

IN THE MATTER OF KENNETH ARKLEY, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

(Case 9016-2004 initially had been brought against Kenneth Arkley and [*Respondent 2*]. The allegations made against [*Respondent 2*] had been dealt with on 7th December 2004)

Mr J N Barnecutt (in the chair)
Mr LN Gilford
Ms A Arya

Date of Hearing: 27th September 2005

FINDINGS

of the Solicitors Disciplinary Tribunal
Constituted under the Solicitors Act 1974

An application was duly made by Stephen John Battersby solicitor and partner in the firm of Jameson & Hill of 72-74 Fore Street, Hertford, Hertfordshire, SG14 1BY on behalf of The Law Society on 24th March 2003 that the Respondent Kenneth Arkley solicitor of South Shields, Tyne & Wear, might answer the allegations contained in the statement which accompanied the application and that the Tribunal make such order as it thought right.

On 29th April 2004 an application was made on behalf of The Law Society by Gerald Malcolm Lynch solicitor and consultant to the firm of Drysdales of Cumberland House 24/28 Baxter Avenue, Southend-on-Sea, SS2 6HZ that Kenneth Arkley solicitor of South Shields, Tyne & Wear, 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 (it was the second application which was made also against [*Respondent 2*] which had been dealt with in part by the Tribunal on a separate earlier occasion).

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

- (i) that he practised in contravention of conditions attached to his Practising Certificate;

- (ii) that contrary to Rule 32 of the Solicitors Accounts Rules 1998 he has failed to keep accounts properly written up;
- (iii) that contrary to Rule 14 of the Solicitor Accounts Rules 1998 he has failed to keep one or more client accounts when holding or receiving client money and/or controlled trust money;
- (iv) that contrary to Rules 8 and 15 of the Solicitors Accounts Rules 1998 he has failed to pay client money and/or controlled trust money into a client account;
- (v) that contrary to Rule 4 of the Solicitors Indemnity Rules 2001 he has failed to take out and maintain Professional Indemnity Insurance;
- (vi) that he has failed to respond to correspondence from the Office for the Supervision of Solicitors.

And

- (vii) delay in dealing with clients' instructions, alternatively failing with reasonable expedition in the pursuit of the same;
- (viii) acting in breach of an undertaking given in the course of practice as a solicitor;
- (ix) acting in circumstances where there existed a conflict or potential conflict of interest;
- (x) failed to respond or respond with sufficient expedition to correspondence and enquiry addressed by the Office for the Supervision of Solicitors;
- (xi) failed to observe or sufficiently observe the provisions of Practice Rule 15 of the Solicitors Practice Rules 1990 and as hereinafter appears.

And that by virtue of each and all of the aforementioned matters ((vii) to (xi)) the Respondent had been guilty of conduct unbecoming a solicitor.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London, EC4M 7NS when Gerald Malcolm Lynch, solicitor and consultant to the firm of Drysdales, Cumberland House, 24/28 Baxter Avenue, Southend-on-Sea, SS2 6HZ appeared as the Applicant and appeared on behalf of the Applicant in the first application. The Respondent did not appear and was not represented.

At the opening of the hearing the long history of the matter before the Tribunal had been pointed out to the Tribunal. A number of adjournments had been granted because of the Respondent's ill health. Notification of the hearing on 27th September 2005 had been sent to Mr Arkley, there had been no response but the letter had not been returned by the Post Office. No further medical evidence had been produced and it was noteworthy that in one medical report there was a suggestion that Mr Arkley's health would be assisted if the disciplinary hearing were no longer hanging over his head. The Tribunal expressed itself satisfied that the hearing should continue and that Mr Arkley was aware of the allegations against him and the hearing date. He had made no counter notice to the notices served upon him under the Tribunal's rules of procedure and the Civil Evidence Acts.

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

The Tribunal Orders that the Respondent, Kenneth Arkely of South Shields, Tyne and Wear, solicitor, be suspended from practice as a solicitor for an indefinite period to commence on 27th day of September 2005 and it further orders 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.

