

IN THE MATTER OF JANET MARY McKAY MACMILLAN, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr R J C Potter (in the chair)
Miss T Cullen
Mr M G Taylor CBE

Date of Hearing: 1st February 2005

FINDINGS

of the Solicitors Disciplinary Tribunal
Constituted under the Solicitors Act 1974

An application was duly made on behalf of the Law Society by Stuart Roger Turner, solicitor and partner in the firm of Lonsdales Solicitors, 342 Lytham Road, Blackpool, Lancashire, FY4 1DW on 12th December 2003 that Janet Mary McKay Macmillan of Old Newton, Stowmarket, 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 Respondent were that she had been guilty of conduct unbecoming a solicitor in each, any or all of the following circumstances, namely:-

- 1) that the Respondent either failed to respond or failed to respond promptly and/or substantively to communications from the Office for the Supervision of Solicitors (the OSS);
- 2) that the Respondent failed to carry out her client's instructions diligently and promptly;

- 3) that the Respondent failed to respond or failed to respond promptly to her client's correspondence and/or telephone calls;
- 4) that the Respondent failed to respond or respond promptly to correspondence and/or telephone calls from third parties;
- 5) that in publicly funded matters the Respondent either failed to lodge or failed to lodge promptly bills of costs with the Court for detailed assessment to the detriment of clients and third parties;
- 6) that contrary to Rule 7 of the Solicitors Accounts Rules 1998 the Respondent failed to remedy promptly upon discovery the improper withdrawal of money from client account;
- 7) that contrary to Rule 22(8) the Respondent allowed a client and/or clients' accounts to become overdrawn by improperly withdrawing or withholding money from them;
- 8) that contrary to Rule 32 of the Solicitors Accounts Rules 1998 the Respondent failed between 30th April 2002 and 12th May 2003 to prepare a reconciliation of client money held by the Respondent;
- 9) that contrary to Section 34 of the Solicitors Act 1974 (as amended) the Respondent failed to deliver to the Law Society an Accountant's Report for the period ending 31st March 2002.

By a supplementary statement of Stuart Roger Turner dated 20th December 2004 it was further alleged that the Respondent had been guilty of conduct unbefitting a solicitor in each, any or all of the following:-

- 10) by repeating allegations 1), 2), 3) and 5) in the Rule 4 Statement dated 12th December 2004;
- 11) by failing to comply with a First Instance Decision of an Adjudicator of the Law Society dated 27th August 2003.

The Applicant sought an Order that the First Instance Decision be treated for the purposes of enforcement as if it had been made by the High Court.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London EC4M 7NS on 1st February 2005 when Stuart Roger Turner appeared as the Applicant and the Respondent did not appear and was not represented.

At the commencement of the hearing the Applicant sought and obtained leave of the Tribunal to abridge the time for service upon the Respondent of the supplementary statement. In granting leave the Tribunal took into account the Respondent's letter to the Tribunal dated 28th January 2005.

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

The Tribunal Orders that the Respondent, Janet Mary McKay MacMillan of Old Newton, Stowmarket, solicitor, be struck off the Roll of Solicitors and they further Order that she do pay the costs of and incidental to this application and enquiry fixed in the sum of £8,078.11.

The Tribunal Orders pursuant to Paragraph 5(2) of Schedule 1(A) of the Solicitors Act 1974 that the Direction of the Adjudicator dated 27th August 2003 that the Respondent Janet Mary McKay MacMillan of 114 Silver Street, Old Newton, Stowmarket, IP14 4HE solicitor, do pay to Ms E A N the sum of £1,000 compensation be treated for the purposes of enforcement as if it were contained in an Order of the High Court.

The facts are set out in paragraphs 1 to 25 hereunder:-

1. The Respondent, born in 1953, was admitted as a solicitor in 1983 and her name remained on the Roll of Solicitors.
2. At all material times the Respondent carried on practice as a sole practitioner under the style of the MacMillan Partnership Solicitors formerly of 3rd Floor, Century House, 39 Princes Street, Ipswich, Suffolk, IP1 1PU and of Felaw Maltings, 44 Felaw Street, Ipswich, Suffolk, IP2 1SJ.
3. The Rule 4 Statement set out details of two complaints by clients and three complaints by firms of solicitors. Details of one complaint by a client and one complaint by a firm of solicitors are set out below by way of example.

