

IN THE MATTER OF STUART JOHN RYAN & STEPHEN JOHN PYKE, solicitors

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mrs H. Baucher (in the chair)
Mr. J. N. Barnecutt
Mrs C Pickering

Date of Hearing: 2nd December 2004

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 Turner solicitor and partner in the firm of Lonsdales Solicitors of 342 Lytham Road, Blackpool, Lancashire, FY4 1DW on 22nd July 2004 that Stuart John Ryan of Exford Drive, Bolton, solicitor and Stephen John Pyke of Armadale Road, Bolton, solicitor might be required to answer the allegation contained in the statement which accompanied the application and that such order might be made as the Tribunal should think right.

On 14th October 2004 the Applicant made a supplementary statement containing further allegations. On 23rd November 2004 the Applicant made a second supplementary statement containing a further allegation and also making application that the direction of the adjudicator of the Law Society dated on 18th February 2004 that the first and second Respondents pay compensation might be enforced as though it were an order of the High Court.

The allegations set out below are those contained in the original statement and the two supplementary statements.

The allegations were that the Respondents had been guilty of conduct unbefitting a solicitor in each/all or any of the following circumstances namely:-

1. That they failed to keep accounts properly written up for the purposes of Rule 32 of the Solicitors Accounts Rules 1998;
2. that they utilised clients' funds for their own benefit;
3. that they utilised clients' funds for the benefit of other clients not entitled to those funds;
4. that they made withdrawals from a client account contrary to Rule 22 Solicitors Accounts Rules 1998;
5. that they failed to remedy breaches of the Solicitors Accounts Rules promptly upon discovery contrary to Rule 7 of the Solicitors Accounts Rules;
6. that they failed to deliver on time to the Law Society an Accountant's Report contrary to Section 34 of the Solicitors Act 1974;
7. that they practised in breach of conditions imposed on their Practising Certificates for the time being in force;
8. that they continue to practise as solicitors whilst uncertificated;
9. that they have failed to provide to the Law Society evidence that their firm had in place for the indemnity period 2003 to 2004 a policy of qualifying insurance;
10. that they have either failed to respond or failed to respond promptly and/or substantively to communications from the Office for the Supervision of Solicitors;
11. that the first Respondent has failed to comply with an Undertaking given to another firm of solicitors;
12. that the first Respondent has failed to comply with a decision of an adjudicator of the Law Society.
13. that they jointly failed to comply with a direction of an adjudicator to pay compensation following a Finding of Inadequate Professional Service.

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

At the opening of the hearing the Applicant invited the Tribunal to abridge the time for service of the second supplementary statement. Correspondence from the Respondents revealed that neither had any issue to raise in this connection. The Tribunal agreed that time might be abridged and confirmed that it would consider the application and allegations made in the first and second supplementary statements of the latter of which was dated 2nd November 2004.

The evidence before the Tribunal included a letter dated 29th November 2004 addressed by Mr Pyke to the Applicant and also his letter of 25th August 2004 addressed to the Applicant which dealt with the substantive issues. The Tribunal also had before it an undated letter from Mr Ryan addressed to the Tribunal received in the Tribunal's office on 21st October 2004.

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

The Tribunal order that the Respondent, Stuart John Ryan of Exford Drive, Bolton, solicitor, be Struck Off the Roll of Solicitors and they further Order that he do pay the costs of and incidental to this application and enquiry to be subject to a detailed assessment unless agreed between the parties to include the costs of the Investigation Accountant of the Law Society and the Law Society's internal costs.

The Tribunal order that the Respondent Stephen John Pyke of Armadale Road, Bolton, solicitor be Struck Off the Roll of Solicitors and they further Order that he do pay the costs of and incidental to this application and enquiry to be subject to a detailed assessment unless agreed between the parties to include the costs of the Investigation Accountant of the Law Society and the Law Society's internal costs.

The Tribunal order that the Adjudicator's decision of the 18th February 2004 that the first and second Respondents pay compensation be enforced as if it were an Order of the High Court.

