No. 8775/2003

IN THE MATTER OF BARRY ARTHUR ROBERTS, RAYMOND ALLAN TAYLOR AND CHRISTOPHER ROGER EXCELL-THOMAS, solicitors

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr S N Jones (in the chair)
Miss T Cullen
Mr M G Taylor CBE

Date of Hearing: 18th September 2003

FINDINGS

of the Solicitors Disciplinary Tribunal
Constituted under the Solicitors Act 1974

An application was duly made on behalf of the Office for the Supervision of Solicitors ("OSS") by Margaret Eleanor Bromley, solicitor of TLT Solicitors, Bush House, 72 Prince Street, BS99 7JZ on 18th March 2003 that Barry Arthur Roberts (First Respondent) of Edmund Avenue, Sheffield, (now of unknown address), Raymond Allan Taylor (Second Respondent) of Eccesall Road South, Sheffield, and Christopher Roger Excell-Thomas (Third Respondent) of Birley, Cutthorpe, Chesterfield, Derbyshire, 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 against the First Respondent were that:-

1. He failed to comply with the Solicitors Accounts Rules in that:-
   1.1. he failed to establish and maintain proper accounting systems, and proper internal controls over those systems, to ensure compliance with the Rules; to keep proper accounting records to show accurately the position with regard to the money held for each client and each controlled trust;
   1.2 he made false entries in client account namely an entry of £94,000 on or about January/February 2001 and an entry of £150,000 on 4th December 2000.

1.3 he utilised the funds of one client for the benefit of another client.
1.4 he failed to remedy a breach of the Rules promptly upon discovery.

2. He had been guilty of conduct unbefitting a solicitor in that:-
2.1 he gave misleading information concerning his practice to the OSS;
2.2 he conducted professional business through a sham partnership;
2.3 he continued to act for two clients, Mr B and IL Ltd where there was a conflict of interest between them;
2.4 he misled his client Mr B;
2.5 he acted for Mr B when his own interests conflicted with the interests of his client;
2.6 he failed to comply with an undertaking dated 20th September 2001 given on behalf of Roberts & Co;
2.7 contrary to Section 41 of the Solicitors Act 1974 he employed in connection with his practice Patricia Brown, a person whose name had been struck off the Roll of Solicitors, without the written permission of The Law Society;
2.8 contrary to Section 41 of the Solicitor's Act 1974 he employed in connection with his practice Christopher Excell-Thomas, a person whose practising certificate was suspended while he was an undischarged bankrupt, without the written permission of The Law Society.

3. The allegations against the Second Respondent were that he had been guilty of conduct unbefitting a solicitor in that:-
3.1 he failed to comply with an undertaking dated 20th September 2001 which he signed as a partner on behalf of Roberts & Co;
3.2 he failed to take adequate steps to ensure that his name was not held out as a partner in a sham partnership.

4. The allegation against the Third Respondent was that he had been guilty of conduct unbefitting a solicitor in that he practised uncertificated.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London EC4M 7NS on 18th September 2003 when Margaret Eleanor Bromley, solicitor of TLT Solicitors, Bush House, 72 Prince Street, BS99 7JZ appeared as the Applicant, the Second Respondent was represented by Mr McAllistair of Counsel. The First and Third Respondents did not appear and were not represented.

The evidence before the Tribunal included the oral evidence of Mr Philip Chadwick.

Prior to the hearing the Tribunal heard evidence of service upon the First and Third Respondents and declared itself satisfied that service had been duly effected.

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

The Tribunal Order that the Respondent, Barry Arthur Roberts of address unknown, (formerly of Edmund Avenue, Sheffield) solicitor, be Struck Off the Roll of Solicitors and they further Order that he do pay the legal costs of and incidental to this application and enquiry fixed in the sum of £5,325.95p together with the costs of the Investigation Accountant fixed in the sum of £1,788.10.

The Tribunal Order that the Respondent, Raymond Allan Taylor of Ecclesall Road South, Sheffield, solicitor, be prohibited from having his name restored to the Roll of Solicitors except by Order of the Tribunal and they further Order that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £2,662.98.

The Tribunal Order that the Respondent, Christopher Roger Excell-Thomas of Birley, Cutthorpe, Chesterfield, Derbyshire, solicitor, be suspended from practice as a solicitor for an indefinite period to commence on the 18th day of September 2003 and they further Order that he do pay the legal costs of and incidental to this application and enquiry fixed in the sum of £887.66.

[Note: the Order erroneously referred to this Respondent as Christopher Robert Excell-Thomas].

The facts are set out in paragraphs 1 to 109 hereunder: -

1. The First Respondent born in 1944 was admitted as a solicitor in 1977 and his name remained upon the Roll of Solicitors.

2. The First Respondent practised on his own account under the style of Roberts & Co from about September 1996 until about 1998 when he was joined in partnership by Mr M. Mr M resigned as a partner in August 2001.

3. The Second Respondent born in 1952 was admitted as a solicitor in 1979. His name had been removed from the Roll of Solicitors in June 2003 under automatic administrative procedures.

4. The Second Respondent worked at the office of Roberts & Co for an unknown period. He maintained that he worked there only from 17th September 2001 to 21st September 2001.

5. The Third Respondent born in 1943 was admitted as a solicitor in 1968 and his name remained upon the Roll of Solicitors. At all material times the Third Respondent was employed as an assistant solicitor by the First Respondent. The Third Respondent was made bankrupt on 18th September 2001.

6. An inspection of the First Respondent's books of accounts took place by an Investigation Officer of the OSS. The inspection started on 11th December 2001. A copy of the resulting Report dated 16th January 2002 was before the Tribunal. The Report noted the matters set out below.

   Allegation that the First Respondent failed to establish and maintain proper accounting systems and proper internal control over those systems to ensure compliance with the Rules; to keep accounting records to show accurately the position with regard to the money held for each client and each controlled trust

7. The client account reconciliation showed an outstanding lodgement of £244,000. The Investigation Officer was informed that this purported credit into client bank account had never been traced to any client account bank statement.

8. The client account reconciliation also showed an item with the narrative "difference on balance b/f" of £30,400.42. This appeared to be made up of differences on balances brought forward by the firm's bookkeeper, Mr RS.

9. The client matter listing showed 334 overdrawn (debit) client balances.

10. The total client balance, as shown by the client matter listing, was £2,678,116.06 overdrawn.

11. The client account bank reconciliation listed 570 items which appeared on the client account bank statements, cheque book stubs or paying-in slips which had not been posted to individual client account ledgers. The client details did not appear to have been identified for 61% of these items.

12. In view of the foregoing the Investigation Officer was unable to express an opinion as to whether or not the funds held on client bank and building society accounts was sufficient to meet the firm's liabilities to clients. The First Respondent agreed with this assessment and also agreed that a minimum cash shortage of £30,724.75 existed (see paragraph 23 below).

13. On 31st January 2002, the firm was intervened into. Mr F, Senior Investigation Officer, attended the intervention and had a meeting with the First Respondent at which various matters relating to the accounts were discussed. A note of the conversations was before the Tribunal.