Complaint by Mr B

4. On 21st November 2001 Mr B wrote to the OSS with a complaint about the services he had received from the Respondent following the engagement of her to pursue a proposed clinical negligence claim on his son's behalf. A copy of the letter was sent by Mr B to the Respondent.
5. His complaint was that after instructing her to act for him on behalf of his son she failed to progress the case and failed to answer his correspondence. He had met with the Respondent at her offices on 3rd November 2000, gave her his instructions, and sent her £500 on account of costs on 29th November for her to pursue the claim. He complained to the OSS:-

“I have written to the MacMillan Partnership on 2nd January 2001, 26th February 2001, 14th June 2001, 29th September 2001, 4th October 2001, 9th October 2001 and 18th October 2001 and despite various telephone messages having been left from time to time between letters I have received absolutely no communication whatsoever from this solicitor.”

When the file was delivered up to the OSS the final letter of 18th October was not on the Respondent's file. Mr B said it was to require the return of his £500 payment on account and for his documents to be returned within seven days to avoid a complaint

to the Law Society being made. He said that no response was received and so he wrote to the OSS. Mr B collected his original papers and his £500 from the Respondent's firm on 5th March 2002. The Respondent said she replied to Mr B on 23rd October 2001 apologising for not being in touch recently and offering the services of a newly recruited member of staff. She next wrote on 18th February 2002, nearly four months later, with the conclusion that her instructions had been terminated.

6. Prior to her letter, on 11th December 2001 an OSS caseworker telephoned the Respondent and left a message asking her to call her back to discuss the complaint. The Respondent did not return the call and so the caseworker telephoned again on 18th December 2001 and was told that the Respondent was in Court and should be back that afternoon.
7. The caseworker called again on the afternoon of 18th December 2001 and was told that the Respondent had received the message and would call her that afternoon. On 20th December 2001 the Respondent's secretary telephoned the OSS and left a message to say that the Respondent would be in Canada until 12th January 2002. On 4th January 2002 the caseworker wrote to the Respondent enclosing a copy of Mr B's complaint and requesting a response by 15th January 2002.
8. On 16th January 2002 the caseworker telephoned the Respondent and was told that she had dictated a letter to the OSS which should be with the caseworker by 21st January 2002. No letter was received and subsequently upon the OSS receiving the solicitor's file at a later date no copy of the letter was on it. By 1st February 2002 no letter had been received from the Respondent so the caseworker wrote to her advising her that the matter had been transferred to the Client Relations Office of the OSS for a formal investigation.
9. On 4th March 2002 the Client Relations Office caseworker wrote to the Respondent to say that Mr B's complaint required a response by 18th March 2002. By 27th March 2002 no reply had been received from the Respondent and the caseworker wrote again reminding her of her duty to respond to the Law Society. A response was required by 4th April 2002.
10. The caseworker spoke to the Respondent on 5th April 2002 when the Respondent said that a reply to the caseworker had been dictated enclosing a copy of all correspondence with Mr B. The Respondent told the caseworker that he should receive the letter by 12th April 2002. The caseworker did not receive a letter from the Respondent. It was subsequently revealed that no copy of that letter existed on the solicitor's file when the file was delivered up to the OSS.
11. The caseworker telephoned the Respondent on 15th April 2002 and 16th April 2002. The Respondent was not available on 15th April but on 16th April 2002 the Respondent said that she had not responded as planned because the client care letter to Mr B was not on the file and the disc that it had been saved on was corrupted. She had previously told the caseworker that she had dictated the letter and that it contained enclosures. She said she now hoped to respond in a day or so. No reply was received and the caseworker telephoned the Respondent yet again on 22nd April 2002 and was told the Respondent was away in Canada for two and a half weeks.