The facts are set out in paragraphs 1 to 33 hereunder:-

1. The Respondent, born in 1954, was admitted as a solicitor in 1982. At the times material to the first application he was practising as a solicitor from his home address at South Shields, Tyne and Wear. At the time of the second application the Respondent was an assistant solicitor/consultant with the firm of McCarron & Smallcombe at 1 Beach Road, South Shields, Tyne and Wear, which position terminated on 16th November 2001. It was understood that Mr Arkley had not practised as a solicitor since that date. On 5th November 2002 The Law Society decided to intervene into the Respondent's sole practice.

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2. On 27th April 2001 the Respondent's Practising Certificate for the year 2000/1 was granted by a Law Society Adjudicator subject to the conditions that he act only as a solicitor in employment or as a member of a partnership which had been approved by The Law Society and that he was not an office holder and/or share holder of an incorporated practice and that he inform any employer/partner or prospective employer/partner of the conditions. The Adjudicator at the same time approved Mr Arkley's employment as a non practising consultant with the firm of McCarron & Smallcombe. After leaving that firm the Respondent worked as a sole principal solicitor from his home address.
3. On 2nd October 2002 an inspection of the Respondent's books of account and other documents was carried out at his home address by an Investigation Officer of The Law Society (the I.O). The Respondent explained that he had not maintained accounting records or a client account as he had not held or received clients' money. He used a personal bank account held jointly with his wife and a building society account for receiving monies.
4. The I.O ascertained that the Respondent was involved in handling client and/or controlled trust monies. In his report dated 29th October 2002 the I.O gave details of the relevant client matters falling into these categories. The Respondent admitted that he did not have Professional Indemnity Insurance in place but claimed that because of the nature of the work undertaken he did not need this. He said that he had checked the position with the Professional Ethics Department of The Law Society.
5. The Law Society had become aware that the Respondent had conduct of court proceedings in the Newcastle Magistrates Court. On 25th June 2002 an investigator from The Law Society attended the court and confirmed that the Respondent was indeed acting as advocate for a client, Mr M.H.

6. The Law Society wrote to the Respondent about these concerns on 24th July 2002 seeking an explanation. In the absence of a reply a further letter was written on 9th August 2002. The Respondent sent a “holding letter” which was received by The Law Society on 22nd August, but he did not provide any substantive response or explanation for his behaviour.
7. A Law Society I.O undertook an inspection of the books of account of McCarron & Smallcombe, commencing on 22nd May 2001. The I.O’s report dated 6th February 2003 was before the Tribunal. It led to the reference of [*Respondent 2*] to the Tribunal in his capacity as a partner. The other partner in the firm died in 2004. The Respondent was an assistant solicitor/consultant at the firm and as such was not responsible for breaches of the Solicitors Accounts Rules or the breaches of the Solicitors Practice Rules that were alleged against the principal, save for the breach of Practice Rule 15 (allegation (xi)).
8. On 28th March 2001, Mr R complained to The Law Society about McCarron & Smallcombe about a matter of which the Respondent had conduct. Mr R’s father, Mr H.R, a gentleman in his late 70s who had been resident in a nursing home, in May 2000 gave instructions with regard to the sale of his property. A purchaser was obtained; Mr H.R’s sister confirmed his instructions. The conveyancing was undertaken by the Respondent.
9. Early on in the matter, questions were raised about the capacity of Mr H.R to provide proper instructions and a medical report was obtained. A medical certificate for use in an application to the Court of Protection was also obtained. The medical opinion was that the client was capable of giving consent to the sale of the house, but was not of testamentary capacity or, accordingly, in a position to deal with the proceeds of the sale.
10. The sale was completed and the proceeds received into McCarron and Smallcombe’s account. From the proceeds of sale there were deducted costs, estate agent’s fees and a local authority charge for care home fees. The balance was placed on deposit. Mr R, the client’s son, urgently required access to the balance of the proceeds of sale to meet care home fees and other expenses.
11. As a result of pressure, the solicitors acting for the son received the balance of the proceeds of sale on 3rd April 2002 and a further sum on 14th June 2002. The first receipt was five months after the sale and the second receipt was seven months after the sale.
12. On 15th November 2000, the Respondent wrote to the client’s sister about Mr H.R’s incapacity. The Respondent had not submitted an application for the appointment of a receiver to the Court of Protection.
13. On 4th January 2001, the client’s son wrote to Mr McCarron asking for news of the Court of Protection application and querying the payment of fees. He wrote a further letter on 2nd February in the absence of response from Mr McCarron.
14. On 7th August 2002, The Law Society wrote to [*Respondent 2*] in relation to Mr R’s complaint. On the same day, a letter was sent to the Respondent raising questions of possible failure to obtain the client’s authority to act on third party instructions and failure to act in the client’s best interest where there was delay in submitting an application to the

