard to Mr B's matter, at no time was Mr B advised to conceal information in an affidavit nor was there ever any intention to mislead the court. District Judge Diamond had misinterpreted the true position.

137. The allegation stemmed from Mr B's own statement in the hearing of his case and a letter the Respondent wrote to him some months before which if the Respondent had acted improperly he would have removed from the file before sending it to the court a year or so later on taxation.

138. Neither the Respondent's employee at court nor counsel advised him of what Mr B had said in cross examination until some days later. The hearing lasted for two days and Mr B's statement had been made on the first day. Had the Respondent been told he would have attended the hearing on the second day in order to correct the false allegation.

139. The Respondent had advised the client that he need not disclose assets not yet received. That advice had been given both orally at a meeting in the office and in a subsequent letter. With hindsight the Respondent came to accept that the letter could have been better worded but at the time the Respondent was unaware of the amount Mr B was to receive from the Fire Brigade or that he had received it. The Respondent also had been unaware that Mr B had moved house and had continued to write to him for some time at his former address.

140. If Mr B had told the Respondent that he had received a lump sum payment and the amount the Respondent would have included it in the affidavit without question.

141. When the Respondent did become aware of the true position a few months later he advised the other side. They had been well aware of Mr B's true financial position for some months before the case was heard and clearly no one was prejudiced.

142. No costs were awarded to the Respondent following taxation.

143. The Respondent accepted that he might have made many mistakes during his career, such as employing Mr C in the first place, but he remained adamant that he did not

advise Mr B not to disclose the full extent of his assets. It had become obvious that the Respondent should have made some mention in the affidavit of the fact that Mr B anticipated receipt of a lump sum. The Respondent believed that the affidavit should reflect Mr B's then current position and the Respondent took Mr B's letter to be a reference to a future payment. The Respondent accepted that he should have made more diligent enquiry but he did not as he assumed that Mr B would have told the Respondent when he received his money.

Findings of fact by the Tribunal

Supervision of staff

144. The Tribunal finds that the Respondent did not exercise proper or adequate supervision over Mr C, an unadmitted member of staff. Mr C was permitted to behave exactly as he pleased in the Respondent's firm where he appeared to regard the firm as his own rather than that of the Respondent. It appeared that the Respondent did what he was told, for instance he signed cheques at the request of Mr C without making any checks and the Respondent did not put in place any checks or balances. The Respondent permitted Mr C to open the post and to send out letters without their first being read by the Respondent. The Tribunal noted that the Respondent was under pressure to permit Mr C to behave as he did because Mr C's debt recovery work brought into the firm the lion's share of fee income. The Respondent's failure to supervise Mr C was wholly irresponsible and reckless.

145. With regard to the matter relating to Mr B's lump sum, the Tribunal does not believe the evidence of the Respondent. The Tribunal finds as a fact that the Respondent was fully aware both of Mr B's entitlement to a lump sum and his application of part of that sum to property purchase probably before the receipt of Mr B's letter of March 1996 but certainly he could have been in no doubt upon the receipt of that letter.

146. It was clear from the attendance note prepared by the Respondent on 28th February 1995 that he was aware that Mr B was in receipt of a pension. It simply was not credible that the Respondent being aware of Mr B's monthly pension payments had not been aware that any related lump sum would have been received by Mr B as a commutation of his pension rights.

147. The Respondent had ample opportunity to set the record straight and had been given a number of reminders by the solicitors acting for Mr B's wife prior to the ancillary relief hearing which took place in October 1997. The Tribunal concludes that the Respondent deliberately sought to keep the fact that his client had received a lump sum payment, and had invested part of it in property, from his client's former wife and her legal representatives.

The Tribunal's Findings as to the allegations

148. The Tribunal found allegations (1) and (2), which were not contested, to have been substantiated.

149. The Tribunal found allegations (3) and (4) to have been substantiated. Allegation (5) was withdrawn.

150. The Tribunal finds that as allegations (1), (2), (3) and (4) were substantiated, allegation (6) was substantiated in that the Respondent had been guilty of conduct unbefitting a solicitor.

151. With regard to allegations (1), (2) and (3), the Tribunal finds that the Respondent had been guilty of a serious abstention from his duty as a solicitor to achieve a full and proper compliance with the Solicitors Accounts Rules and thereby exercise a proper stewardship of clients' funds. Further he had not maintained the proper and required level of supervision of staff required by a solicitor in his practice. Such failures did not serve the interests of the public and could only damage the good reputation of the solicitors' profession.

152. The Tribunal considered the Respondent's behaviour in connection with his instructions to act in ancillary relief proceedings following Mr B's divorce (allegation (4)) to be a most serious matter. The Tribunal has found that the Respondent's behaviour in that regard was deliberate.

153. At a hearing on 11th November 1999 the Tribunal found the following allegations to have been substantiated against the Respondent. The allegations were that the Respondent –

(1) contrary to the provisions of Rule 1 of the Solicitors Practice Rules 1990 had

(a) in his dealings with other parties failed to act to preserve the good repute of both himself and the solicitors' profession (generally).

(b) failed to act in the best interests of his client.

(2) in his dealings with other parties, failed to act in accordance with good manners and to extend courtesy to an extent whereby his actions amounted to professional misconduct (generally).

(3) improperly misled a Duty Solicitor Committee in connection with an application thereto.

(4) improperly misled the Law Society in the Society's investigation into alleged misconduct.

(5) unreasonably delayed in the submission of an Accountant's Report contrary to the provisions of the Solicitors Act 1974.

(6) acted in breach of the Solicitors Accounts Rules 1991 in the following particulars:-

(a) contrary to the provisions of Rule 11, failed to maintain his books of account or to effect reconciliations as by the said Rule required.