12. On 23rd April 2002 the caseworker received a letter from the Respondent dictated on 19th April 2002. The Respondent's letter did not deal substantively with the caseworker's letter to her of 4th March 2002. All it did do was advise the caseworker that the Respondent would be away from the office until 8th May 2002 and that she would contact the OSS shortly after her return.
13. On 14th June 2002 after still not hearing from the Respondent another caseworker within the Client Relations Office sent a Statutory Notice to the Respondent enclosing a decision made under Section 44B of the Solicitors Act 1984 requiring the Respondent to forward her file within seven days. The original request for the file had been made on 4th March 2002.
14. The caseworker received a reply from the Respondent on 25th June 2002 by fax. The Respondent said that she had not received the caseworker's letter until 18th June 2002 and that the time limits imposed were "nonsensical". The Respondent said that she would respond to the letter by 2nd July 2002. The Respondent failed to adhere to her own timetable and the next correspondence received from her was not for a further seven weeks.
15. On 12th August 2002 the Respondent wrote to the OSS enclosing her file. Within that letter she stated she had realised she had not accounted to Mr B for any interest earned on the payment on account of costs whilst she held the money in her client account and so she had dictated a note to her cashier to do the necessary calculations and then she would send the cheque to Mr and Mrs B with a copy of the covering letter to the OSS. This was not carried out until 17th December 2002.
16. The letter stated the "entirety" of the file was enclosed save for two missing copy documents. One was a letter of 5th December 2002 purporting to be the client care letter to the Respondent's client. The other was a copy compliment slip containing a note to the Respondent dated 5th March 2002. The complainant Mr B subsequently supplied the OSS with a copy of the compliment slip. In the note on the compliment slip the Respondent offered to print out letters purportedly sent "last July" and "last October". There was no copy of a letter of July 2001 on the file sent to the OSS.
17. The file revealed amongst other things:-
 - (i) that a meeting on 3rd November 2000 took place between the Respondent and Mr B. From the file note on the file it appeared that instructions were taken together with the history of Mr B's son's treatment regarding a proposed clinical negligence claim. Some advice was given and Mr B was also advised there were reasonable prospects of a successful claim. The Respondent discussed the next steps if the Client wanted to proceed and these included the Respondent writing before Christmas to a proposed expert witness to enquire if he was willing to prepare a report. The client was also informed that it would probably be a few weeks before the Respondent could begin work. Further advice was also given on funding the claim and the various methods available;

- (ii) that the client paid £500 on account of costs which was banked in the Respondent's client account on 1st December 2000;
- (iii) that the Respondent failed to acknowledge receipt of the payment on account;
- (iv) that the Respondent failed to follow up the meeting on 3rd November 2000 with confirmation in writing of the client's instructions, the advice given, the likely costs, and the agreed steps;
- (v) that the Respondent failed to advise the client of the firm's policy on client care and the firm's complaints procedure;
- (vi) that having written on 20th January 2001 seeking instructions from the client the Respondent failed to proactively follow the letter up following the failure of her client to reply to it;
- (vii) that having received the letter from Mr B on 27th February 2001 expressing disappointment at not having heard from the Respondent or any acknowledgement of his correspondence, the Respondent failed to reply to the letter at all despite a request for an early response and failed to challenge that part of the client's letter which expressed disappointment when purportedly the Respondent had sent a letter on 20th January 2001;
- (viii) that the client Mr B was left to contact the Respondent again on 14th June 2001. It was clear from the fax that the client was adamant that he had heard nothing from the Respondent since their first meeting some seven months earlier on 3rd November 2000;
- (ix) that the Respondent purportedly replied to the fax on 16th June 2001 explaining she was waiting to hear from Mr B;
- (x) that the Respondent failed to follow that letter up again having heard nothing from her client despite the tone of the client's fax of 14th June 2001;
- (xi) that on 21st September 2001 the client sent a further fax complaining that he had "not received any communication from you whatsoever". The fax went unanswered and on 3rd October 2001 the client telephoned for an update. The call was not returned and the client sent two further faxes on 4th October 2001. The second one required a reply that day. The Respondent took until 23rd October 2001 to reply.
- (xii) that the Respondent failed either to review the file or record that she had periodically reviewed the file;
- (xiii) that the Respondent failed to ensure that the client was regularly informed of the progress of his case or the reason for there being no progress;
- (xiv) that the Respondent failed to provide costs update information to her client;

- (xv) that the Respondent failed to follow up letters purportedly sent which requested instructions from the client on the future progress of the case;
 - (xvi) that the Respondent failed to carry out agreed instructions to approach an expert witness;
 - (xvii) that little or no work was done on the file as evidenced by the Respondent's own time ledger.
18. On 4th December 2002 a copy of the report prepared by the caseworker for the Adjudicator was sent to the Respondent. The Respondent replied on 17th December 2002 within the required time limit imposed but the letter contained information that the complainant was not entitled to see and so an amended response was sent on 2nd January 2003.
19. On 29th January 2003 the Adjudicator's decision was to refer the conduct of the Respondent to the Tribunal. The Respondent was notified by letter on 3rd February 2003. The Respondent did not apply for a review.