Allegation that the First Respondent made false entries in client account namely an entry of £94,000 on 2nd January 2001 and an entry of £150,000 on 4th December 2000

14. In the course of a conversation between Mr F and Mr RS, Mr RS identified two false entries in client account namely the £94,000 on 2nd January 2001 in the matter of O and the £150,000 in the client ledger for IC. In response to a question from Mr F "Who instructed you to do this?" Mr RS said:-

> "On the £150K I told Barry and he said we were due money from J R Residential so I put it through but the money never came in. In the case of the £94K I spoke to Jackie and she showed me that £94K and I did not realise it had been used as an advance."

15. Mr F also spoke to the First Respondent about the £244,000. In response to a question "What about the £150K?" the First Respondent said:-

> "There was supposed to be £150K coming in from J R Residential, PA, it came in by cheque but seems not have been paid in."

16. In a letter to the OSS of 28th January 2002 the First Respondent stated in respect of the lodgement of £94,000:-

> "It followed monies coming into our client account on two separate occasions and being returned to Intelligent Finance on two separate occasions when completion was delayed. The end product was that the transaction was

> completed without the monies coming in from Intelligent Finance on the third occasion and as appears from our letter to them of 14th January 2002, a copy of which is attached hereto, we are pressing Intelligent Finance for its return."

17. In respect of the balance of £150,000 the First Respondent stated the following:-

> "As to the balance, we are conducting the search for the same and I understand from my cashier, RS, that this and all the other outstanding items will be resolved within the next two weeks."

Allegation that the First Respondent utilised the funds of one client for the benefit of another

18. The Respondent acted in the purchase of a property in Barnsley on behalf of Mr S.

19. The completion of Mr S's purchase took place on 23rd November 2001. On that date the sum of £32,500 was transferred to the seller's solicitors, Tierney & Co. The Respondent had received from the purchaser payment of £1,775.25. However the mortgage advance from Abbey National Building Society had not been received.

20. The authority to remit funds completed by the Respondent indicated that payment was dependant on receipt of an electronic payment which was due in that day from Abbey National.

21 However the sum of £32,500 was sent out to Tierney & Co notwithstanding that the money from Abbey National was not received.

22. The Respondent subsequently contacted Abbey National and on 23rd January 2002 the Abbey National forwarded the sum of £32,475.

23. There was therefore a shortage on client account in respect of this matter in the sum of £30,724.75 (£32,500 - £1,775.25) from 23rd November 2001 until January 2002. In a conversation with Mr F the First Respondent accepted that in order for completion to have taken place then other clients' funds must have been utilised. He put the error down to poor accounting systems.

24. The Respondent acted for the purchaser and the lender in respect of the purchase of a property in Redhill, Surrey. Completion took place on 22nd February 2001.

25. At the date of completion, the mortgage advance from Intelligent Finance in the sum of £94,000 had not been received.

26. On 22nd February 2001, the sum of £105,000 was sent to John Foster Pegg solicitors in respect of completion. Other clients' money was therefore used to fund the purchase monies.

27. On 14th January 2002, The First Respondent wrote to Intelligent Finance stating:-

> "There has been a situation whereby you have not paid over to us any mortgage funds and yet we have completed the purchase and you are

> registered as the chargor over the above title and are in possession of the title deeds and documents."

Allegation that the First Respondent failed to remedy breaches of the Rules promptly upon discovery

28. The First Respondent was asked by the Investigation Accountant whether he was able to replace the minimum cash shortage in respect of the S matter in the sum of £30,724.75. He said he was unable to do so from his own funds. Payment was not received from Abbey National until 23rd January 2002.

29. In the course of his conversation with Mr F on 31st January the First Respondent confirmed that he was unable to replace the £94,000 relating to the O matter.

Allegation that the First Respondent gave misleading information concerning his practice to the OSS and that he conducted professional business through a sham partnership

30. At the start of the inspection on 11th December 2001, the First Respondent gave the Investigation Officer details of his professional history. He said inter-alia that the Second Respondent joined the firm as a partner in August 2001 replacing Mr M who had been a partner for approximately three years.

31. The Second Respondent was not present at any stage during the inspection and the Investigation Officer's contact was only with the First Respondent.

32. On 25th January 2002 the OSS wrote to the First Respondent sending a copy of the Report and asking for his comments. The letter concluded:-

> "a similar letter is being sent to your partner Mr Taylor, and former partner Mr M."

33. A copy of the letter was addressed to the Second Respondent at Roberts & Co's DX addressed in Sheffield.

34. In October 2001 the First Respondent had written to the Head of Case Work Standards at The Law Society in connection with another matter. He first acknowledged receipt of a letter "addressed to myself, my former partner Mr M and my new partner Mr Taylor". He went on to say:-

> "Mr Taylor has played no active part in the practice until he recently became a partner and if there should be any form of disciplinary proceedings, then it is my submission that neither Mr M nor Mr Taylor be subjected thereto."

35. On 30th October 2001 the Second Respondent had written to the First Respondent saying:-

> "I am not and never have been a partner in your firm and whilst negotiations have been ongoing they have never been finalised."

With that letter he returned the keys to the office. That letter was copied to The Law Society.

36. On 9th November 2001 the First Respondent wrote again to The Law Society on notepaper on which the Second Respondent was shown as a partner. He repeated his assertion that the Second Respondent had not played any active role in the failure of the practice. However he did not at any stage make it clear that the Second Respondent was not in fact a partner.

37. On 28th January 2002 the First Respondent wrote to the OSS on notepaper on which the Second Respondent was shown as a partner and on 14th January 2002 he had written to Intelligent Finance on notepaper on which the Second Respondent was shown as a partner.

38. On 13th March 2002 the Second Respondent forwarded to The Law Society an Affidavit sworn by the First Respondent. The Affidavit stated:-

> "Mr Taylor is not, was not and never has been a partner in the law firm of Roberts & Co."

39. In the course of his interview with Mr F, the First Respondent said that the Second Respondent was not a partner. In response to the question "Was it a name only to get on the bank/society panels?" The First Respondent replied "With hindsight, yes."

<u>Allegations that the First Respondent continued to act for Mr B and IL Limited when there was a conflict of interest and that he misled Mr B</u>

40. This matter was dealt with in the Report of the Investigation Accountant and in a letter from Hartley Linfoot & Whitlam dated 27th July 2001 which was appended to the Report.

41. The firm (the First Respondent) acted for both Mr B and IL Ltd.

42. On 6th September 2000 the First Respondent wrote to Mr B stating that in return for Mr B loaning the sum of £250,000 to IL Ltd he would receive interest and that the loan would be secured on three separate properties.

43. The First Respondent in the letter to Mr B of 6th September 2000 set out the lending terms and parameters. These included:-

> "(i) You will take a second charge over the freehold property known as H….. House, H…… Street, Liverpool….That will stand as a second charge behind the first charge lending to Primescot Limited under and by virtue of a charge dated 1st September 2000.
> (ii) You will take a first charge over the property situate and known as the G…….P…… Club… which is owned by IC.
> (iii) You will take a second charge over the property situate and known as The C……, S……. Drive…owned by IC."

44. The First Respondent went on to set out the repayment terms which were:-

> "The terms of the lending are to be 3% per month calculated on the full amount of the capital sum with 3% payable upon draw down and 3% payable upon the capital and which is intended to be paid over a period of two months with a minimum interest repayable over the term of £30,000."

