No. 8591-2002

IN THE MATTER OF ROBERT WILLIAM GARSIDE, ANITA JANE GARSIDE & PAUL VERNEY ROBERTSON, solicitors

AND

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr. J. P. Davies (in the chair)
Mr J R C Clitheroe
Mrs C Pickering

Date of Hearing: 7th October 2004

FINDINGS
(Relating to Robert William Garside only)

of the Solicitors Disciplinary Tribunal
Constituted under the Solicitors Act 1974

The original application was made against the above three mentioned Respondents. The Tribunal having dealt with Mrs Garside and Mr Robertshaw on an earlier occasion considered only the allegations made against Robert William Garside at the hearing on 7th October 2004.

An application was duly made on behalf of the Law Society by George Marriott solicitor and partner in the firm of Gorvins (formerly Gorvin Smith Fort) then of Stockport but subsequently of Gorvins solicitors 4 Davy Avenue, Knowlhill, Milton Keynes, MK5 8NL on 18th April 2002 that Robert William Garside then of Valley Road, Hebden Bridge, (and the other two Respondents) 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 16th October 2002 the Applicant made a supplementary statement containing further allegations.

The allegations were that the Respondent had been guilty of conduct unbefitting a solicitor in that:-

1. Employed or remunerated in connection with his practice without written permission from the Law Society the third Respondent, a person whose Practising Certificate had been suspended by reason of him being an undischarged bankrupt contrary to Section 41 of the Solicitors Act 1974;

2. withdrawn

3. he failed to supervise and manage his practice in accordance with the minimum requirements set down by Rule 13 of the Solicitors Practice Rules 1990;

4. he through the company controlled by him, failed to keep accounts properly written up for the purpose for Rule 11 of the Solicitors Accounts Rules 1991;

5. he utilised clients' funds for his own benefit or for the benefit of a company controlled by him;

6. he failed to transfer from office account to client account disbursements received, and recoupments to be paid to the Legal Services Commission contrary to Rules 19 and 20 of the Solicitors Accounts Rules 1998;

7. Withdrawn

Following applications the details of which are noted below, the Applicant withdrew allegations 2 and 7. With the agreement of the Respondent and the consent of the Tribunal minor amendments to the allegations were made. The allegations set out above are in the agreed amended form.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London, EC4M 7NS on 7th October 2004 when George Marriott appeared as the Applicant and the Respondent appeared in person.

The evidence before the Tribunal included the admissions of the Respondent as to allegations 3, 4, 5 and 6. Dishonesty was alleged by the Applicant in respect of allegation 5 and the Respondent denied that he had been dishonest. Mr Briggs and Mr Smith gave oral evidence, as did the Respondent. The Respondent handed up a written argument and Law Reports upon which he placed reliance.

At the conclusion of the hearing the Tribunal made the following Order:-

The Tribunal Order that the Respondent, Robert William Garside of Valley Road, Hebden Bridge, solicitor, be suspended from practice as a solicitor for an indefinite period to commence on the 7th day of October 2004 and they further Order that he do pay the costs of and incidental to this application and enquiry to be subject to a detailed assessment unless agreed between the parties to include the costs of the Investigation Accountant of the Law Society.

Preliminary Matter

1. The Applicant sought to add a new allegation namely that the Respondent failed to notify and pay windfalls to the supervisor of his IVA. The Respondent objected to the addition of that allegation.

2. The Applicant said that he had given the Respondent advance notice of the addition of the allegation, such notice having been given on 1st October 2004. The allegation would come as no surprise to the Respondent as the matters underlying the allegation had been contained in the Law Society's Investigation Accountant's Report. The documents demonstrated that the Respondent was obliged to notify the supervisor of his IVA of any windfall. The Respondent had not declared the receipt of monies upon the disposal of assets which exceeded the sale price estimated in the IVA proposal.

3. The chief purpose of the addition of the new allegation was to make it clearer to the Respondent the allegations which he was facing.

4. The Tribunal did not permit the addition of the further allegation. The evidence upon which it was based had been in the Applicant's hands over a long period of time. It was not fair to the Respondent to expect him to answer a further allegation upon only six days notice.

Second Preliminary Matter

5. The Respondent made an application that there was no case to answer with regard to allegation 7 namely that he made false and/or misleading representations and/or statements concerning an IVA.

6. The Respondent made his application before the Applicant had opened his case.

7. When the Law Society's Investigation Accountant attended at the offices of the Respondent's firm Mr Garside had said that he did not think that he was well enough to talk to the Investigation Accountant about certain matters of concern.