Complaint by CLC Solicitors

20. On 28th May 2002 CLC Solicitors wrote to the OSS seeking their assistance in dealing with the Respondent's firm. They had on 11th October 2001 approved and returned to the Respondent a bill of costs which the Respondent's firm were then to lodge at Court for assessment before payment by the Legal Services Commission. They wrote on 11th February 2002 and telephoned the Respondent on 6th, 14th and 22nd March and 19th April. On each occasion they were unable to speak to the Respondent and left messages asking her to return their calls, which she did not do.
21. On 23rd April 2002 CLC Solicitors enquired at Ipswich County Court whether or not the bill had been lodged and received a reply on 8th May confirming that it had not.
22. On 13th May 2002 CLC Solicitors wrote again to the Respondent warning that without a response within 14 days they would report the matter to the OSS. No reply was forthcoming so on 28th May 2002 a complaint was made to the OSS.
23. An OSS caseworker telephoned the Respondent's office on 25th July 2002, 29th July, 30th July (twice) and 31st July. On each occasion the Respondent was unavailable and the caseworker left a message for her to call back. On 31st July 2002 she wrote to the Respondent drawing the Respondent's attention to her professional obligations to deal promptly and substantively with correspondence from the OSS and warning that a failure to do so might result in disciplinary proceedings. A response was requested by 13th August 2002. On 19th August having not received a response the caseworker wrote again to the Respondent explaining the matter was being passed to the Solicitors Practice Unit.
24. On 5th September 2002 a Solicitors Practice Unit caseworker wrote to the Respondent with full details of the complaint requiring a full answer within 14 days. The next day the Respondent telephoned the caseworker apologising for not responding to the OSS correspondence and stating that the reason was due to the serious ill-health of her

father. She said she would be flying to Canada to be with her father and anticipated returning on 23rd September when she said she would resolve all outstanding matters. On 1st October the caseworker spoke again to the Respondent who said she would respond by 8th October. The Respondent's father passed away and the Respondent returned to Canada. The caseworker therefore took no further action until 28th January 2003, when she wrote to the Respondent seeking a reply to the letter of 5th September 2002 within eight days. No reply was received. The caseworker telephoned the Respondent on 4th February and the Respondent said she was trying to sort matters out. She said she had been having problems with the DX. There had been no further response from the Respondent since that time.

25. Paragraphs 33 to 51 of the Rule 4 Statement set out details of complaints by CMHT Solicitors, O Solicitors and a client, Mrs H.

Law Society Practice Standards Report

26. On 12th and 13th May 2003 Miss H, Practice Standards Advisor from the Practice Standards Unit of the OSS visited the Respondent's firm. A resulting memorandum dated 20th May 2003 was before the Tribunal. The memorandum noted the matters set out below.
27. The last comparison of the client bank statement balance against the total of client ledger balances was made on 31st March 2002, over twelve months prior to her visit. Accordingly the reconciliations of clients' money had not been undertaken in accordance with Rule 32(7) of the Solicitors Accounts Rules 1998.
28. Miss H also reported that a Mr J B from the Respondent's firm of accountants met with her and explained that the firm's accounting software was not up to date as no postings had been made on it for over twelve months. He was only able to spend a limited amount of time at the firm due to its financial constraints and over the last twelve months the office account had taken priority. Client account had been left and was therefore not up to date.
29. He further explained that an attempt had been made to keep track of client money by setting up a spread sheet along with a receipt book and a folder containing copies of bills rendered.
30. Miss H was unable to view up to date client ledgers for the files she reviewed. Mr J B offered and prepared a ledger for the file of N. The prepared ledger confirmed that the client ledger had gone overdrawn on 26th March 2002 when costs were transferred from client to office leaving an overdrawn balance of £160.29. She reported that the error appeared to have occurred because there was a duplication of costs being transferred. One transfer took place on 28th November 2001 and the same amount was transferred again on 3rd December 2001. The ledger recorded that the error was rectified on 13th May 2003.
31. On 21st May 2003 the OSS wrote to the Respondent enclosing the preliminary report of Miss H requiring an explanation of the matters raised within the report. The Respondent replied on 29th May 2003. The letter contained enclosures and amongst