At no stage did the First Respondent advise Mr B to take independent legal advice about the making of the loan.

45. The ledger card confirmed that the sum of £250,000 was received from Mr B on 6th September 2000 and credited to the client account in the name of Mr IC.

46. The legal charge between IC and Mr B dated 24th November 2000 recorded a loan to IC and not to IL Ltd and that the capital would be repaid six months "from the date hereof" as distinct from the two month period agreed by Mr B. The properties purportedly offered as security were not those referred to in the letter of 6th September 2000.

47. Mr B wrote to the First Respondent on 21st June 2001. In that letter he stated in respect of the loan to IL Ltd, which he described as a short term loan:-

> "It subsequently turned out when you appeared at my house in March 2001 you told me that the collateral against my loan had been changed from the initial collateral of 6th September 2000 to a new legal charge of 24th November 2000 against six pubs. I do not have to elaborate that you did this without asking whether you could change the collateral and in fact it was a fait accompli on your part."

48. In that letter Mr B gave the First Respondent until the end of June 2001 to get the matter finalised or to give him some guaranteed security and pay the interest in arrears for April, May and June.

49. The First Respondent wrote to Mr B on 22nd July 2001. In that letter he referred to a recent meeting and went on to say:-

> "I set out below details from the three sources of lending from which your loan and outstanding interest will be repaid by 10th August 2001."

50. By letter dated 27th July 2001, Hartley Linford and Whitlam who had been instructed by Mr B wrote to the First Respondent. In that letter they stated:-

> "Our client holds you entirely responsible for any loss he may suffer as a consequence of your conduct, including:
>
> (i) Whilst acting as our client's solicitor, soliciting a loan from him for the benefit of a third party, IL Ltd without advising that our client should seek independent legal advice;
>
> (ii) Your failure to obtain priority for registration of charges against the properties mentioned in your letter of 6 September 2000;

(iii) Your failure to register charges against the said properties;

(iv) Your arbitrary action when informing our client that this loan would be secured against the alternative properties set out in a purported legal charge dated 24 November 2000;

(v) Your failure to obtain priority for registration of charges against the properties mentioned in the first schedule to that document;

(vi) Your failure to register charges against the said properties;

(vii) Your failure to inform our client of an agreement dated 14 May 2001 purporting to transfer the said properties to a company, T Limited in which you are shown as holding one half of the equity and act as company secretary without reference to our client's interest under the charge dated 24 November 2000;

(viii) Your failure to comply with several verbal undertakings to our client that repayment of this loan would be made on diverse dates."

51. The First Respondent replied by manuscript letter dated 2nd August 2001 in which he said:-

> "I accept all that you say therein and am using all my endeavours to repay Philip's lending plus interest."
>
> Philip is aware of the various sorts of funding from which he will be repaid in full together with interest."

52. As confirmed in the letter from Hartley Linfoot and Whitlam of 27th July 2001 and by Office Copy Entries which were before the Tribunal the First Respondent failed to register the charges as set out in his letter of 6th September 2000 to Mr B. Neither did he register the charges set out in the legal charge dated 24th November 2000.

53. The Respondent was appointed as a Director of IL Ltd on 6th September 2000.

54. IL Ltd entered into administrative receivership in April 2001.

55. In their letter of 25th January 2002, the OSS asked the First Respondent about the loan of £250,000. In particular they asked:-

> "(i) By acting for PB and IL Ltd do you not consider that there is a conflict of interest?
>
> (ii) Why did you not advise Mr B that he should seek independent legal advice before agreeing to loaning the sum of £250,000 to IL Ltd?
>
> (iii) Why does the loan of £250,000, despite written assurances, not have any security attached to it?"

56. In his reply of 28th January 2002 the First Respondent said:-

> "(i) With hindsight. Yes.
>
> (ii) With hindsight. Yes.
>
> (iii) For the reasons set out in my reply to Mr F and Mr H as detailed in items 29 and 30 of the Forensic Investigation Report."

57. The OSS wrote again to the First Respondent on 20th June 2002 having received a complaint from Hartley Linfoot & Whitlam on behalf of Mr B. The First Respondent did not reply to that letter.

Allegation that the First Respondent acted for Mr B when his own interests conflicted with the interests of Mr B

58. On 12th February 2000 the First Respondent sent a fax to Mr B in the following terms:-

> "In consideration of your loaning to me the sum of £15,000 to purchase shares…I undertake to repay such sum:-
>
> 1. On the sale of such shares
>
> 2. By 31st December 2000.
>
> Whichever shall be the sooner.
>
> I also agree that until such sale the shares shall remain the property of PB."

The First Respondent did not advise his client to obtain independent legal advice before entering into the loan arrangement.

59. In his letter of 21st June 2001 Mr B referred to this loan of £15,000. He made it clear that he wanted the loan repaid along with the various other debts or investments.

60. In their letter of 27th July 2001 Hartley Linfoot and Whitlam referred to this loan in the following terms:

> "There is also the matter of the personal loan you secured from our client on 12th February 2000, this is in the sum of £15,000 with interest due on or before 31st December 2000. Your personal liability is compounded by additional factors:-
>
> (i) Whilst acting as our client's solicitor, you failed to advise him that he should obtain independent legal advice before entering into the loan arrangement;

(ii) You failed to provide that our client's financial interest was properly secured and/or that the loan was subject to interest at a commercial rate."

61. The letter went on to demand repayment of the personal loan in the sum of £15,000.

62. The First Respondent's reply of 2nd August 2001 accepted all that was said in the letter of 27th July.

63. The sum of £15,000 was repaid at the end of August 2001.

Allegations of Breaches of Section 41 of the Solicitors' Act 1974
Patricia Brown

64. On 23rd April 2001 the OSS wrote to the First Respondent indicating that they had received information that the First Respondent was employing Patricia Brown who was struck off the Roll of Solicitors on 5th April 1994.

65. Mrs Brown responded by letter dated 30th April indicating that she was not employed as a solicitor by Roberts & Co but as a clerk.

66. The First Respondent replied by letter dated 1st May 2001 in which he confirmed that he was aware that Mrs Brown was the subject of disciplinary proceedings. He went on to say that his understanding was that he did not require permission in order to employ her as a clerk.

67. On 10th May the OSS wrote again to the First Respondent pointing out that he must not continue to employ Mrs Brown until he received permission from the OSS.

68. On 25th May the First Respondent forwarded to the OSS an application form for the necessary permission. In that letter he stated that Mrs Brown commenced part time employment with his practice in May 1999.

Christopher Excell Thomas
Allegation of practising uncertificated

69. On 18th September 2001, a Bankruptcy Order was made in the Chesterfield County Court against the Third Respondent on the petition of the Royal Bank of Scotland.

70. As a result of the Order, the Third Respondent's practising certificate was automatically suspended.

71. On 23rd October 2001 a case worker from the OSS telephoned the Third Respondent at Roberts & Co. The case worker informed the Third Respondent that the OSS had been informed that he had been made bankrupt. The Third Respondent confirmed that he was aware of the Bankruptcy Order and stated that he was going to write to the OSS about the matter. He confirmed that his employers were aware of his bankruptcy. The Third Respondent was informed that he was practising uncertificated and that his practising certificate was automatically suspended as a result of his bankruptcy. He was told to cease his employment with Roberts & Co.