8. Those matters of concern had been that Mr Garside appeared to have realised assets, a property in Spain, and a property formerly owned by his mother at Elland, and had not paid the whole of the sum realised to the supervisor of his IVA.

9. The Respondent explained that the figures contained in the IVA proposal were estimates. They had been based on formal valuation.

10. The Respondent's firm's bank, Lloyds TSB, had secured all business and formal borrowing of the Respondent on property owned by him. The Respondent's personal bank was also Lloyds TSB. Although the ledgers referred to payments made to the Respondent the monies were in fact paid to the Respondent's account at Lloyds TSB and Lloyds TSB had made appropriate transfers to redeem, or partially to redeem, its secured lending.

11. The fact that the sale price of the Elland property was so much greater than the figure estimated in the IVA proposal was explained by the fact that the property had been in bad condition. The Respondent had been advised that an outlay of some £5,000 would be likely to increase the value of the property by some £10,000. The bank had agreed to lend the money for the work to be carried out. The work had been carried out and then when the property came to be sold it was at a time when there had been substantial increase in property values. The whole of the difference between the estimated sale value of £23,000 and the actual sale price in excess of £40,000 remained owing to the bank as a secured creditor.

12. The Applicant told the Tribunal that it was the first time he had heard the Respondent's explanation. After taking instructions he sought leave to withdraw allegation 7. The Tribunal consented.

Further Preliminary Matter

13. Mr Garside wished to seek a ruling from the Tribunal that the evidence failed to disclose dishonesty on his part with regard to allegation 5 (utilisation of clients' funds). The Tribunal ruled that it would consider the Respondent's evidence and submissions on this matter during the course of the substantive hearing in the usual way.

Further Preliminary Matter

14. The Respondent invited the Tribunal to deal with certain points of law. The Respondent submitted that he was entitled to a fair trial pursuant to Article 6 of the European Convention on Human Rights and Fundamental Freedoms of 1951 and in accordance with the Human Rights Act of 1998. He invited the Tribunal to give consideration to the Civil Procedure Rules, the Police and Criminal Evidence Act 1984 and the Codes of Practice thereunder, the cases of Law Society -v- Erron 2003 and the case of DPP -v- Morgan 1976 AC182.

15. The Respondent raised these points in connection with allegations 1 and 2 (employment of a person whose Practising Certificate had been suspended and breach of Practice Rule 1).

16. In the submission of the Respondent when Mrs H of the Law Society telephoned him to enquire whether he was employing Mr Robertshaw, a solicitor whose Practising Certificate had been suspended by reason of his bankruptcy, she should have cautioned him or told him of his right to remain silent. When Mr Garside spoke with Mrs H on the telephone he did not know that her intention was to obtain facts. In the absence of such caution it was not available to the Applicant to use the Respondent's response in evidence.

17. The Respondent noted the warnings and advice given in the letter addressed to him by the Law Society of 5th July 2001. Those warnings were not couched in the form required by the Police and Criminal Evidence Act.

18. In the submission of the Applicant the Law Society knew that Mr Robertshaw had been adjudicated bankrupt and Mrs H's telephone call was simply an enquiry as to whether or not Mr Robertshaw was still employed. A solicitor has a duty to give an honest answer to an enquiry made of him by his own professional body. The telephone conversation was a fact-finding exercise.

19. What was said on the telephone was contained in a letter addressed to the Respondent by the Law Society dated 5th July 2001. That letter contained the following two paragraphs

> "When the investigation is completed however the matter may be referred for formal adjudication by either an Adjudicator or the Compliance and Supervision Committee, who will consider your explanation when deciding on further action. If a decision is taken to institute disciplinary proceedings your reply may be used in those proceedings……

> If there is a problem which you feel prevents you from dealing with this matter and which you do not wish to discuss with us, I recommend that you seek immediate legal advice. You may wish to contact the Solicitors Assistance Scheme, which provides independent advice to solicitors with professional or personal worries. If so, you may wish to call Susana Lewis at the Law Society, in confidence, on 0207 3205795, for further information. You need not give your name if you prefer to remain anonymous."

Thus when the Respondent was invited to give a formal response, he was cautioned.

The Tribunal's Ruling.