other things a list of her client balances for 30th April 2002. In the list of client balances the balances for the client Ms N on 30th April 2002 was overdrawn in the sum of £160.29. At the end of the client balances there was a handwritten reconciliation at 30th April 2002. The overdrawn client balance was not rectified until 13th May 2003, some 13 months later and after discovery by the Law Society's Practice Standards Advisor.

32. Additionally, the client balances showed that for Ms B, Mr C and Mrs W, the client ledger balances were overdrawn by £50, £15 and £40.53 respectively as at 30th April 2002.
33. Following the Respondent's response to Miss H's report, a report was prepared for formal adjudication and after further correspondence between the OSS and the Respondent on 23rd June 2003 the Adjudication Panel resolved to refer the Respondent's conduct to the Tribunal.

Outstanding Accountant's Report

34. Pursuant to Rule 35 of the Solicitors Accounts Rules 1998 and Section 34 of the Solicitors Act 1974, for the period ending 31st March 2002 the Respondent was required to file an Accountant's Report to the Law Society by 30th September 2002. The Respondent's accountants wrote to the Law Society on 11th March 2003 acknowledging that the Accountant's Report was overdue and attributing it to a number of factors including cash flow problems and the Respondent's absences due to her father's ill health and death in October 2002. Despite the Law Society having granted the Respondent extensions until 31st October 2002, then 31st December 2002 and then until 28th February 2003 it had not been possible for the outstanding work to be completed and the accountants were still discussing with the Respondent how quickly the work could be scheduled and funded eleven days after the deadline had expired. The letter also acknowledged that the five weekly reconciliations and comparisons required under Rule 32 of the Solicitors Accounts Rules 1998 were in arrears and that the report by them would be qualified with respect to such matters.
35. In a letter to the OSS on 29th May 2003 the Respondent stated that in respect of the outstanding report it would take her accountants 44 to 54 hours to prepare and submit a report to the Law Society and that it would not be ready until the end of July 2003, ie five months after the extended time allowed by the Law Society had expired. The report remains outstanding.
36. On 27th August 2003 a First Instance Decision of inadequate professional service was made against the Respondent by the Law Society Adjudicator after reading the report of the Complaints Resolution Officer. The Decision arose from a complaint by Mrs N who was a client of the Respondent.
37. The Adjudicator's reasons and comments were set out and a Direction was made that the Respondent's firm pay compensation to the complainant in the sum of £1,000, and a further Direction was made that the Respondent's firm within two months file a bill for detailed assessment in respect of the complainant's domestic affairs.

38. Additionally it was directed that the conduct of the Respondent should be further investigated in view of the nature and extent of the inadequacies of service in this case and her failure to respond to the Law Society. The Respondent did not exercise her right to request a review of the decision.
39. The Respondent failed to reply to a letter from Mrs N written on 5th March 2001 asking for "an early refund of monies held by you to finalise my account". Mrs N wrote again on 26th March 2001 asking for a "closing statement".
40. On 15th May 2001 the Respondent replied to Mrs N's letter of 5th March 2001 explaining that £6,000 had been sent to the Legal Services Commission. She also wrote that she was arranging for the "file of papers to be sent to the firm's costs draftsman so that a bill of costs can be prepared. Once the draft bill of costs has been received I confirm that a copy of that bill will be sent to you for your comments upon together with a letter of explanation at that time". At the time of writing that letter three months had passed since the £6,000 had been lodged with the Legal Services Commission.
41. By 12th November 2001 Mrs N had heard nothing from the Respondent and so she wrote to her again. She pointed out she was a single parent financially responsible for two small children, the sum was no small amount to her and she required the matter to be urgently attended to. There was no reply.
42. Mrs N sent a complaint resolution form to the Respondent on 25th February 2002. The Respondent failed to reply. Mrs N sent a chasing letter on 3rd April 2002 and complained to the Law Society on 3rd May 2002 after again not receiving a reply from the Respondent. The Law Society wrote to the Respondent on 2nd September 2002 after three telephone messages had been left, and the Respondent telephoned the caseworker on 6th September to say she would be away until 23rd September 2002. On 31st January 2003 the Law Society wrote again because the Respondent had not been in contact and so had ultimately failed to reply. The matter was then sent for adjudication of the inadequate professional service complaint by Mrs N referred to above.
43. On 8th December 2003 the Law Society sent by recorded delivery a copy of the complainant's file so that the bill for detailed assessment could be prepared. The Respondent refused to accept delivery of the letter and so to date the client's file had not been assessed by the Court. The requisite Report on Case had not therefore been lodged with the Legal Services Commission. The result was that the money the Legal Services Commission held could not be either allocated to the Statutory Charge or returned to the client. A total of £6,000 was lodged with the Legal Services Commission by the Respondent and she told Mrs N that her estimated costs were £5,000. According to the information given to her by the Respondent, the client was therefore due to receive £1,000 but was unable to get this from the Respondent as the Respondent had lodged it with the Legal Services Commission and was unable to get it from the Legal Services Commission as they were exercising a lien on it until they received a report on costs from the Respondent with the assessed bill of costs.
44. On 9th December 2003 the Respondent was written to by the Law Society. The complaint centred around the Respondent's failure to prepare a bill of costs for