He was advised that if he wished to continue to practise then he would need to write to the OSS to request the lifting of the suspension on his practising certificate. The Third Respondent confirmed that he would be taking immediate action to deal with the matter. The Third Respondent did not apply to the OSS to request the lifting of the suspension on his practising certificate.

72. On 13th December 2001 a case worker from the OSS rang the firm of Roberts & Co and asked to speak to the Third Respondent. He was informed that the Third Respondent was engaged with clients. The case worker was informed that the Third Respondent worked at the office at 450 Abbeydale Road.

73. On the same date, The First Respondent rang the OSS. In the course of that conversation the First Respondent confirmed that he was aware of the Third Respondent's bankruptcy. The First Respondent was informed that he should no longer continue to employ the Third Respondent and that if he continued to do so he would continue to be in breach of Section 41 of the Solicitors' Act.

74. On 14th December 2001, the OSS wrote to the First Respondent confirming the telephone conversation of the previous day and asking for his explanation within 14 days for employing a solicitor who was without the benefit of a current practising certificate.

75. On the same date the OSS wrote to the Third Respondent asking for his explanation within 14 days.

76. On 27th December the First Respondent sent a fax to the OSS acknowledging receipt of the letter of 14th December and indicating that he would respond in full early in the New Year.

77. On 18th January the OSS wrote again to the First Respondent as they had not received a reply. On the same date they wrote to the Third Respondent who had also not responded to the letter of 14th December. No reply was received from the Third Respondent.

78. On 28th January 2002 the First Respondent responded to the OSS. In that letter he acknowledged that he had known of the Third Respondent's bankruptcy but said that he had not known for some time. The First Respondent maintained that he did not in fact employ the Third Respondent but that he was engaged as a self-employed consultant.

79. On 8th October 2002 the matter was considered by an adjudicator and it was resolved to refer the matter to the Disciplinary Tribunal. The First Respondent and the Third Respondent were informed of the decision by a letter dated 14th October 2002.

<u>Allegation of Breach of Undertaking</u>

80. Roberts & Co acted for IC and AC and their partnership, NWL. Mr and Mrs C and NWL were subject to Voluntary Arrangements. Mr PF of BKR Haines Watts was the joint supervisor of the Voluntary Arrangements of both Mr and Mrs C and NWL.

81. Amongst other conditions under the Voluntary Arrangements Mr and Mrs C were required to make monthly contributions and also to ensure that current creditors were paid as and when their liability to them fell due. By September 2001 there were arrears of £74,000 under the Voluntary Arrangements and rent arrears to Liverpool City Council in the sum of £36,000.

82. The supervisor indicated that he would issue Certificates of Default which would lead to bankruptcy petitions being issued against the debtors.

83. On 29th and 30th August 2001 Roberts & Co wrote to Liverpool City Council and to the supervisor undertaking to pay the sums outstanding following a refinancing package. The undertakings were unacceptable.

84. Following a meeting of the Creditors' Committee on 30th August, the supervisor was instructed to write to Roberts & Co advising that unless he received payment of the sum of £66,000 before 14th September 2001 and Liverpool City Council were paid £36,000 by the same date, the supervisor was immediately to issue Certificates of Non-Compliance and then issue bankruptcy petitions against Mr and Mrs C. Roberts & Co were advised that the only acceptable alternative would be an unconditional irrevocable solicitor's undertaking to pay those sums. The supervisor wrote in those terms on 11th September.

85. On 19th September a form of undertaking was drafted by the supervisor's solicitors, Bermans, and forwarded to the supervisor who in turn forwarded it to Roberts & Co.

86. Mr Chadwick, a partner of Mr PF at BKR Haines Watts, contacted Roberts & Co after the draft undertaking had been forwarded to them. Mr Chadwick spoke to the Second Respondent whom he was told was a partner and explained the situation, specifically that he required the undertaking to be signed and returned. At the time the First Respondent was in Spain. The Second Respondent advised Mr Chadwick that he would arrange for the undertaking to be faxed to the First Respondent who would sign and return it. In fact the undertaking was signed by the Second Respondent as a partner on behalf of Roberts and Co and returned to the supervisor on 20th September 2001.

87. The undertaking included the following terms:-

> "(i) To discharge the arrears of contributions outstanding under the arrangements currently standing at £74,000 by 31st October 2001, together with whatever further sums become due and owing by 31st October 2001.
>
> (ii) To discharge rent and rate arrears currently outstanding to Liverpool City Council in the sum of £36,000 by 31st October 2001 and to use our best endeavours to negotiate a satisfactory repayment proposal with regard to the balance of the sums outstanding from NWL to Liverpool City Council.
>
> We can confirm that these undertakings are given by the firm and partners of Roberts & Co in a professional capacity and in the knowledge that in the event

> that payment of the above sums is not made by 31st October 2001, this firm and its partners will become personally liable to discharge those sums."

88. Payments were due under the undertaking by 31st October 2001. On that date Mr Chadwick contacted Roberts & Co to enquire as to why payment had not been made. He spoke to the Second Respondent and was advised that the undertaking was not valid as he had not signed it. Mr Chadwick then contacted Bermans, and Bermans immediately wrote to Roberts & Co requesting that either the First and Second Respondents provide a facsimile that afternoon confirming the authenticity of the undertaking of 20th September and confirming that payment of the sums due under the undertaking would be made forthwith or, alternatively, written confirmation that they considered that the undertaking of 20th September was fraudulent and providing an explanation as to how that document emanated from the office of Roberts & Co.

89. Upon receipt of that letter the Second Respondent spoke to Mr Chadwick again and confirmed that the undertaking was valid and that he had signed it.

90. Payments were not made in accordance with the undertakings and proceedings were taken against both the firm and partners, the First and Second Respondents personally. The petition against the Second Respondent was dismissed on 25th June 2002 on payment by the Second Respondent of £30,000.

91. On 9th November 2001 Bermans complained to the OSS about the breach of the undertaking by Roberts and Co and the First and Second Respondents.

92. On 7th December 2001 the OSS wrote to the First Respondent and separately to the Second Respondent requesting a detailed response within two weeks. No reply was received to that letter and the OSS wrote again on 8th January 2002 to the First Respondent and to the Second Respondent.

93. On 22nd January 2002 a case worker at the OSS received a telephone call from the Second Respondent giving a new contact address. The Second Respondent said that he had only gone into the office for a week, did not like it and left.

94. The Second Respondent wrote to the OSS on 24th January 2002 when he indicated that he could not remember signing the undertaking but confirmed that the date of the undertaking coincided with the First Respondent's vacation in Spain. He also referred to speaking to an accountant in London regarding the undertaking and informing him that he could not remember signing it.

95. On 28th January 2002 the First Respondent wrote to the OSS saying that the letter of complaint had not been enclosed.

96. The OSS wrote to the First Respondent again on 7th and 25th March 2002. No reply was received to those letters.

97. On 10th July 2002 the OSS wrote to the Second Respondent enclosing a draft Report which had been prepared for formal adjudication. A copy of the Report was also sent to the First Respondent.