20. The Tribunal recognised that when the Law Society's Investigation Accountant made an inspection of a solicitor's books of account no caution was given. It was only when an Investigation Accountant formed the view that there were areas of concern that he would give a warning to the solicitor. Similarly a Police Officer when making enquiries does not caution the person questioned. It is only when the Police Officer considers that it is likely that an offence had been committed does he caution the person to be questioned. The telephone call made by Mrs H of the Law Society to the Respondent was analogous to both of these situations namely she was making enquiry to ascertain the position and in the light of the Respondent's response when she became concerned as to the position she wrote a letter setting out her concerns and issuing formal warnings to the Respondent.

21. The Law Society and this Tribunal are not operating in a criminal jurisdiction and the form of caution to be given where a criminal offence is alleged does not apply.

22. The Tribunal does take the view that it is incumbent upon a member of the solicitors' profession to provide honest answers to any questions asked of him by his own professional and regulatory body.

Further Preliminary Matter.

Is a breach of Section 41 of the Solicitors Act 1974 an offence of a strict liability?

23. The Respondent said that he had employed Mr Robertshaw. He knew that Mr Robertshaw had been adjudicated bankrupt and should have been alert to the fact that his Practising Certificate would automatically have been suspended and that written permission of the Law Society would be needed before he could be employed or remunerated by another solicitor. That was the provision of Section 41 of the Solicitors Act 1974.

24. The Respondent had not been aware and became aware only upon receipt of the telephone call from Mrs H at the Law Society. Upon receipt of that telephone conversation he took immediate steps. He told Mr Robertshaw that he was not to attend at the office; he removed his name from the firm's letterhead and he sought permission of the Law Society to employ Mr Robertshaw. That permission had been forthcoming within a short period of time. Mr Robertshaw had told the Respondent that the Law Society had agreed to his employment.

25. Mr Garside did not remunerate Mr Robertshaw.

26. The Applicant did not dispute that Mr Garside honestly believed that the Law Society had given its permission. Mr Garside invited the Tribunal to consider the questions of mens rea and consent and relied upon the case of DPP -v- Morgan.

27. It was the Applicant's submission that such matters related to mitigation. It was accepted that a finding of a breach of Section 41 required the Tribunal to impose a mandatory sanction specified in the Section. The Tribunal had either to strike off or suspend a solicitor found to have been in breach of Section 41. Mitigation played an important role in the Tribunal's decision whether to strike off or suspend and how long any suspension might be.

The Tribunal's Ruling

28. The Tribunal ruled that once a solicitor had knowledge of the suspension of another solicitor's Practising Certificate then a breach of Section 41 in effect became an offence of strict liability. The Tribunal agreed that the employing solicitor's belief that the Law Society had given consent would be a mitigating factor but it did not provide a defence.

29. Payment to a suspended solicitor by a solicitor employing him without consent was not a necessary element. The word in the Section "employment" was to be given its wider meaning to include 'use the services of a person or to keep a person occupied."

Further Preliminary Matter

30. The Respondent pointed out that he had been in breach of Section 41 for a period of eight working days only, where there were strong mitigating circumstances. It was his submission that that did not amount to a breach of Practice Rule 1 or conduct unbefitting a solicitor.

After some discussion the Applicant accepted that allegation 2 added nothing to the matters alleged. The Respondent, with the consent of the Tribunal, withdrew that allegation.

The Substantive Hearing

The Facts are set out in paragraphs 31 to 62 hereunder:-

31. The Respondent agreed the facts, he had admitted the allegations remaining against him save that he disputed that he had been dishonest in respect of allegation 5.

32. Mr Garside, born in 1948, had been admitted as a solicitor in 1975. Mr Garside and his wife carried on in practice as partners at Thompson Garside & Co., from Hawkstone House, Valley Road, Hebden Bridge, HX7 7BL until 30th November 2001.

33. Mr and Mrs Garside carried on practice as directors of Thompson Garside Limited, trading as Thompson Garside, from the same address at Hebden Bridge from 2nd July 2001.

34. Mr Robertshaw had worked as an assistant solicitor at the firm since 1st May 2000. On 21st May 2001 a bankruptcy order was made against Mr Robertshaw as a result of which his Practising Certificate was automatically suspended.

35. The Law Society intervened into the practice on 11th October 2002. In the letter to Mr Garside of 5th July 2001 the Law Society asked him to explain why he had continued to employ Mr Robertshaw knowing that he had no Practising Certificate (when he had known this fact for at least two weeks) and what work Mr Robertshaw had undertaken for Thompson Garside whilst uncertificated.