detailed assessment, failing to keep the client informed and failing to respond to letters from both the Respondent's client and the Law Society. The Respondent was required to provide a detailed response to the complainant within 14 days, in this case by 23rd December 2003.

45. The Respondent failed to reply within the timescale and a reminder letter was sent on 8th January 2004. The Respondent failed to reply to that also, and so the complaint was added to the existing proceedings.

The Submissions of the Applicant

46. In relation to Mr B it was clearly incumbent on the Respondent to correct the position if, as she had said, she had written to him without response. When on 4th October Mr B required a response the same day, the Respondent had replied on 23rd October saying she would pass his file to someone who had not yet joined the firm.
47. In her correspondence with the caseworker relating to the forwarding of the file, the Respondent set her own agenda yet failed to keep to it.
48. The complaint from O Solicitors followed a similar pattern. The complaint from the client Mrs H was similar in nature to that of Mrs N.
49. Mrs N, who was a single parent with two small children, had still not received £1,000 she believed was due to her and the compensation of £1,000 was also still outstanding. Mrs N had been prejudiced and inconvenienced.
50. It appeared that the Respondent dealt with client matters up to a point and then did not take matters further.
51. In relation to the Practice Standards Report, it was more than 12 months since the last reconciliation had been done. No postings had been made on the accounting software for 12 months so the ledgers were not up to date. The Respondent had attributed the problems largely to bank errors but this was not accepted by the Applicant.
52. It was accepted that the overdrawn client balances did not involve huge amounts of money, but the Rules were quite clear and the Respondent had not remedied the situation. The Accountant's Report had never been filed.

The Submissions of the Respondent

53. The Respondent wrote to the Tribunal on 28th January 2005. She explained why she was unable to attend the hearing and withdrew her earlier request for an adjournment. She expressed the view that whether she was present or not, justice would neither be done nor seen to be done.
54. She set out her current financial circumstances.

55. She enclosed a copy of her application of 7th March 2004 for her voluntary removal from the Roll and her undertaking never to seek restoration to the Roll. She said that her application had not been acknowledged. She therefore asked the Tribunal to strike her off the Roll so as to achieve the result which she said she had been seeking for the better part of a year.

The Findings of the Tribunal

56. The Tribunal considered carefully the documents before it, including all the responses of the Respondent, and was satisfied from the clear evidence in the documentation that all the allegations were substantiated.