(b) contrary to the provisions of Rules 7 and 8 drew from client account monies other than in accordance with the provisions of the Rules aforesaid and utilised the same for his own benefit, alternatively for the benefit of other clients not entitled thereto.

(8) been guilty of delay, alternatively failed to deal with proper expedition with correspondence and enquiry raised by the Legal Aid Board.

(9) acted in breach of the Solicitors Accounts Rules in that he transferred from client account to office account clients' money other than in accordance with the provisions of Rules 7 and 8 and improperly utilised the said money for his own purposes.

(10) failed, despite requests, to act in accordance with the provisions of the relevant Legal Aid Regulations.

(11) in correspondence with the Legal Aid Board, failed to observe the requirements of courtesy required of solicitors in correspondence.

(13) by virtue of each and all of the aforementioned had been guilty of conduct unbefitting a solicitor.

154. The Tribunal in its Findings dated 5th January 2000 said:-

"The Tribunal have given this matter particularly careful consideration. There had been a litany of complaints against the respondent. Clearly the letters written by him and instances of his unacceptable behaviour served only to bring the solicitors' profession into serious disrepute. His manner had been arrogant, petulant, combative and threatening in some instances and in others he had been intolerably rude. There was no doubt that the respondent's behaviour had been disgraceful.

Despite the psychiatric report of Professor Hale indicating that the respondent had regained the psychological equilibrium which apparently he had earlier lost, the Tribunal continued to have severe doubts as to whether the respondent was fit to practise as a solicitor.

The allegations substantiated against the respondent not only encompassed his own very unfortunate behaviour but also included failures to act in the best interests of his client, an improper misleading of a duty solicitor committee, an improper misleading of the Law Society in its investigation into alleged misconduct, delay in connection with the submission of an Accountant's Report, an important statutory requirement for a solicitor, and breaches of the Solicitors Accounts Rules. In addition to those matters this experienced solicitor had failed to deal with proper expedition with correspondence and enquiry raised of him by the Legal Aid Board and in a Legal Aid matter had been guilty of a further breach of Rules 7 and 8 of the Solicitors Accounts Rules and had failed to act in accordance with the Legal Aid regulations.

> In view of the number and variety and the seriousness of the allegations made against the respondent the Tribunal had given a great deal of thought as to whether or not the respondent should be struck off the Roll of Solicitors. If it had not been for the fact that the Tribunal had been apprised of the respondent's difficulties with his mental health then they would have made a striking off order.
>
> In the particular circumstances of this case the Tribunal decided to suspend the respondent from practice for an indefinite period of time.
>
> The Tribunal wish to make it plain that it would be very unlikely to entertain favourably an application by the respondent that the period of suspension be bought to an end unless he were in a position to demonstrate that he had with the consent of the Law Society first been employed within the solicitors' profession and had performed over a period of time in a satisfactory matter without recourse to the discourtesy and rudeness displayed by him in the past.
>
> The Tribunal would also wish to have detailed medical opinion as to the respondent's current state of physical and mental health.
>
> The Tribunal also consider that the respondent's reaction to pressure has made it self evident that he is not fit to practise as a sole principal and should the respondent be permitted to return to practice in the future then the Tribunal would urge the Law Society to make any Practising Certificate issued by it subject to conditions that would prevent the respondent from again practising as a sole practitioner."

155. In December 2002 the Tribunal noted that the division of the Tribunal dealing with the earlier matter had the benefit of a medical report by Professor Hale. Professor Hale had concluded in his report dated 4th October 1999 that the Respondent was free of depression and had achieved a normal mental state and was competent to continue to practise as a solicitor.

156. The division of the Tribunal dealing with the allegations at the hearing in December 2002 did not have any medical evidence but took into account the fact that the Respondent appeared to have regained his mental equilibrium at the latest in October 1999.

157. The Tribunal had before it no evidence or claim from the Respondent that his behaviour in relation to the facts of allegation (4) was in any way affected by his mental state at the material time. Indeed the Respondent has continued to assert, though in a wholly unconvincing manner, that he was unaware that his client had an entitlement to a substantial lump sum or that he had actually received it and used part of it to secure an interest in property. As stated above, the Tribunal did not believe the Respondent's evidence and it has concluded that he acted deliberately and did not act with the probity, integrity and trustworthiness required of a solicitor either at the material time or in subsequently maintaining his lack of knowledge at the material time.

158. The Respondent's abrogation of responsibility with regard to compliance with the Solicitors Accounts Rules and the supervision of staff was reckless in the extreme. In addition to that the Tribunal has made a finding that the Respondent deliberately suppressed disclosure of his client's assets in an ancillary relief matter and has concluded that in doing so he acted with conscious impropriety. In making that finding the Tribunal has applied the tests set out in Royal Brunei Airlines v Tan and Twinsectra Ltd v Yardley.

159. In the interests of protecting the public and the good reputation of the solicitors' profession a solicitor cannot be permitted to remain a member of that profession if he has fallen below the high standards of probity, integrity and trustworthiness required of a solicitor.

160. The Tribunal considered it right to order that the Respondent be struck off the Roll of Solicitors. They ordered that the Respondent do pay 95% of the costs of and incidental to the application and enquiry (to include the costs of the MIU Officer of The Law Society), such costs to be subject to a detailed assessment if not agreed between the parties. The Tribunal considered it right to make an order that the Respondent should pay 95% of those costs in view of the fact that allegation (5) had been withdrawn. It accepted the estimate by the Applicant that the matters relating to that allegation represented approximately 5% of the work undertaken in the matter as a whole.

DATED this 18th day of February 2003
on behalf of the Tribunal

J C Chesterton
Chairman