Court of Protection. The Respondent replied on 8th August denying any misconduct. He wrote further about the matter on 1st October 2002.

15. On 17th November 2000, Messrs Spencer Ewin and Mulvihil, Solicitors of Leeds, wrote complaining about the firm. They were acting for Barclays Bank. On 16th April 1999, in a document signed by the Respondent and the late Mr McCarron, an undertaking had been given to Barclays Bank to complete a conveyancing transaction (purchase and mortgage) and to arrange all necessary stamping and registration. There had been numerous attempts by letter and telephone to contact the Respondent. He had not replied and there had been no response from the partners of the firm.
16. On 28th February 2001, The Law Society wrote to the Respondent, seeking his response. On 23rd March The Law Society drew it to the Respondent's attention that the time limit for response had expired. The Respondent wrote on 8th August to say the matter was receiving attention, and then on 28th September he replied more fully. He blamed the situation in the firm as contributing to the problem, but admitted that "I may not be blameless". He had not worked at the firm between October 1999 and May 2000 and had not been present when certain of the Bank's letters had been sent. Financial problems had meant that staff had left and work had not been done. The Respondent had signed the undertaking, but he said that the partners were responsible for honouring the same. The Respondent apologised for his failure to respond promptly.
17. On 1st May 2002, Messrs Spencer Ewin & Mulvihil wrote again to complain about the Respondent's firm. The circumstances were almost exactly similar to the earlier complaint but it related to a different property. There had been failure to observe the terms of an undertaking given to Barclays Bank, a similar failure to respond to correspondence and telephone enquiry. The certificate of title had been signed by both partners and also by the Respondent who was principally acting in the matter.
18. On 12th April 2002, Mrs O complained to The Law Society about the firm which she had instructed in a probate and administration matter. The Respondent had conduct of the matter. Mrs O alleged gross and unreasonable delay against the firm which had been instructed in June 2000 in the administration of the estate of her late brother. The complainant had received no correspondence from the firm since her initial instructions. Both she and her late husband had attended at the firm on several occasions but had been unable to see a solicitor, save on one occasion when she had met with Mr McCarron who had agreed that he would progress the matter personally. Nothing had been heard from the firm since. There had been no response to letters.
19. The Law Society wrote to the Respondent on 29th May 2002 for explanation. There was no response and letters of 18th June 2002 were sent to the Respondent (and a partner) requiring reply and drawing Principle 30.04 to their attention. The Respondent replied on 20th June. He recalled meetings with the complainant and asked that he might see a copy of the file to consider his response. He felt that, unfortunately, it was quite likely that there was delay while the file was under his control. He had not known of the Rule 15 complaint lodged. On 2nd July The Law Society sent to the Respondent a copy of the file of papers. On 8th July, Mr McCarron indicated that the complainants had agreed that the firm continued to handle the matter on the basis that no fees were charged. On 29th July, the Respondent said he could add little to his previous letter, the office was in chaos and staff demoralised. He apologised to the complainant for the delays. The matter had been

in the hands of the Respondent. Upon enquiry from The Law Society in November 2001 the firm had explained that the case was far from straightforward. There were a number of side issues which had needed attention.