36. Mr Garside's letter of reply dated 10th July 2001 stated that Mr Robertshaw had been employed by Thompson Garside as a full time self-employed locum from 1st May 2000 until that firm ceased to trade on 30th June 2001. From 1st July 2001 the practice was incorporated, trading as Thompson Garside. On the 19th or 20th June 2001 Mr Robertshaw had informed Mr Garside that he had been made bankrupt. Mr Garside had told Mr Robertshaw that he would have to cease to practise, whereupon Mr Robertshaw indicated that he had discussed the matter with the Law Society and although told he could not act as a solicitor he could still be employed by the firm as a paralegal. Mr Garside had believed Mr Robertshaw when he said this. Mr Garside accepted that he should have contacted the Law Society or referred to the Practice Rules but had not done so because of an inspection by the Law Society, pressure of work, the sale of premises in Halifax and the incorporation of the practice, all of which had taken up his time.

37. When the Law Society informed him that he should not employ Mr Robertshaw, Mr Garside told him to leave.

38. On learning of Mr Robertshaw's bankruptcy, Mr Garside had taken immediate steps to remove his name from the firm's letterhead and stationery and told his accounts staff that Mr Robertshaw was unable to administer oaths or sign any documents which might bind the firm. Mr Garside also informed his wife of the position.

39. Mr Robertshaw received no remuneration. It was proposed that Mr Robertshaw would be employed by the limited company from 2nd July but no contract of employment had been prepared. Mr Garside apologised for his oversight. He had held a Practising Certificate for twenty six years, his wife had had a Practising Certificate for nine years and both of them had unblemished professional records.

40. Once Mr Garside had discovered the position, Mr Robertshaw remained in the office no more than eight and a half days, during which time he was not held out as a solicitor and did not receive any remuneration.

41. Following authorisation and notification given to Mr Garside an inspection of his books of account was commenced by the Law Society on 12th August 2002. The inspection was terminated on 19th August 2002 and the Investigation and Compliance Officer (the ICO) prepared a Report dated 30th August 2002 which was before the Tribunal

42. The Report questioned Mr Garside's failure to supervise the firm. In February 2002 Mr Garside had been signed off work by his doctor and had attended the office only occasionally since that time. He attended twice during the course of the inspection and on 19th August advised the ICO that he was not well enough to talk to him about matters relating to the accounts.

43. In Mr Garside's absence the office was left in the hands of JB a solicitor qualified for four years. NK a solicitor who qualified in March 2002, a cashier and two secretaries were also at the firm. During JB's absence on holiday Mr Garside told the ICO he had attended the office to supervise NK and although he checked the incoming post he spent no time with NK.

44. JB said that she had never agreed to supervise the practice in Mr Garside's absence. She had been asked to check the incoming post in the morning and did little more by way of supervision. She did not feel able to supervise NK's work. She had been given no authority over the accounts staff or other staff. She did not understand the accounts. Files were not reviewed and outgoing post was not checked.

45. Mr Garside told the ICO that owing to his ill health he was not fit to run the practice. His doctor had told him not to practise law and he had taken that advice. Although he did some work from home he attended the office only rarely to oversee the accounts department.

46. NK undertook work in limited areas and considered that he needed no supervision.

47. The ICO reported upon breaches of the Solicitors Accounts Rules.

48. As at 31st July 2002 the practice operated one general client account, three designated deposit accounts and one office account. Mr Garside also operated a business account which was a "hangover" from his firm prior to its incorporation.

49. The books of account were not in compliance with the Solicitors Accounts Rules in that although a list of liabilities to clients as at 31st July 2002 totalling £91,285.03 was in agreement with the balances in the client ledger, there were further liabilities to clients totalling £6,482.26, which were not shown by the books. The total of liabilities to clients was £97,767.29 and cash available was £91,192.53 revealing a cash shortage of £6,574.76.

50. The cash shortage was caused by money wrongly paid into or retained in office bank account (totalling £6,482.26) and overpayments or over transfers from client account to office account totalling £92.50.

51. Transfers were made to correct the overpayments or over transfers on client account totalling £92.50. No action was taken to remedy the shortage caused by the wrongful retention of monies in office bank account totalling £6,482.26. There were eleven credit balances in office account ranging from £4 to £2,980.23.

52. The ICO made reference to the matters of KLG and MH.

53. Mr Garside acted on behalf of KLG, a minor, in a claim for personal injuries against a local authority. KLG had the benefit of Legal Aid. The matter was settled by negotiation with an agreement for £8,500 damages plus costs.

54. The defendant's solicitors sent cheques totalling £5,550 to Mr Garside on 1st March 2002. That sum included costs and disbursements to be recouped by the Legal Services Commission and unpaid professional disbursements.