The facts are set out in paragraphs 1 to 42 hereunder:-

1. Mr Ryan, born in 1950, was admitted to the Roll of Solicitors in 1980. Mr Pyke, born in 1965, was admitted to the Roll of Solicitors in 1991. At all material times the Respondents practised in partnership under the style of Stuart J Ryan & Co. of the Old Bank, 116-118 Bradshaw Brow, Bolton, BL2 3DD with another office at Whitefield, Manchester.
2. Notice having been duly given an Officer of the Forensic Investigation Department of the Law Society (the FIO) began an inspection of the Respondents books of account. His report, dated 31st October 2002 was before the Tribunal.
3. That report revealed that the Respondents' books of account were not in compliance with the Solicitors Accounts Rules. The following breaches were identified.
4. The last client account reconciliation had been carried out in March 1999, three and a half years prior to the start of the inspection .
5. Client ledger accounts were maintained only in respect of certain client matters.
6. Client ledger accounts that were maintained were often incomplete.
7. Numerous client ledger accounts were in debit.
8. Errors noted on client ledger accounts, including the posting of incorrect amounts, in one example by more than £32,000 over the correct figure, had been posted and in

another example payment to a client of over £4,000 was shown as a receipt from that client.

9. Postings had been made on a client ledger account which related to a different client or matter;

10. The first Respondent agreed that the listings of client balances were incomplete and that some balances in the listing were meaningless. The FIO could not express an opinion as to the firm's liabilities to clients. However, at the 31st July 2002 the FIO established that there was a minimum cash shortage of £98,336.94. The cause of the minimum cash shortage arose as follows:-

(i)	Client funds in office bank account	£90,740.00
(ii)	Debit balances – overpayments	6,924.94
(iii)	Debit balances – over transfers	572.00
(iv)	Bank error	100.00
	Total	<u>£98,336.94</u>

11. Client funds totalling £90,740 were lodged in the firm's office bank account on 26th July 2002. They remained there for twelve days when the first Respondent lodged an office bank account cheque for £90,740.00 in the firm's client bank account. The first Respondent had, in error, picked up the wrong bank paying in book.

12. Debit balances totalling £6,924.94 were identified at 31st July 2002. These were caused by payments being made from client bank account when insufficient funds were available. Between 3rd May 2002 and 29th July 2002 the payments had been made in varying amounts from £40 to £5,065.66 in respect of five client matters.

13. During the inspection the FIO established that on at least two occasions the firm had paid the balance of purchase monies from client bank account on the completion of conveyancing purchase transactions without the money having been received from the client or lender. In one case the first Respondent acted for a client in the purchase of a property at £19,000 with a completion date of 10th May 2002. The file revealed a letter to the client on 23rd April 2002 confirming the completion date and requesting the balance due of £17,100 on that day. The client bank account statement for 10th May 2002 showed a payment of £17,100 from client bank account. Payment was not however made by the client until 10th June 2002. The payment of the completion money had been authorised by the first Respondent.

14. In the second matter the first Respondent completed a conveyancing purchase on 21st June 2002 with a payment out of client bank account of £27,630.06. The mortgage advance of £27,500 was received on 28th June when a cash shortage of £130.06 remained.

15. At the time the FIO's Report was prepared the Respondents had not delivered an Accountant's Report covering the periods ending 31st March 2000, 31st March 2001 or 31st March 2002. On 13th August 2002 a condition was placed on their Practising Certificates that they should file half yearly Accountant's Reports. As at 20th October 2003 the firm had not filed its Accountant's Reports for the periods ending March 2001 and 2002: they had not filed their half yearly Accountant's Reports for the

periods to 30th September 2002 and to 30th March 2003. On 26th September 2003 an adjudicator of the Law Society expected the first and second Respondents to deliver the outstanding Accountant's Report for the six month period ending 31st March 2003 within twenty-eight days. These reports were lodged in March 2004. There remained an Accountant's Report outstanding for the six months' period ending 30th September 2003.