Previous appearance of the Respondent

57. At a hearing on 3rd April 2003 an allegation that the Respondent had been guilty of conduct unbecoming a solicitor in that she failed to reply to correspondence from the OSS had been substantiated.
58. The Tribunal on that occasion accepted the Respondent's evidence that certain letters from the OSS had not been received by her and that she had in response to a letter from the OSS of 20th June 2002 replied on 25th June although the OSS had not received that response. The Tribunal noted however that it was clear on the face of the letter of 25th June that the Respondent therein made no attempt whatsoever to address the substantive issues raised with her. Indeed the Respondent herself confirmed to the Tribunal that she had dealt with the substantive issue only on the day prior to the disciplinary hearing.
59. It was therefore noteworthy that the Respondent had notice of the OSS concerns in June 2002 and did not make a proper response until 2nd April 2003.
60. The Tribunal noted principle 30.04 at paragraph 1 of the Guide to the Professional Conduct of Solicitors 1999 in which it states, "A solicitor is obliged to deal promptly and substantively with correspondence from the OSS. Failure to answer commonly results in disciplinary proceedings and failure to give a sufficient and satisfactory explanation of the solicitor's conduct may make the solicitor subject to sections 12 and 13A of the Solicitors Act 1974 by virtue of Section 12(1)(e)".
61. The Respondent's failure was that she did not deal promptly and substantively with the letter of 20th June 2002, as was clearly required by principle 30.04 and it was for this reason and in respect of that particular letter that the Tribunal found the allegation to have been substantiated.
62. The Tribunal considered that it would be appropriate to mark this breach of professional duty with a fine of £750 because the breach amounted to failure to deal with one letter rather than a failure to deal with a series of letters. If the Tribunal had found that the Respondent had failed to deal with all of the letters addressed to her then the fine would have been considerably higher.

63. The Tribunal in 2003 hoped that the Respondent would have learned a lesson and would recognise that if she had in June 2002 dealt substantively with all the issues raised by the OSS, she might very well not have been brought before her professional disciplinary Tribunal. The Tribunal trusted that the Respondent would recognise in future that it was inappropriate to rely on messages left for third parties, without following them up herself, particularly where they related to such serious matters. Solicitors had to recognise the importance of requests for information and explanations from their own regulatory body. The Respondent was ordered to pay the Applicant's costs.

The Hearing on 1st February 2005

64. The Tribunal had before it 11 substantiated allegations and details of a number of serious complaints made by clients and other firms of solicitors. The documentation showed a chaotic picture in which the Respondent started work but did not adequately finish it. Her accounts were not in order. Members of the public had suffered significant losses and the Tribunal considered that the Respondent represented a real risk to the public. She had failed or delayed in replying to letters and telephone calls from her regulatory body whose purpose was to regulate solicitors in the interests of the public. The Tribunal noted that the Respondent had previously appeared before the Tribunal to face an allegation of a similar nature.
65. The Respondent's work as a solicitor had fallen far below the standard expected of the profession. The Respondent may have recognised this herself in her request to the Tribunal to impose the ultimate sanction.
66. In correspondence the Respondent had referred to an attempt to remove her name voluntarily from the Roll. In correspondence with the Applicant she had said that allowing her voluntary removal from the Roll would save the Law Society time and money. For the avoidance of doubt however, the Tribunal noted that where disciplinary proceedings had been commenced against a solicitor it was no longer open to that solicitor to remove his or her name voluntarily from the Roll.
67. While the Respondent had requested that her name be struck off the Roll of Solicitors the Tribunal had in determining this matter considered also the full range of sanctions available to it. Given however the number and seriousness of the allegations which had been substantiated against the Respondent and the prejudice and loss which had been caused to clients, the Tribunal was satisfied that in the interests of the public and for the sake of the reputation of the profession it was right that the Respondent's name be struck off the Roll of Solicitors. It was also right that she pay the Applicant's costs. The Respondent having failed to comply with the Direction of the Adjudicator dated 27th August 2003, the Tribunal would make an Enforcement Order in respect of the direction for the payment of compensation.
68. The Tribunal made the following Orders:-

The Tribunal Orders that the Respondent, Janet Mary McKay MacMillan of Old Newton, Stowmarket, solicitor, be struck off the Roll of Solicitors and it further

Orders that she do pay the costs of and incidental to this application and enquiry fixed in the sum of £8,078.11.

The Tribunal Orders pursuant to Paragraph 5(2) of Schedule 1(A) of the Solicitors Act 1974 that the Direction of the Adjudicator dated 27th August 2003 that the Respondent Janet Mary McKay MacMillan of 114 Silver Street, Old Newton, Stowmarket, IP14 4HE solicitor, do pay to Ms E A N the sum of £1,000 compensation be treated for the purposes of enforcement as if it were contained in an Order of the High Court.

Dated this 4th day of April 2005
On behalf of the Tribunal

RJC Potter
Chairman