20. The complainants' new solicitors, Patterson Glenton & Stracey of South Shields, wrote to The Law Society on 31st January 2002. There were questions about the competence of the Respondent when dealing with the matter. A question of access rights had arisen and the Respondent had not appeared to take any real steps to investigate the problem.
21. A letter seeking explanation was addressed by The Law Society to the Respondent on 6th June 2002. Explanation for alleged delay was sought. The Respondent replied by letter dated 30th July. He explained that the matter was complex. In September 2002, the Respondent's secretary had left the firm and was not replaced and it was difficult or impossible to have work typed. Pressure of work was also referred to. If delays were occasioned, people were demoralised by the prevailing conditions at the firm.
22. The complainants also sought interest on money they had not received. In a letter to The Law Society of 29th July 2002 the Respondent explained that post completion matters had been dealt with by another member of staff and problems had arisen when staff members left the firm.
23. Mr and Mrs H instructed the Respondent in connection with the sale of their property and a purchase in about late September 2000. Completion appeared to have taken place on 14th December of that year. The clients had instructed the Respondent to conduct the conveyancing in their purchase of a freehold property but he proceeded with the purchase of a leasehold interest. This did not come to light until after exchange of contracts in December. There was dispute as to payment of the estate agents' charges. The Respondent had advised the clients not to pay the estate agents' fee because of their alleged misrepresentation. The complainants transferred instructions to Messrs Sutton Owens, Solicitors of South Shields (subsequently known as Robson Palmer) in or about May 2001, whereafter it came to light that the transfer deed in the purchase had not been stamped or registered with the Land Registry.
24. On 14th August 2001, Messrs Sutton Owens wrote to The Law Society to complain about the firm. A large number of letters and telephone calls and threats to take action against the firm had been made before funds to pay stamp duty and Land Registry fees were received from the firm in July 2001. The stamp duty late payment penalty had been paid by the complainants. The complainants' solicitors had required a cheque for the balance due and an undertaking to be responsible for the costs, but no response had been received.
25. On 4th November 2002, The Law Society wrote to the Respondent raising questions about failure to account for the balance of the monies due, the delay in registration of title and breach of undertaking to do the same, and failure to deal with the letters and other communications. The existence of a conflict of interest was raised.
26. On 6th April 2001, Mrs C complained to The Law Society about the Respondent's firm which she had instructed in relation to divorce proceedings and her daughter had instructed the firm in connection with a road accident.

27. On 13th February 2002, The Law Society wrote to the Respondent. There was an allegation that misleading information had been given to the client and documents said to have been lodged with the Court in divorce proceedings had not been so lodged. In relation to the daughter's road accident matter, there was an apparent termination of the retainer without reasonable notice.
28. On 19th February, the Respondent wrote to say that he required sight of the file and did not believe that he had personal control of the complainant's file throughout the period alleged.
29. On 3rd July, the Respondent wrote to The Law Society denying the allegations. The client had terminated the retainer. The Respondent wrote again on 3rd July reiterating that the problem had been caused by the successor solicitors.
30. In a letter of 9th August, Mr C said that the Respondent returned none of the telephone calls made by her and that the Respondent was responsible for dealing with matters throughout, apart from a period between approximately September 1999 and February 2000.
31. After further written enquiry by The Law Society, on 4th November the Respondent replied denying allegations against him and reiterating the position taken in earlier correspondence.
32. On about 25th July 2001, the Respondent's firm accepted instructions from Mr A to act for him in a dispute with his landlord regarding an "Indian takeaway" property in Gateshead. The matter was dealt with by the Respondent. On 20th August 2002, Messrs Row & Scott, Solicitors of Newcastle upon Tyne, wrote to The Law Society to complain about the Respondent's firm on the basis that a refund of moneys paid on account of costs was due to Mr A. On several occasions the client had given cheques and cash to the Respondent but the receipts had not been recorded on the ledger accounts of the Respondent's firm. In particular, Mr A had paid £2,500 cash and a £500 cheque to the Respondent on 4th September 2001. He had been given receipts. The cheque appeared in the ledger account but the £2,500 cash did not appear.
33. The Law Society wrote to the Respondent on 4th November 2002. He replied on 5th November, explaining that there was a changeover from manual to computerised accounting and the accounts were often in disarray. The Respondent had had to pay counsel in cash. There had been an agreement that the Respondent would retain 50 per cent of fees generated in lieu of salary because of difficulty in payment. Some £700 in cash was due to him. He had given the receipt to the client. When the complainant's solicitors obtained copies of the relevant accounting records of the Respondent's firm, only the payments made by cheque had been recorded.