16. The three Accountant's Reports were qualified. At 30th September 2003 about 10 client ledger accounts were reported to show debit balances. Many had been overdrawn for many months. Search fees had not been posted, bills were missing from client files, the office account entries had not been posted or reconciled with office bank account.
17. Both Respondents were subject to a condition of approved employment or partnership on their Practising Certificates with effect from 30th September 2003 in addition to the requirement that they lodge half yearly Accountant's Reports. The Law Society would not approve their partnership arrangement with each other under the condition.
18. On 30th September 2003 the Law Society received a written complaint from E solicitors. They had received information that the firm's office in Bolton had closed. A recorded telephone message confirmed that the office had closed and ceased business and that all clients would be contacted in the future. On the same day BC Solicitors faxed the Law Society a copy of a letter from the firm dated 29th September 2003 which informed the clients that the firm had closed with immediate effect. It also informed the clients that their files had been passed to SE Solicitors in Bury and then in the same paragraph referred to CR & Co. Solicitors, causing the client confusion as to what was happening with her file.
19. On 2nd October 2003 Bolton Law Society wrote to the Law Society enquiring about the firm stating that its members were becoming increasingly concerned.
20. On 14th October 2003 the Law Society wrote to both the first and second Respondents outlining the concerns of the Law Society and requesting an explanation of their actions. The second Respondent replied on 16th October 2003 and again on 24th October 2003. Both letters were written on letterhead of the firm giving no indication that the firm had closed. The Law Society wrote to the second Respondent on 22nd and 27th October 2003 setting out further concerns and raising further matters.
21. The Respondents made a joint response to the Law Society's letter of 14th October by letter of 29th October. It was written on their firm's headed paper with no indication that the practice had closed. The copy bank statements provided showed a credit balance on client account of £168,270.50. They said they had considered employing a locum solicitor. They had tried to contact the Solicitors Assistance Scheme on two occasions without success.
22. On 25th November 2003 the Law Society asked whether the Respondents had properly closed their practice and whether they were practising in compliance with the approved employment/partnership conditions on their Practising Certificates. The Respondents replied on 28th November 2003 requesting a further seven days in which to complete the work involved in closing their practice. This was granted by the Law

Society by a letter of 1st December 2003. That letter also raised concerns that the Respondents were still holding client money and still using the formal letterhead paper. On the face of it they were continuing to practise as principals of that firm in breach of the condition on their Practising Certificates. They were also advised that a ground for intervention under Part 1 of the Schedule 1(1)L of the Solicitors Act 1974 (as amended) now existed.

23. By letter of 5th December 2003 the Respondents sought advice from the Law Society. The Law Society replied on the same date. A further fax response dated 8th December 2003 was received by the Law Society from the Respondents, but no substantive response was made. Later that day a member of the Solicitor's Assistance Scheme telephoned the Law Society confirming that the Respondents had sought his advice. A short period of time was agreed. By letter of 9th December 2003 the Assistance Scheme member tried to resolve the situation by suggesting that a cheque for £31,563.19 be sent to the Law Society. On 12th December 2003 the Law Society pointed out that the money could not be vested in the Law Society without an intervention resolution being made.
24. On 26th January 2004 it was confirmed, amongst other things, that in excess of £100,000 still remained in the client account of the firm.
25. On 25th March 2004 the Law Society's Compliance Board Adjudication Panel resolved to intervene into the remains of the Respondents' practice.
26. On 1st April 2004 the Law Society had written to the Respondents at their practice address in Manchester. It advised them that they owed the Assigned Risk Pool in excess of £40,000 to cover the premium for the year 2003/2004 and an additional sum of in excess of £37,000 for run off cover. The Respondents did not reply. The debt to the Assigned risks Pool remained outstanding.
27. On 2nd December 2002 the Law Society had written to the first Respondent requesting a copy of the firm's written complaints procedure. After reminders had been sent the first Respondent replied on 14th January stating "I accept that I do not understand your request". The Law Society explained their request and asked for a substantive response within twenty-eight days. The Law Society wrote again on 17th and 26th February and 10th and 19th March. The Law Society wrote also to the second Respondent on 19th March.
28. The first Respondent replied on 27th March 2003 but still did not enclose a copy of the written complaints procedure. The Law Society wrote again on 2nd April. The first Respondent did not reply.
29. On 14th May 2003 T Solicitors wrote a letter of complaint to the Law Society. They acted for a bank with regard to a proposed advance to a borrower for whom the firm acted,
30. On 19th December 2001 T Solicitors wrote to the firm explaining they acted for a lender client in connection with a proposed loan to a Mr P. In that letter T solicitors said,