55. On 4th March 2002 a bill was raised in respect of the practice's costs totalling £2,175.50. On the same day the cashier was instructed by Mr Garside to pay all monies into office bank account. The cashier was unhappy about this and put a note on the paying-in slip to state it was done under Mr Garside's instructions. The result

of the payment into office account meant that as at 31st July 2002 £2,980.83 appeared as a credit balance in office account. This sum should have been paid into client account pending recoupment by the Legal Services Commission and the payment of professional disbursements.

56. Mr Smith, the cashier, said that Mr Garside had given him the instruction to pay the money into office account on the telephone. In his evidence, Mr Garside said he had no recollection of the matter.

57. Mr Garside and NK acted for the estate of MH and relatives. Legal Aid Certificates were issued to all members of her family to enable them to pursue claims. Two claims were successful and the estate settled one claim for £13,000 and the other for £6,000. Payments were made to the mother. A letter from Legal Services Commission dated 4th July 2000 confirmed that £1,689.83 was to be recouped. £427.27 remained in client account.

58. The ledger for the estate showed that after payments out, the sum of £1,531.13 remained on client account as at 28th July 2000.

59. A further ledger in the name of the estate showed a credit in office account of £1,077.94.

60. Thereafter the sums of £427.27 and £1,531.13, being client account balances on the mother's and the estate's ledger, were transferred to another ledger in the name of the estate together with the credit balance on office account.

61. There were no further dealings after July 2000 save that on 5th June 2001 £2,833.65 was transferred to office bank account from client account. The Respondent had asked the firm's cashier to make the transfer. The cashier did not agree with the instruction and had marked the transfer authority "per RWG". The funds transferred were either unpaid professional disbursements or monies to be recouped by the LSC or further damages due to the client. Mr Garside did not recall having given the instruction to his cashier. He had been ill and away from the office. Mr Smith, the cashier recalled having had the instruction on the telephone.

62. At the material times the firm had suffered from cash flow problems.

The Submissions of the Applicant

63. The Respondent had admitted all of the allegations.

64. The purpose of Section 41 of the Solicitors Act 1974 was to ensure that the public was protected from a struck off or suspended solicitor. The public was not so protected if a struck off or suspended solicitor were to be working in a solicitor's office and such work was permitted only with the written consent of the Law Society which enabled the Law Society to ensure that any such person employed was subject to full and reliable supervision.

65. The improper payments identified by the ICO meant that monies which under the Rules were not permitted be transferred to office account had in fact been so transferred. The transfers had been made at a time when the firm was suffering cash flow difficulties and the Tribunal was invited to conclude that such transfers had been made with a view to making money available in office account to be utilised by the Respondent or his firm or the company which he controlled for the payment of office

expenses. Such use amounted to a dishonest use by the Respondent of client money for his own purposes.

66. There was particular provision in the Solicitors Accounts Rules 1998 at Rule 22(1) as to when withdrawals could be made from client account. Rule 21 dealt particularly with the treatment of payments to Legal Aid practitioners. Rule 21(2) provided that if the Legal Aid Board (as the LSC then was) had paid any costs to a solicitor or a previously nominated solicitor in a matter or had paid professional disbursements direct and costs were subsequently settled by a third party

(a) the entire third party payment must be paid into a *client account*.
(b) the sum representing the payments made by the [Legal Services Commission] must be retained in the *client account*
(c) ----------
(d) the sum retained in the *client account* as representing Payments made by the Board must be:

(i) either recorded in the individual *client's* ledger account and identified as the Board's money
(ii) or recorded in a ledger account in the Board's name and identified by reference to the *client* or matter
(iii) and kept in the *client account* until notification from the board that it has recouped an equivalent sum from subsequent Legal Aid payments due to the *solicitor.* ----------

67. Mr Garside suggested that the applicable Rule was Rule 19, which required a sum of money comprising a mixture of client and office money to be paid into client account which provided that mixed funds should be paid into client account and the office money should be transferred out of client account within fourteen days of receipt was not applicable.