The Submissions of the Applicant

34. In connection with the first application (to which allegations (i) – (vi) related) the facts placed before the Tribunal spoke for themselves.
35. With regard to the allegations contained in the second application (allegations (vii) – (ix)) the Respondent had been responsible for failures in the conduct of Mr H.R's matter. Mr

H.R was an elderly man in a care home. The Respondent had had conduct of the matter in his capacity as an assistant solicitor. He had delayed in making application to the Court of Protection to enable the disposal of the net proceeds of sale of the property to take place. The funds were urgently needed. The failure amounted to a breach of Practice Rule 1.

36. Two complaints had been made against the Respondent relating to matters where he had been acting for Barclays Bank. The Respondent had failed to comply with undertakings given in the course of his practice as a solicitor and there had been a failure to operate a complaints handling procedure in breach of Practice Rule 15. There had been failures to respond promptly to correspondence.
37. The Respondent had been guilty of gross and unreasonable delay in dealing with the probate and administration of the estate of Mrs O's late brother. The way in which the client's complaint had been handled had amounted to another failure to comply with Practice Rule 15.
38. The Respondent had been guilty of further gross and unreasonable delay in a conveyancing matter.
39. In connection with the matter of Mr and Mrs H, the Respondent had been instructed in connection with a purchase of a freehold property and had proceeded with the conveyancing in connection with a leasehold interest. In that matter the Respondent failed to follow his client's instructions and acted in breach of undertaking by failing to proceed with the purchase of a freehold interest and failing to stamp or register the transfer. He failed to reply to correspondence and continued to act where there was a potential conflict of interest. The potential conflict of interest arose when it became clear that he might have been regarded as being negligent in failing to secure the appropriate title. The Respondent had failed to reply to correspondence from the complainant's solicitors and in this matter also failed to deal promptly and substantively with correspondence addressed to him by The Law Society.
40. In the matter of Mrs C (her divorce and her daughter's road traffic accident) the Respondent unreasonably delayed in progressing the County Court action of Mrs C's daughter, failed to follow her instructions in breach of Practice Rule 1 and failed to reply to correspondence or keep her informed of the progress of her matters. It was alleged that he terminated her retainer without reasonable notice.
41. With regard to Mr A's matter the Respondent, together with his principal, acted in breach of Rule 15 of the Solicitors Accounts Rules by failing to pay the client's cash into client account.
42. The Tribunal was invited to find all of the allegations to have been substantiated. The Tribunal was invited to give due consideration to the copy letters written by the Respondent which had been placed before them.

The Submissions of the Respondent

43. The Tribunal here summarises the Respondent's explanations and submissions contained in letters addressed by him to The Law Society.