“Please also let us have your undertaking to be responsible for our costs in dealing with this transaction in the sum of £497.10 plus VAT whether or not the matter proceeds to completion. Additional charges may be incurred in connection with additional security documents and/or time engaged dealing with specific requisitions relating to the title or other matter. All costs are subject to VAT and where relevant disbursements”.

31. On 25th February 2002 the first Respondent confirmed that T Solicitors:-
“...may accept this letter as out undertaking to be responsible for your costs in this mater whether or not it proceeds to completion”.
32. T Solicitors then wrote to the firm on 29th January 2003 informing it that their client had given instructions to close their file. An invoice in the sum of £584.09 was enclosed. The Respondent replied on 1st February 2003 stating:-

“In view of your client having withdrawn from this matter how can you expect our client to make a payment of any charges?”
33. T Solicitors response of 3rd February 2003 was that the undertaking given was expressed to apply whether or not the matter proceeded to completion and that they expected their costs to be paid in accordance with the undertaking given by return.
34. The first Respondent replied by letter dated 12th February 2003. He said he did not believe that T Solicitors could seriously expect the client to pay charges when T Solicitors’ client had withdrawn.
35. The Law Society put the complaint to the first Respondent in May 2003. He replied on 9th March 2004. He denied being in breach of any undertaking. He maintained that fees were only payable on the mortgagors’ withdrawal or if the matter completed and that the undertaking had been extracted by duress.
36. On 15th July 2004 an adjudicator of the Law Society “expected” the first Respondent to comply with the undertaking within twenty-eight days of the decision, failing which she directed that his conduct should be referred without further notice to the Tribunal. The adjudicator also decided that in the event the Respondent complied with the adjudicator’s decision, he should pay the Law Society’s fixed costs of £840.
37. On 18th February 2004 an adjudicator of the Law Society made a finding against the Respondents’ firm of inadequate professional service and directed the Respondents to pay to Mr and Mrs H £300 in compensation. The Review Panel upheld the adjudicator’s original decision on 17th June 2004.
38. On 29th June the Law Society wrote to both the Respondents enclosing a copy of the Review Panel’s final decision and requested compliance and confirmation of compliance within seven days. A further letter was sent by the Law Society on 29th July 2004 advising the Respondents that the Law Society was considering a referral to the Tribunal.
39. The second Respondent replied on 16th August 2004.

40. The Law Society then asked the second Respondent to confirm by 31st August that he had complied with the Adjudicator's Decision and a reminder was sent on 1st September.
41. On 23rd October 2004 Mr and Mrs H wrote to the Law Society confirming that no monies had been received. At the date of the hearing the inadequate professional services award had not been paid.
42. The first Respondent had not replied to letters sent to him since the notification of the review panel's decision was sent to him. No correspondence had been received from the second Respondent in respect of this matter since his letter of 16th August. The compensation had not been paid.

The Submissions of the Applicant

43. The Respondents' breaches of the Solicitors Accounts Rules had been serious. They had not carried out reconciliations for a period of some three and a half years. It had taken a number of days for an error (when a large amount of client money had been paid into office account by mistake) to be rectified. There were examples of occasions when clients' purchases of properties had been completed without the firm having received funds. It was inevitable in such circumstances that monies belonging to other clients were being utilised to complete the unfunded clients' business.
44. Despite conditions being placed on the Respondents' Practising Certificates that they might practise only in employment or partnership first approved by the Law Society, and it had been made plain that the Respondents' current partnership would not be approved for the purpose of the condition, they had been writing letters on letterhead indicating that they continued to practise together as solicitors. The Respondents had not taken steps to close down their practice when they should have done and did not appear to take steps to close down in an orderly fashion. The Law Society had intervened into the practice.
45. The Respondents had not had indemnity insurance cover under the Indemnity Rules 2003 which were then in force and they did not have any run off cover. They owed the Assigned Risk Pool some £40,000 and over £37,000 for run off cover. That had not been paid.
46. When the Law Society asked for the Respondents' firms written complaints procedure it appeared that the first Respondent did not know what that was. None was in any event supplied. At the date of the hearing the Respondents' Accountants Reports had all been filed and none was outstanding. There had, however, been substantial delays in complying with that important regulatory requirement.
47. The Applicant did not put the allegations before the Tribunal as matters involving dishonesty on the part of the Respondents, he did put it as a very bad case of shoddy work.