98. The Second Respondent responded by an undated letter received on 19th July 2002. In that letter he said:-

> "I can say that I have no recollection of signing the undertaking dated 20th September 2001. I have seen the document but cannot recall it at all. I note that it bears my signature and am prepared to concede that this is indeed my true signature Obviously I cannot have read the letter presented to me for signature, otherwise I would not have been prepared to sign it. If the letter had borne the heading "undertaking" I would have been more careful to check the contents of the letter."

99. The Second Respondent went on to accept that he was effectively holding himself out as a partner of the practice by signing the undertaking in the terms that he did.

100. On 1st August 2002 Bermans wrote to the OSS updating them as to the current position in the proceedings against the firm and the individual partners. Bermans confirmed:-

> "I can confirm that Mr Taylor made an offer of settlement to my client in relation to his liability. The offer was significantly less than the value of the undertaking, however, given Mr Taylor's apparent lack of means, the offer was accepted."

The letter continued:-

> "Pursuant to the terms of the undertaking, my client had an expectation that Roberts & Co would remit the sum of £118,000. That was not the case and therefore my client's complaint still stands."

101. The payment made by the Second Respondent in settlement was in the sum of £30,000.

102. In the course of the bankruptcy proceedings the First Respondent served an Affidavit in which he stated:-

> "Mr Taylor is not, was not and never has been a partner in the law firm of Roberts & Co."

<u>Allegation of failure by the Second Respondent to take adequate steps to ensure that his name was not held out as a partner in a sham partnership</u>

103. The Second Respondent's name first appeared on the notepaper of Roberts & Co in June 2001.

104. In his letter of 15th May 2002 to the Applicant the Second Respondent stated:-

> "It may be of interest to you to know that my name had previously been put on the letterhead by Mr Roberts without my consent in June after the resignation of Mr M. I discovered this when The Law Society telephoned me at home to

> ask me if I was practising uncertificated which, of course, I was not. I told Mr Roberts to remove my name but I now doubt that he did so."

105. The Second Respondent worked at the offices of Roberts & Co on his own admission for a period of one week from 17th September 2001 to 21st September 2001. During that period he signed correspondence emanating from that firm. The notepaper at that date had the Second Respondent's name on it as a partner.

106. Mr Chadwick of BKR Haines Watts was able to contact the Second Respondent at the offices of Roberts & Co at the end of October, beginning of November 2001.

107. On 20th September 2001 the Second Respondent signed the undertaking referred to above. Under his signature the following words appeared: "Raymond A Taylor (Partner) on the (sic) behalf of Roberts & Co." From that date, if not earlier, the Second Respondent knew that he was being held out as a partner in the firm. He failed to take immediate steps to ensure that the holding out did not continue.

108. The Second Respondent's name continued to appear on Roberts & Co's notepaper into January 2002.

109. On 30th October 2001 the Second Respondent wrote to The Law Society in which he said:-

> "I have at no time signed any bank mandate forms and I have no partnership agreement or indeed any other kind of agreement with Mr Roberts and I have this morning severed all links with him and his firm."

He enclosed with that letter a copy of his letter of the same date to the First Respondent in which he said:-

> "I am not and never have been a partner in your firm and whilst negotiations have been ongoing they have never been finalised….. here are your keys to the office and copies of this letter have been sent to The Law Society….."

The Submissions of the Applicant

Allegations against the Second Respondent
Oral evidence of Mr Philip Chadwick

110. Mr Chadwick, a partner in the firm of Haines Watts, Insolvency Practitioners, confirmed that he had written the letter of 11th September 2001 to Roberts & Co referred to at paragraph 84 above. The voluntary arrangement had been in default and the supervisor was under pressure to resolve matters. Mr C had habitually been in arrears with his contribution and had also failed to meet post arrangement liabilities to Liverpool City Council. An agreement for the purchase of the equitable interest of a major asset in Spain had not been proceeded with.

111. The supervisor had had promises in the past so was unwilling to take Mr C's word. Mr C had suggested that a solicitor's undertaking be given.

112. Messrs Bermans solicitors had prepared a draft undertaking which would ensure that Haines Watts could go to the creditors' meeting with something upon which they could rely.

113. On 20th September Mr Chadwick had spoken to Roberts & Co. It had habitually been difficult to get hold of the First Respondent and Mr Chadwick was told that the First Respondent had gone to Spain for an urgent family problem. The secretary had suggested that Mr Chadwick speak to the First Respondent's partner, the Second Respondent.

114. The Second Respondent had told Mr Chadwick that he would speak to the First Respondent in Spain.

115. All of Mr Chadwick's previous dealings had been with the First Respondent. The Second Respondent had a grasp of the situation but not day to day control. Mr Chadwick had stressed the urgency of the matter and the Second Respondent had said he would fax the undertaking to Spain for the First Respondent to agree.

116. The Second Respondent subsequently said he would sign on behalf of the firm. Mr Chadwick had been told by the secretary that the Second Respondent was a partner in the firm.

117. The undertaking came back signed by the Second Respondent "as a partner". The Second Respondent could not have been in any doubt that what he had signed was an undertaking.

118. Haines Watts had relied on the undertaking in respect of the voluntary arrangements. Haines Watts had been told that 31st October was the date of Mr and Mrs C's refinancing.

119. Mr Chadwick had not had any more contact with the Second Respondent.

120. The undertaking had not been complied with and the voluntary arrangement had failed. Action had been taken against the partners of Roberts & Co to enforce the undertaking.

121. Mr Chadwick subsequently heard that the Second Respondent had intimated to Messrs Bermans that his signature was a forgery. He had later agreed that it was not a forgery but had then said that he was not a partner. In Mr Chadwick's view the Second Respondent had signed as a partner and that had been sufficient for Mr Chadwick.

122. **In cross-examination** Mr Chadwick confirmed that the draft had already stated that it was to be signed and the name printed by a partner.

123. Mr Chadwick confirmed that it was the receptionist who had referred to Mr Chadwick as a partner and Mr Chadwick had not had any reason to query this with the Second Respondent.

124. Mr Chadwick confirmed that he had spoken to the Second Respondent because the First Respondent was in Spain and not at a later date. The Second Respondent was going to act as a conduit to the First Respondent. Mr Chadwick had no knowledge of the conversation between the First and Second Respondents but had had no reason to doubt that the undertaking was signed by a partner. The Second Respondent was also on the letterhead as a partner.

125. The bankruptcy proceedings in respect of the Second Respondent had been compromised. The creditors were happy to recover as much as possible.

126. Following Mr Chadwick's oral evidence the Applicant made the following submissions in respect of the allegations against the Second Respondent.

127. The Second Respondent did not now dispute that he had signed the undertaking but in his witness statement, which was before the Tribunal he had said that it was not clear that it was an undertaking. The Tribunal was referred in that regard to the evidence of Mr Chadwick and also to the wording of the letter of 20th September 2001. Although the letter was not headed as an undertaking it stated at the end of the first paragraph "We undertake" and set out very explicitly the terms of the undertaking. The word undertaking was used four times in the body of the letter and it was clear to anyone who read it that it was an undertaking on onerous terms.

128. The Second Respondent had signed it "Raymond Taylor" as a partner. His name was also on the notepaper on which the letter was written as a partner.

129. The Second Respondent had accepted that he had seen when he came into the office during that week that his name was on the notepaper as a partner but had done nothing.