44. In connection with his sole practice the Respondent said he had wished to renounce his executorship but had been persuaded to deal with the case as the beneficiary lived in New Zealand and the deceased lived in Kenya. The matter was complicated and there was no other relative available to take out a grant. There were funds which the Respondent received in his capacity as an executor. The Respondent did not accept that he was subject to the Solicitors Accounts Rules. He had taken guidance from The Law Society's professional ethics department and understood he was entitled to handle certain matters outside the usual practising restrictions.
45. With regard to the matter of Mr H.R in a letter dated 8th August 2002 the Respondent told The Law Society that he had been introduced to Mr H.R via a colleague at work. Alarm bells had sounded in this matter as Mr H.R's sister was a forceful lady and had approached another firm of solicitors but had dismissed them at the suggestion that it could be necessary to involve the Court of Protection. The Respondent had explained to that lady that the costs and delays involved with the Court of Protection were best avoided if possible but if circumstances so dictated there might be no other choice. A meeting with her brother Mr H.R was arranged. The initial approach had been from Mr H.R's niece and the Respondent had personally met Mr H.R to confirm instructions. The Respondent wrote to Mr H.R to confirm his instructions; there had been no need to doubt the bona fides of Mr H.R's sister, there had been no doubt that Mr H.R was the client and he was being assisted in the day to day management of his affairs by his sister. Mr H.R behaved appropriately and appeared competent to give instructions. When the Respondent went to see Mr H.R to discuss his draft will he had appeared unable to focus on the issues and the Respondent became concerned that there might be a need to involve the Court of Protection. Mr H.R's sister was hostile to the idea of involving the Court of Protection and she wanted the sale of the property pushed through quickly. The Respondent had contacted Mr H.R's nursing home and a consultant had formed the view that he was competent to authorise the sale of his property but not competent to deal with the distribution of the net sale proceeds. The niece had insisted that the proceeds of sale be paid into the bank account of Mr H.R which she controlled. The Respondent said he politely but firmly refused to do this. Mr H.R's position was protected when the net proceeds of sale were placed on an interest earning account while the Respondent was attempting to apply to the Court of Protection. Mr H.R's sister was not co-operative and indicated that she might not be prepared to look after her brother's affairs.
46. It was in Mr H.R's best interest to retain his purchaser. It was clear that the funds should not have been released until the Court of Protection involvement. In refusing the sister's request for release of funds the Respondent protected Mr H.R and also the complainant, Mr D.R, who (as his father was not competent to prepare a will) was likely to inherit part of the estate in due course. By the time of Mr D.R's involvement the pressure to release funds was being directed to the late Mr McCarron. Mr McCarron might not have responded properly to letters addressed to him about that.
47. In a letter addressed to The Law Society of the 28th September 2001 the Respondent accepted he might not be blameless in the matter of the complaints by Messrs Spencer Ewin Mulvihill but the situation at McCarron and Smallcombe had been beyond the Respondent's control.

48. The Respondent had written to The Law Society on 3rd July 2002 in connection with the complaint by Mrs C (divorce matter) and the road traffic accident relating to her daughter. It was the Respondent's position that he did not terminate the retainer, Ms C had done so by her new solicitor. The Respondent said the relationship with the client broke down and new solicitors were instructed by October 2000. The divorce file was forwarded to the new solicitors at about that time. He was told by Mrs C's daughter to stop acting for her at about the same time and that had come as no surprise. In a letter of 3rd July 2002 the Respondent pointed out that the mechanics of the divorce had been dealt with by another solicitor at the practice with some input from the Respondent. There had been problems at the firm that were beyond the Respondent's control. In particular the Respondent's secretary had resigned because the firm had failed to pay her wages.

The Findings of the Tribunal

49. The Tribunal found all of the allegations to have been substantiated. The Tribunal noted that there was no allegation of dishonesty made against the Respondent and, of course, it makes no finding that the Respondent behaved dishonestly.

The Respondent's Previous appearances before the Tribunal

50. On 1st June 1989 the Tribunal found the following allegations to have been substantiated against the Respondent, namely:-

That he had been guilty of conduct unbecoming a solicitor in each of the following particulars, namely that he had:-

- (i) practised as a solicitor without there being in force a Practising Certificate in respect of the practice year commencing 1st November 1987;
 - (ii) been guilty of unreasonable delay in the conduct of professional business;
 - (iii) failed to reply to letters from The Law Society, the Legal Aid Office and from the Solicitors Complaints Bureau.
51. On that occasion the Tribunal said that the matters were not of the gravest nature that had been brought before them. The Respondent had foolishly put his head in the sand. The Tribunal expressed the hope that the Respondent had learnt his lesson. On this earlier occasion the Tribunal's order was that the Respondent be reprimanded and an order for costs was made against him.
52. On 3rd April 1990 the Tribunal found the following allegations to have been substantiated against the Respondent:-

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

- (i) practised as a solicitor without their being in force a Practising Certificate in respect of the practice year commencing 1st November 1998;
- (ii) been guilty of unreasonable delay in the conduct of professional business;

(iii) delayed in replying to letters from other solicitors and/or from the Solicitors Complaints Bureau.