48. In addition to the shoddy work demonstrated by the FIO's Report a clear Undertaking had been given by the first Respondent with which he did not comply. Breach of an Undertaking by a solicitor was a serious matter.
49. The Respondents had been directed by the Law Society to make a payment of compensation to former clients following a ruling that their professional services had been inadequate. The former client concerned had confirmed to the Law Society that she had received no money. She complained at the length of time that it had taken for the matter to be resolved and in particular said:-

“May I also pass comment, that if your ruling can be ignored what chance has the rest of us got. When I was originally forced to pay for someone else's mistake – the law of the land was used as a threat to force me to pay. What action can I take when the highest office known to me fails?”

The Submissions of the First Respondent (contained in his letter of 21st October 2004)

50. The first Respondent indicated his intention not to attend the hearing or put in a formal defence. He had no confidence in receiving a fair trial. He said that he and the second Respondent had already been punished at least twice on the same facts. He did not have the funds to be represented.
51. The first Respondent did not feel ashamed of the way he conducted the firm; no clients suffered and no monies were misappropriated. The firm supported the public in every way that they could and their prices were set at levels that the public could afford.
52. The first Respondent said that help had not been available when requested. A former partner had not been a party to the proceedings although a proportion of the problems had been caused by him. The firm's reporting accountants had created problems which, despite working extremely long hours over a long period of time, the first Respondent had not been able fully to resolve. The first Respondent did not consider that he had been treated fairly by the Law Society.
53. The first Respondent requested that his name be removed from the Roll as he no longer wished to be associated with the Law Society and he regretted the thirty-seven years he had spent practising law.

The Submissions of the Second Respondent

54. The Second Respondent said that he was not in reality a partner in the firm. He received a set salary each month and had no share in the profits nor any control over office or client monies. The first Respondent had been sole signatory on the firm's bank accounts.
55. The Second Respondent accepted that Accountant's Reports had been delivered late but all had now been put right. The firm closed for business on 28th September 2003 and he understood that insurance premiums had been paid up to that date. The second Respondent questioned the need for insurance. As he had not been in reality a partner

and did not have the control of the first Respondent the second Respondent did not believe he was or ever could be a danger to the public.

56. In the letter written by him to the Applicant dated 6th October 2004 the Second Respondent said that he was working in a non-legal capacity and had no intention of attempting to find work in the legal field.
57. In his letter addressed to the Applicant dated 29th November 2004 the Second Respondent said that he could not agree the costs figures put forward by the Applicant.
58. With regard to the compensation directed to be paid to Mr and Mrs H of £300 the second Respondent believed that there should have been sufficient money to make that payment. The second Respondent had taken that matter up with the Law Society but was told that the intervening agents had advised that there was no money in office account and very little in client account.
59. The second Respondent did not believe that that could be correct as he had undertaken work from October 2003 until March 2004 having not been paid his salary during that period.
60. The second Respondent had not been prepared to write a personal cheque for £300 to clients of a firm in which he was not a partner in the true sense when the matter had resulted from a former equity partner's error and in circumstances where the Law Society or their agents were in control of an amount of money belonging to the firm.