130. In the submission of the Applicant it was inconceivable that the Second Respondent did not see that he had signed as a partner and inconceivable that he did not read the letter bearing in mind his telephone conversation with Mr Chadwick on that date.

131. In his witness statement the Second Respondent had said that when he arrived at the office he was surprised to find his name on the firm's letterhead in the capacity as a partner but as the First Respondent was in Spain there was not a great deal he could do about it at the time. In the submission of the Applicant there was a great deal he should have done about it. His attitude was not the proper attitude for a solicitor. By not taking action he took part in the deception. The undertaking was not the only letter signed by the Second Respondent during that week. The Second Respondent could have crossed out his name or could have walked out. He should have taken immediate action and in failing to do so he was colluding in presenting a sham partnership to clients and others.

132. In his witness statement the Second Respondent had accepted responsibility for the undertaking and had paid the sum of £30,000. The fact remained however that this sum was substantially less than the sum contained in the undertaking. A commercial decision had been taken by the creditors to accept such sums as they could but the Second Respondent remained in breach. In a letter of 1st August 2002 to the OSS Messrs Bermans had written:-

> "My client believes that he has been prejudiced as a result of Mr Taylor's conduct. Pursuant to the terms of the undertaking, my client had an expectation that Roberts & Co would remit the sum of £118,000. That was not the case and therefore my client's complaint still stands."

133. In relation to the matter of the partnership the Second Respondent had said in his witness statement that in the Summer of 2001 he knew that the First Respondent had put his name on the letterhead as a partner and had told him to remove it. This had put the Second Respondent on notice. It had been apparent in September 2001 that his name had not been removed which placed a heavier onus on the Second Respondent to take strenuous steps when he realised that the First Respondent could not be relied on.

134. After leaving the office the Second Respondent had taken no further steps to get his name off the notepaper. His letter to the First Respondent of 30th October 2001 had not referred to removing his name from the notepaper at all. His name remained on the notepaper until the intervention. He had written to The Law Society on 30th October 2001 to say that he was not a partner but had taken no effective steps to deal with the removal of his name. In the submission of the Applicant the allegation was made out.

Allegations against the First Respondent

135. No formal response had been received from the First Respondent and the Applicant had served a Notice to Admit and Civil Evidence Act Notice. No formal counter-notice had been received.

136. In the submission of the Applicant the Accounts Rules breaches were at the most serious end of scale and were at a fundamental level. The matters referred to in the Investigation Accountant's Report were only a snapshot of the scale of problems appearing on the records of the firm.

137. There was a serious allegation of making false entries.

138. It was significant that the Investigation Accountant had concluded that he could not calculate the deficit on client account because of the state of the records.

139. The First Respondent had misled his professional body in relation to the sham partnership. He had told the Investigation Accountant that the Second Respondent had joined as a partner in August 2001 which was simply untrue. Making untrue statements to the solicitors' professional body damaged the reputation of the profession. In an interview on 31st January 2002 he had admitted that the Second Respondent was not a partner and had accepted that the Second Respondent's name had been put on the paper to enable the First Respondent to get on bank and building society panels. He had accepted in his Affidavit that the Second Respondent had not been a partner.

140. The First Respondent's actions in this regard had been deliberate and calculating.

141. With regard to Mr B, Mr B had been misled as to the circumstances of the loan to the other client. The First Respondent had betrayed the trust which Mr B had placed in him. There had clearly been a conflict and the Respondent had preferred the interests of Mr C to that of Mr B. The First Respondent had accepted the existence of a conflict in his letter to the OSS of 28th January 2002.

142. In relation to the personal loan to the First Respondent from Mr B, again the First Respondent had not told Mr B to take independent legal advice and had not stuck to the terms of the loan.

143. There were two breaches of Section 41 alleged against the First Respondent. In relation to Patricia Brown the First Respondent's explanation had been that he did not realise that employing her was wrong as she had not been employed as a solicitor. In the submission of the Applicant however as she had been struck off the Roll she could not have been employed as a solicitor in any event.

144. In relation to the Third Respondent it was clear that he had continued to work for the First Respondent for three months after his bankruptcy which had led to an automatic suspension of his practising certificate.

145. The First Respondent had said in a letter to the OSS of 28th January 2002 that he had known of the bankruptcy but not "for some time". The Third Respondent had undertaken probate and conveyancing work for the First Respondent's firm.

146. The Tribunal was respectfully reminded that the penalty for breaches of Section 41 was mandatory.

147. The allegations against the First Respondent were at the most serious end of the scale and the Tribunal was referred to the Compensation Fund claims.

Allegation against the Third Respondent

148. This had been a serious breach of the regulatory framework which was there to protect the public. The Third Respondent had chosen not to respond to the Applicant in any way.

149. In relation to costs, the Applicant submitted that the First Respondent only should bear the costs of the Report of the Forensic Investigation Unit. The Applicant submitted that it would be appropriate to apportion the Applicant's legal costs as to 60% payable by the First Respondent, 30% payable by the Second Respondent and 10% payable by the Third Respondent.

The Submissions on behalf of the Second Respondent

150. The allegations against the Third Respondent and the majority of the allegations against the First Respondent did not involve the Second Respondent. The overlap related to the undertaking and the sham partnership.

151. Unfortunately the Second Respondent was not present but the Tribunal was referred to his statement. The Second Respondent agreed in large part with the Applicant's

statement but had no recollection of a telephone call with Mr Chadwick on 19th September 2001. He recalled the telephone call with Mr Chadwick as being much later in October.

152. The undertaking had been drafted by other solicitors and faxed to Roberts & Co. In the First Respondent's Affidavit it appeared that the First Respondent had been involved with regard to the undertaking but the Second Respondent accepted responsibility in that he had signed it and that he was wrong to sign it in the capacity as a partner as he was not a partner.

153. The Second Respondent accepted that he had signed the undertaking and when he had realised that the undertaking had been breached, he had taken steps to remedy the situation by the payment of £30,000. He understood that the First Respondent had not made any payment.

154. The Second Respondent had been unaware that the document was an undertaking and considered that it must have been in a pile with a number of documents. Whether or not the conversation with Mr Chadwick had taken place before he signed, it was not inconceivable that he had not read it.

155. The Tribunal was referred to the Second Respondent's letter to the OSS received on 19th July 2002 in which he wrote:-

> "Accordingly, I came into work at Roberts & Co's offices on 17th September 2001. I clearly recall that at the time I came to the offices of Roberts & Co, Mr Roberts himself had left the country for vacation. The very reason for my coming to the offices on that date was as a favour to Mr Roberts in view of his absence from the office. In the circumstances, I was left to deal with Mr Roberts' client matters which is not the situation which I had at all envisaged at the time when I had agreed to come to take a look at the practice……
>
> I am extremely pleased to say that I was successful in my attempts to put together funds to settle the bankruptcy proceedings, which have now been withdrawn. Whilst I can recall nothing of either the undertaking or of the nature of the transaction, I was determined to try to put all matters into order.
>
> Consequently, as the bankruptcy proceedings have been withdrawn, I strongly feel that I have discharged the undertaking, although not in the strict terms given in the undertaking.
>
> I am of course aware of the true nature of a solicitor's undertaking and the strict necessity to comply with the terms of such undertakings. Whilst I reproach myself for signing an undertaking the terms of which I was not aware at the relevant time, I do consider that I have now done my utmost to discharge the terms of that undertaking, which I believe I have done under the terms of the bankruptcy proceedings issued against me, but now settled by way of payment and hence withdrawn."