53. In its Findings dated 12th June 1990 the Tribunal said that if it were not for the very favourable evidence received from a witness as to the Respondent's competence and character the Tribunal would have had to give serious consideration as to whether or not the Respondent's ability to practise should be curtailed.

54. The Tribunal also made it clear that it would be unlikely to deal leniently in the future with the Respondent should he appear before it again. On that occasion the Tribunal ordered the Respondent to pay a fine of £3,000, with costs.

55. On 14th September 1999 the Tribunal found the following allegations to have been substantiated against the Respondent, the allegations were:-

That the Respondent had been guilty of conduct unbefitting a solicitor in each of the following particulars namely that he had:-

(a) practised as a solicitor without there being in force a Practising Certificate in respect of the practice years commencing 1996, 1997 and 1998;

(b) failed to reply to letters from the Office for the Supervision of Solicitors.

56. In September 1999 the Tribunal said:-

“It was with considerable dismay that the Tribunal learned that the Respondent was appearing before the Tribunal on a third occasion admitting allegations similar to those substantiated against him on two earlier occasions. The Respondent appeared to have failed to grasp the seriousness of his shortcomings or to pay any attention to the warning given when last before the Tribunal. He had flouted statutory requirements and had prevented his own professional body from fulfilling its important regulatory function.

The Tribunal considers the Respondent's failures to have been serious. This is the third occasion upon which he has failed to ensure that he has been in certificated practice. The Respondent's behaviour and his attitude is unacceptable. The Tribunal concluded that the Respondent's behaviour can only be marked by a period of suspension from practice.”

The Tribunal ordered that the Respondent be suspended from practice for a period of six months to begin on 14th October 1999 and that he pay the Applicant's fixed costs.

The Tribunal's Decision and it's Reasons

57. Not only has the Respondent had allegations substantiated against him on three previous occasions, the two applications dealt with at this hearing in September 2005 lead the Tribunal to conclude that the Respondent has worked in a chaotic manner and has failed to recognise the very serious duties and obligations which he has as a member of the solicitors' profession, to put first and has failed to safeguard the best interests of his clients.

58. The Respondent, having practised in what appears to have been somewhat chaotic circumstances, with a lack of supervision by the principals of the firm by which he was employed, might well have played some part in the situation which arose and led to complaints being made about the Respondent. However, the action of the Respondent in seeking to act as a solicitor contrary to the conditions placed on his Practising Certificate has led the Tribunal to view this matter with considerable concern. This is a flouting of The Law Society's decision as regulator of the solicitors' profession.
59. The Tribunal is, however, mindful of the poor health of the Respondent and although it has no formal up-to-date evidence before it, does not consider that it would be fair or proportionate to ignore the Respondent's medical history. In the absence of any finding of dishonesty against the Respondent the Tribunal concluded that it could fulfil its duty to protect the public and maintain the good reputation of the solicitors' profession by ordering that the Respondent be suspended from practice for an indefinite period of time.
60. It was right that the Respondent should pay the costs of and incidental to the application and enquiry. Although figures were discussed at the hearing, in the absence of the Respondent the Tribunal was not minded summarily to fix the level of costs. The Tribunal ordered that, after taking into account the costs order made against [*Respondent 2*] at the earlier hearing, the Respondent should pay the costs of and incidental to the application and enquiry to include the costs of The Law Society's Investigation Officer, such costs to be subject to a detailed assessment if not agreed between the parties.

DATED this 28th day of October 2005
On behalf of the Tribunal

J N Barnecutt
Chairman