68. The Applicant invited the Tribunal to take the view that the Respondent had authorised the transfer of funds from client account to office account to meet his own needs. The Tribunal was further invited to apply the test in Twinsectra -v- Yardley which might be summarised as follows:-

> "Definition of Dishonesty (Twinsectra -v- Yardley 2002 UKHL 12)
> Lord Hutton at page 387
> Dishonesty requires knowledge by the (Respondent) that what he was doing would be regarded as dishonest by honest people, although he should not escape a finding of dishonesty because he sets his own standards of honesty and does not regard as dishonest what he knows would offend the normally accepted standards of honest conduct.
> Head note at page 377
> A (Respondent) would not he held to be dishonest unless it was established that his conduct had been dishonest by the ordinary standards of reasonable and honest people and that he himself had realised that by those standards his conduct was dishonest. Thus, in equity, a person could not escape a finding of dishonesty because he set his own standards of honesty and did not regard as dishonest what he knew would offend the normally accepted standards of honest conduct".

69. The Tribunal could make a finding of dishonesty or it could find allegation 5 to have been substantiated without a finding of dishonesty. It was also open to the Tribunal to

make a finding that the Respondent had been reckless bearing in mind the following definition of recklessness:-

> "The Respondent failed to give any thought or any proper thought as to whether or not there was a risk of harmful consequence to the client in circumstances where if any thought or any proper thought had been give to the matter it would have been obvious that there were."

The Submissions of the Respondent

70. The Respondent had suffered from serious ill health. Not only had he suffered from diabetes but he also had become mentally ill. He accepted that he must have authorised the transfers as reported by his cashier. He had no recollection of doing so. He thought it was likely he had done so on the telephone. Because he had no recollection of the matter he could not remember why he had required the monies to be transferred from client account to office account. He accepted that such transfers had been made in breach of the Solicitors Accounts Rules, although he had considered that such transfers might have been authorised by the Rules as they represented mixed funds. He had come to accept that the transfers had been made in breach of Rule 21. The Respondent had had no intention to utilise monies to which he was not entitled. He was not a dishonest person and he had not behaved dishonestly in that respect.

The Tribunal's Finding on the Question of Dishonesty

71. The Tribunal accepted that the Respondent had required the transfers from client to office account to be made as reported by Mr Smith, his cashier. Mr Smith had been in no doubt that the transfers should not have been made but considered that he had to comply with the authorisation of his employer. He had taken care to mark the transfers had been made upon the instruction of Mr Garside. The Tribunal accepted that Mr Garside had been very unwell at the material time.

72. Mr Garside had accepted that the office had not been properly supervised and the Tribunal concludes that the transfer was made in part as a result of Mr Garside's ill health, his non-attendance at the office, and the overall lack of proper supervision of the firm.

73. A finding of dishonesty would require that allegation to be proved to the highest standard of proof and the Tribunal finds that the Applicant has not discharged the burden of proof which falls upon him. The Tribunal does not find that Mr Garside had been dishonest. The Tribunal does, however, consider that the authorisation of such transfers whilst unwell and not at the office did amount to recklessness.

The Tribunal's Finding in Relation to all of the Allegations

74. The Tribunal found all of the allegations to have been substantiated, indeed they were not contested. The Tribunal confirms that having found allegation 5 to have been substantiated, it did not find in all the circumstances of this particular case that the Respondent had behaved dishonestly.

75. The Tribunal had to bear in mind that a finding that a solicitor had been in breach of Section 41 of the Solicitors Act 1974 required it to impose one of two mandatory sanctions upon such solicitor, either that he be struck off the roll or that he be suspended from practice. Looking at the broad picture and taking into account not only the breach of Section 41 but the other substantiated allegations and also taking into account the fact that Mr Garside had suffered from both physical and mental ill-

health, as was set out in medical reports placed before the Tribunal, it would be appropriate and proportionate to order that Mr Garside be suspended from practice for an indefinite period of time.

76. The Tribunal gave Mr Garside credit for the way in which he conducted himself at the hearing even though a medical report suggested that he would not be sufficiently recovered by the date fixed for the hearing.

77. The Tribunal wished to make it plain to Mr Garside that, should he make an application to the Tribunal for his indefinite period of suspension to be brought to an end, as well as indicating to the Tribunal that he was in every way fit to be a practising solicitor, the Tribunal would be likely to require expert medical evidence as to his full physical and mental recovery. Such medical evidence should include a statement by the medical expert or experts that the Respondent was fit both mentally and physically to practise as a solicitor in recognition of the fact that such practice was demanding and high-pressured.

78. The Respondent agreed that he should bear the costs of and incidental to the application and enquiry, inviting the Tribunal to order that such costs be subject to a detailed assessment unless agreed between the parties. The Tribunal agreed that this was the appropriate order and accordingly made such order.

Date this 24th day of November 2004
On behalf of the Chairman

J P Davies
Chairman