156. In relation to the misleading publicity the Second Respondent had said in his statement that first he had not been aware that his name was on the notepaper and this

had been confirmed by the First Respondent in his Affidavit of 11th March 2002 in which he had written:-

> "Mr Taylor's name was put on my letterhead at my instigation and without Mr Taylor's knowledge, express or implied. I did verbally undertake to change my firm's letterheading."

157. It was true that the Second Respondent had seen his name on the letterhead in the September and he accepted with hindsight that he should have walked out. At the time he had been in a difficult situation and had done the best he could.

158. The allegation against the Second Respondent was parasitic on the transgression of the First Respondent. The Second Respondent had made efforts earlier which had come to nothing and the Tribunal was also referred to his letters of 30th October 2001 to The Law Society and to the First Respondent.

159. The Second Respondent had severed contact with the First Respondent and it was submitted that by those two letters the Second Respondent had taken sufficient steps.

160. It was further submitted in mitigation on behalf of the Second Respondent that he accepted that his breaches were serious but said that they were unintentional. He was the only Respondent who had made representations before the Tribunal. He had paid £30,000 in respect of the undertaking while the First Respondent had made no payment. Clients had been less prejudiced by the Second Respondent than by the First Respondent.

161. The Second Respondent had made some efforts although not enough in respect of the misleading letterhead. The transgression by the First Respondent in that regard had been active.

162. The Tribunal was referred to paragraph 19 of the Respondent's statement in which he had said he had severed all contact with the First Respondent as a result of what he believed was an inducement to sign an undertaking that could not be honoured by Roberts & Co.

163. The Second Respondent asked for leniency. His name was no longer on the Roll of Solicitors and he did not intend to practise again which was another example of his acceptance of his professional responsibilities.

164. Prohibition from having his name restored to the Roll was itself a serious sanction and it was asked on his behalf that there be no extra financial penalty. The Second Respondent had suffered financially and was not in work.

165. The Second Respondent had appeared before the Tribunal previously but this was not a question of repeat offences.

166. The Tribunal was asked to give credit for the cooperation of the Second Respondent in these proceedings and to bear in mind the difference between the First and Second Respondents.

The Findings of the Tribunal

167. The First and Third Respondents had not responded to the allegations. The Tribunal considered the documentation with great care noting in particular any comments made by the Second Respondent in the documentation. The appropriate notices had been served and the Tribunal found the allegations against the First and Third Respondents proved on the documents.

168. In relation to the Second Respondent the Tribunal considered the Applicant's documents and also the written statement of the Respondent and the submissions made on his behalf. The Second Respondent had admitted signing the undertaking. Although he had made efforts by making a payment of £30,000 the Tribunal was satisfied that he had failed to comply with the undertaking which he had signed as a partner on behalf of Roberts & Co.

169. In relation to the second allegation against the Second Respondent, while he had originally requested the First Respondent to remove his name from the letterhead, he had worked in the office for a week in September 2001 knowing that his name was on the letterhead and had taken no steps either during that week or subsequently to have his name removed. He was aware that he was being held out as a partner when that was not in fact the case and the Tribunal also found that allegation substantiated against the Second Respondent.

Disciplinary History of the Second Respondent

170. On the 19th October 1993 the Tribunal found the following allegations to have been substantiated against the Respondent (together with two other Respondents, his erstwhile partners), namely that the Respondent had:-

(1) acted in breach of the provisions of the Solicitors Accounts Rules 1986 in that:-

(a) contrary to Rule 12 of the Rules books of account relating to the practices of the respondents at 84A Kensington High Street, London,W8 were not produced to the Law Society's Investigation Accountant despite notices served in that regard;

(b) contrary to the provisions of Rule 3 of the Solicitors Accounts Rules received monies for and on behalf of clients which was not paid into the Respondents' client account. Further or in the alternative, contrary to Rules 7 and 8 of the Solicitors Accounts Rules, drew money from clients' account not permitted by the said Rules to be so drawn and utilised the same for their own benefit or alternatively for the benefit of other clients not entitled thereto.

(2) contrary to the provisions of Practice Rule 7 of the Solicitors Practice Rules shared or agreed to share professional fees with a party other than one permitted by the provisions of the said Rule;

(3) contrary to the provisions of Practice Rule 13 of the Solicitors Practice Rules failed to ensure that the office at Kensington High Street aforesaid was and could be reasonably seen to be properly supervised in accordance with the minimum standards laid down by the said Rule;

(4) failed to ensure that all partners held current Practising Certificates as required by Principle 2.08 of the Guide to the Professional Conduct of Solicitors alternatively failed to make adequate or proper enquiry as to the status of a person intended to be taken into partnership;

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

171. In its written Findings dated 23rd December 1993, the Tribunal considered on that occasion that all three of the Respondents were honest hardworking solicitors who had been heavily punished for what might well have been perceived as an enterprising venture. It was a sad fact that nobody whether a solicitor or a lay person was exempt from the persuasion of a determined fraudster. On that occasion the Respondent was said to be the author of his own misfortune because he did not take fundamental steps to check upon the status of Mr G. However, the failure was understandable in view of that fact that Mr G was quite well known to the Respondent who had no reason to doubt that Mr G had not been admitted as a solicitor. The Tribunal went on to warn solicitors to check the credentials of prospective employees most carefully. The Tribunal went on to say that it was because of the behaviour of Mr G that client funds had been placed in jeopardy and a very substantial claim had been made upon the Solicitors Indemnity Fund. The Tribunal said the Respondent had behaved stupidly, but the Tribunal was content that he had acted foolishly and not knavishly. He had suffered considerable financial penalty following the closure of the Kensington office.

172. At a hearing on 19th April 1996 the following allegations were substantiated against the Respondent namely that he had been guilty of conduct unbefitting a solicitor in each of the following respects in that he had:-

(a) used clients' funds for his own purposes;

(b) failed to maintain properly written books of account contrary to Rule 11 of the Solicitors Accounts Rules 1991;

(c) drawn monies out of a client account other than in accordance with Rule 7 of the Solicitors' Accounts Rules 1991 contrary to Rule 8 of the said Rules;

(d) failed to pay clients' money into a client account contrary to Rule 3 of the Solicitors Accounts Rules 1991.

173. The Tribunal in 1996 considered that the most serious matter was the fact the Respondent had received and retained
drawings drawn upon the Kensington office client account. The Tribunal was however as before able to accept that the respondent had been an honest and hardworking solicitor who had been duped by Mr G. This matter appeared to be a

continuation of the earlier unfortunate state of affairs. The Respondent's real failure in this respect was that he did not ensure that the payment from client account had been put right. It was the Tribunal's view that the acceptance of an assurance from Mr G, however well trusted that gentleman might have been, was not sufficient. Clients' funds were sacrosanct. It was inevitable that accounting mistakes might occur from time to time and if and when that did happen it was incumbent upon a solicitor to make absolutely sure that such mistakes were corrected speedily. It was a matter upon which the assurance of another could not be accepted. A responsible solicitor would always be sure that correction of the mistake was within his own personal knowledge.