The Findings of the Tribunal

61. The Tribunal found all of the allegations to have been substantiated.

Previous Tribunal Finding

62. Following a hearing on 7th January 2003 the Tribunal found the following allegation to have been substantiated against the first and second Respondents together with Martin Barry Crookall.
63. The allegation was that the Respondents had failed to deliver an Accountant's Report in accordance with Section 34 of the Solicitors Act 1974 and the Rules made thereunder.
64. **On that occasion the Tribunal made the following orders:-**

The Tribunal order that the Respondent Stuart John Ryan of The Old Bank, 116-118 Bradshaw Brow, Bolton, BL2 3DD solicitor be suspended from practice as a solicitor for an indefinite period to commence on the 3rd day of March 2003 unless an Accountant's Report relating to the financial year ending 31st March 2000 is filed with the Law Society before that date. If such Accountant's Report is so duly filed then each of the Respondents shall pay a fine of £2,000, such penalty to be forfeit to Her Majesty the Queen and they further order that he do pay one third of the costs of and incidental to this application and enquiry fixed in the sum of £2,173.26.

The Tribunal order that the Respondent Stephen John Pyke of The Old Bank, 116-118 Bradshaw Brow, Bolton, BL2 3DD solicitor be suspended from practice as a solicitor for an indefinite period to commence on the 3rd day of March 2003 unless an Accountant's Report relating to the financial year ending 31st March 2000 is filed with the Law Society before that date. If such Accountant's Report is so duly filed then each of the Respondents shall pay a fine of £2,000, such penalty to be forfeit to Her Majesty the Queen and they further order that he do pay one third of the costs of and incidental to this application and enquiry fixed in the sum of £2,173.26.

The Tribunal order that the Respondent Martin Barry Crookall of 114 Summerford Road, Stockport, Cheshire, SK5 6QE solicitor be suspended from practice as a solicitor for an indefinite period to commence on the 3rd day of March 2003 unless an Accountant's Report relating to the financial year ending 31st March 2000 is filed with the Law Society before that date. If such Accountant's Report is so duly filed then each of the Respondents shall pay a fine of £2,000, such penalty to be forfeit to Her Majesty the Queen and they further order that he do pay one third of the costs of and incidental to this application and enquiry fixed in the sum of £2,173.26.

65. In its written findings dated 11th February 2003 the Tribunal said:-

“The Tribunal found the allegation to have been substantiated, indeed it was not contested

The timeous filing of Accountant's Reports is a fundamental requirement of a solicitor in private practice. Such a report demonstrates to the Law Society that a solicitor is handling clients' money fairly and in accordance with the Solicitors Accounts Rules and is exercising a proper stewardship over that money.

The Law Society as the professional regulator needs to be satisfied that clients' financial affairs are managed with the utmost probity and it needs to be in a position to give an assurance to clients that this is indeed the case. A failure to comply punctiliously with the statutory requirement to file an Annual Accountant's Report prevents the Law Society as the profession's regulator from fulfilling its proper duties of protecting the public and ensuring that the good reputation of the solicitors' profession is not damaged.

On the face of it, the Respondents appear to have shown a complete disregard for this fundamental rule of practice which could serve only to damage the confidence of the public in the solicitors' profession.

The allegation before the Tribunal relates to the non-filing of the Annual Accountant's Report relating to the Respondents' financial period ending on 31st March 2000. At the date of the hearing that Report still had not been filed, although the Tribunal noted that it had before it a letter from accountants instructed by Mr Ryan and Mr Pyke which offered assurance that this outstanding Report would be filed by the end of February 2003.

Although not forming part of any allegation before the Tribunal, the Tribunal expressed some anxiety about the Accountant's Reports relating to the financial periods ending March 2001 and March 2002. The Tribunal wished to make it very plain indeed that if those Reports were not filed within the periods indicated by the reporting accountants then the Tribunal expected the OSS to institute further disciplinary proceedings in respect of those outstanding reports.

It was of the utmost importance that the outstanding Accountant's Reports be filed. The Respondents cannot be allowed to continue in practice at a time when they are seriously in breach of this fundamental obligation of practice.

The Tribunal ordered that the Respondents would be suspended from practice for an indefinite period to commence on 3rd March 2003 if on that date the Accountant's Report for the year ending 31st March 200 has not been filed with the Law Society. If that Accountant's Report is so duly filed then the Respondents will not be suspended from practice but each of them shall pay a fine of £2,000 such penalty to be forfeit to Her Majesty the Queen. Each of the Respondents was ordered to pay one-third of the fixed costs of the application and enquiry. The whole of the fixed costs was £2,173.26.

The Tribunal requires to be satisfied that the before-mentioned Annual Accountant's Report has been filed with the Law Society. It will be so satisfied if an affidavit to that effect is lodged with the Tribunal's Clerk. Clearly this must be done prior to the 3rd March 2003 if the period of suspension is to be avoided".

The Tribunal's Decision and its Reasons

66. Following the conclusion of the hearing in December 2004 the Tribunal was concerned to find that the Respondents had appeared before the Tribunal on an earlier occasion to answer an allegation that an Accountant's Report had not been delivered in accordance with Section 34 of the Solicitors Act 1974 and the Rules made thereunder. The Respondents could be in no doubt as to the serious view taken by the Tribunal of such a breach. Indeed the Tribunal made it plain that unless the outstanding Accountant's Report (and those subsequently falling due) had not been filed by the end of February 2003 then the Respondents would be suspended from practice.
67. From the facts placed before the Tribunal at the December 2004 hearing it appeared that the Respondents had not been suspended from practice but they had continued not to file Accountant's Reports on time. This flew in the face of the strict statutory requirement and demonstrated that the Respondents had ignored the clear warning given to them in the Tribunal's earlier findings and orders.
68. The Tribunal had before it a catalogue of breaches of the Solicitors Accounts Rules, regulatory failures and failures to comply with requirements of the Respondents' own professional body.

69. The regulatory requirements are in force to make sure that the public is fully protected. Not only does a failure interfere with the protection of the public but it serves to prevent the Law Society as the profession's regulator from fulfilling its duties in that capacity.
70. The Tribunal considered whether or not the second Respondent was indeed a partner in the firm. It was clear from the firm's letterhead that he was held out to the public as a partner and in that regard he could not escape the responsibilities of partnership.
71. There had been many and wholly unacceptable discrepancies in the firm's books of account in particular with regard to client account and the Respondents' breaches of the Solicitors Accounts Rules clearly indicated that were not prepared to exercise the proper stewardship over clients' money which they were required to do when practising as solicitors.
72. The first Respondent only was in breach of an undertaking. Anyone accepting an Undertaking from a solicitor is entitled to expect that Undertaking to be complied with. If third parties can not rely upon solicitors' Undertakings then the way in which business in the United Kingdom, particularly in conveyancing transactions, is conducted would become both more difficult to conclude and inevitably become far more expensive to clients. It is for this reason that a breach of a solicitor's undertaking is considered to be a matter of the utmost gravity.
73. The Tribunal deprecates the Respondents' failure to comply with a direction made by the Law Society in connection with its regulation of inadequate professional services. The Tribunal can do no better than refer to the comment of the client concerned when she said:-

“May I also pass comment, that if your ruling can be ignored what chance has the rest of us got. When I was originally forced to pay for someone else's mistake – the law of the land was used as a threat to force me to pay. What action can I take when the highest office known to me fails?”

The Tribunal regrets that the client has been put to anxiety and inconvenience by the Respondents' failure. Not only has the allegation been found to have been substantiated but the Tribunal has also made the necessary direction so that the Law Society's direction may be treated for the purposes of enforcement as if it were an order of the High Court.

74. Bearing in mind its duty to protect the public and maintain the good reputation of the solicitors' profession, having found that these two Respondents have fallen so very far short of the high standards to be maintained by members of the solicitors' profession, the Tribunal concluded that it was right to order that each of them be Struck Off the Roll of Solicitors.
75. As neither Respondent was present to consider the question of costs the Tribunal ordered that the Applicant's costs should be paid by the Respondents on a joint and several basis and that such costs should be subject to a detailed assessment unless agreement was reached between the parties. Those costs are to include the costs of

the FIO (or investigation accountant) of the Law Society and the Law Society's internal costs where those have been quantified.

Dated this 17th day of February 2005

On behalf of the Tribunal

H Baucher
Chairman