174. The Tribunal in 1996 had been mindful of the very sad events which had beset the Respondent, however it could not ignore the seriousness of the breaches of the Solicitors' Accounts Rules, which followed on from an earlier finding of breaches of the Accounts Rules by the Tribunal, and the utilisation of clients' monies. The Tribunal was prepared to accept that such utilisation took place without dishonesty on the part of the Respondent. In order to mark their disquiet at what happened the Tribunal considered it appropriate to impose a suspension from practice for a period of six months upon the Respondent and further ordered him to pay the costs of and incidental to the application and enquiry to be taxed if not agreed. The Tribunal went on to recommend to the Respondent that he should go through a period of retraining and avoid working on his own account in the future.

The Disciplinary History of the Third Respondent

175. On 16th August 1979 the Tribunal found the following allegations to have been substantiated against the Respondent. The allegations were namely that the Respondent had -

(i) failed to comply with the Solicitors Accounts Rules 1975 in that he had:-

(a) notwithstanding the provisions of Rule 8 of the said Rules drawn out of a client account money other than that permitted by Rule 7 of the said Rules;

(b) failed to comply with the provisions of Section 34 of the Solicitors Act 1974 and the Rules made thereunder in that he failed to deliver to the Law Society the Accountant's Report required by the said Act and Rules within the period specified by the said Act and Rules;

(c) been guilty of conduct unbefitting a solicitor in that he:-

(i) practised as a solicitor while holding no current practising certificate;

(ii) used for his own purposes money held and received by him on behalf of clients;

(iii) used money held and received by him on behalf of certain clients for the purposes of other clients.

176. On that occasion the Tribunal considered that the Respondent had on his own

admission deliberately misapplied clients' monies and he had resorted to "teaming and lading" in an attempt to conceal the position. The Tribunal gave consideration to ordering that the Respondent be struck off the Roll, but took account of much good which had been said on his behalf and the fact that since the inspection of his books of account he had acted wisely and responsibly. On that occasion the Tribunal ordered the Respondent to be suspended from practice as a solicitor for a period of three years from 16th August 1979 and ordered him to pay the costs of the application and enquiry. The Tribunal expressed the hope that it might be possible for the Respondent to remain with his then employers.

177. On 13th January 1998 the following allegations were substantiated against the Respondent namely that he had:-

(i) failed to reply to correspondence and enquiry addressed to him by clients, other solicitors and the Solicitors Complaints Bureau alternatively failed with reasonable expedition to reply;

(ii) failed alternatively with reasonable expedition to pay Counsels' fees due;

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

178. The Tribunal in 1998 did not take into account the 1979 decision and sanction imposed by the Tribunal which had taken place many years ago. The Tribunal did however express the very great seriousness with which it regarded a solicitor's failure to respond promptly and substantively to letters addressed to him by his own professional body whether about fees or other matters. The Respondent had been guilty of a very great failing in this respect. The Tribunal had noted that the matter of Mr R was one of some complexity and was one which appeared to have been resolved, so far as Mr R was concerned, by the completion of the sale of the property. The Tribunal recognised that it was difficult to convince a client who had been badly served that he was not entitled to compensation for the bad service of a previous solicitor if the client had not suffered actual loss. The Tribunal recognised that the matter caused the Respondent considerable difficulty but that did not excuse his failure to respond to the Solicitors Complaints Bureau. Similarly, the anxiety and inconvenience caused to a client and a client's new solicitor if files properly requested were not handed over promptly was considerable. In the matter in which Irwin Mitchell complained the Respondent again failed to respond to letters addressed to him by his own professional body. In order to mark the seriousness with which the Tribunal regarded the Respondent's failures they imposed upon him a penalty of £3,500 together with costs.

Hearing on 18th September 2003

179. At the hearing on 18th September 2003 the Tribunal found on the evidence presented that the First Respondent had been dishonest. He had falsified his accounts which were also in a state of such chaos that the Investigation Accountant had been unable to calculate the liabilities due to clients. He had misled his client, Mr B, and had breached the trust placed in him by Mr B. He had preferred the interests of another client and indeed of himself above the interests of Mr B. He had misled the OSS and the public in relation to the sham partnership which he had admitted had been for the purposes of obtaining membership of bank and building society panels and he had been found guilty of breaches of Section 41 of the Solicitors' Act 1974. He had failed to comply with the undertaking of 20th September 2001 thereby prejudicing the third party who relied upon it. He had not provided any explanation or mitigation to the Tribunal. The Tribunal considered that his conduct had damaged the reputation of the profession. The public was entitled to rely on the integrity of solicitors both in relation to funds entrusted to them and in relation to undertakings given and apparent partnership arrangements. For the protection of the public the First Respondent could not be allowed to continue in practice.

180. In relation to the Second Respondent the Tribunal gave him credit for representations made on his behalf and in his statement. The Tribunal also gave him credit for the reparations he had attempted to make in respect of the breach of undertaking through his payment of £30,000. The Tribunal made no finding of dishonesty in respect of the Second Respondent but did consider that he had been careless to the point of recklessness both in signing the undertaking and in not taking urgent and active steps to remove his name from the letterhead of the First Respondent's firm from September 2001 onwards. The Respondent's name was no longer on the Roll of Solicitors and the appropriate penalty would be an order prohibiting the restoration of his name to the Roll without the consent of the Tribunal.

181. In relation to the Third Respondent again the Tribunal had before it no explanation or mitigation on his behalf. This was his third appearance before the Tribunal, although the Tribunal accepted, as had the Tribunal in 1998, that the first appearance had been many years ago. On the present occasion an allegation of practising uncertificated had been substantiated against him. The holding of a practising certificate was a crucial part of the regulation of solicitors for the protection of the public. The appropriate order would be the imposition of an indefinite suspension upon the Third Respondent.

182. In relation to the matter of costs, the Tribunal accepted the submissions of the Applicant regarding the costs of the Report and the apportionment of the legal costs between the Respondents.

183. The Tribunal ordered that the Respondent, Barry Arthur Roberts of unknown address (formerly of 6 Edmund Avenue, Sheffield, S17 4RN) solicitor, be struck off the Roll of Solicitors and they further ordered him to pay the agreed costs of and incidental to this application and enquiry fixed in the sum of £5,325.95p together with the costs of the Investigation Accountant fixed in the sum of £1,788.10

184. The Tribunal ordered that the Respondent, Raymond Allan Taylor of 301 Ecclesall Road South, Sheffield, S11 9PQ solicitor, be prohibited from having his name restored to the Roll of Solicitors except by order of the Tribunal and they further order him to pay the costs of and incidental to this application and enquiry fixed in the sum of £2,662.98.

185. The Tribunal ordered that the Respondent, Christopher Roger Excell-Thomas of Birley, Cutthorpe, Chesterfield, Derbyshire, S42 7AY solicitor, be suspended from practice as a solicitor for an indefinite period to commence on the 18th day of September 2003 and they further ordered him to pay the agreed costs of and incidental to this application and enquiry fixed in the sum of £887.66.

DATED this 26th day of November 2003

on behalf of the Tribunal

S N Jones
Chairman