

IN THE MATTER OF AMARJIT SINGH DEVGUN, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr D J Leverton (in the chair)
Mr A G Ground
Mrs S Gordon

Date of Hearing: 13th September 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 Margaret Eleanor Bromley, solicitor of TLT Solicitors, 1 Redcliff Street, Bristol, BS99 7JZ on 29th September 2004 that Amarjit Singh Devgun of Chingford, London, E4 might be required to answer the allegations contained in the statement which accompanied the application and that such order might be made as the Tribunal should think right.

On 12th May 2005 the Applicant made a supplementary statement containing further allegations.

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

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

- 1) Failed to comply within a reasonable time with an undertaking given to Richard Sandler & Co on 20th August 1997, alternatively an undertaking given to Bowling & Co on 10th January 2001;

- 2) Failed to keep Richard Sandler & Co and/or Bowling & Co informed as to the reasons for delay in performance of the undertakings;
- 3) Failed and/or delayed in registering title of a property at Leighton, London following completion and in so doing failed to act in the best interests of his client contrary to Practice Rule 1;
- 4) Failed to deal promptly or at all with letters and communications relating to the matters of a former client, namely, Barclays Bank;
- 5) Delayed in responding and/or failed to respond to correspondence from the Office from the Supervision of Solicitors.
- 6) Failed to comply with the Solicitors Accounts Rules 1998 in that:-
 - (i) He failed to keep his accounting records properly written up contrary to Rule 32;
 - (ii) He failed to transfer money in respect of his costs from client account within 14 days of giving written notification of costs to the client contrary to Rule 19;
- 7) He failed to deliver his Accountant's Report for the year ending 31st January 2004 on time contrary to section 34 of the Solicitors Act 1974;
- 8) He had been guilty of conduct unbecoming a solicitor in that:-
 - (i) He wrongly retained money which he knew or ought to have known was due to a third party;
 - (ii) He failed to provide a prompt and/or substantive response to correspondence from the Office for the Supervision of Solicitors;
 - (iii) He delayed unduly in dealing with a matter on behalf of a client, Mrs McN;
 - (iv) He failed to comply with a decision of an Adjudicator dated 14th April 2004.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London, EC4M 7NS on 13th September 2005 when Margaret Eleanor Bromley appeared as the Applicant and the Respondent was represented by Alan Jenkins of Counsel instructed by Messrs Murdochs Solicitors of Wanstead.

The evidence before the Tribunal included the admissions of the Respondent as to all of the allegations save for allegation 8(i) which he denied. Mr Briggs, The Law Society's Forensic Investigation Officer, and the Respondent gave oral evidence. At the hearing the following documents were handed up:-

- (i) Mr Briggs's bundle beginning with Mr Briggs's handwritten notes;
- (ii) Letters to and from the Legal Services Commission and the Respondent; and

- (iii) A letter from a County Court Judge.

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

The Tribunal orders that the Respondent, Amarjit Singh Devgun of Chingford, London, E4, solicitor, be suspended from practice as a solicitor for an indefinite period to commence on the 13th day of September 2005 and it further orders that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £14,968.56

The agreed facts are set out in paragraphs 1 to 105 hereunder:-

1. The Respondent, born in 1950, was admitted as a solicitor in 1995 and his name remained upon the Roll of Solicitors.
2. The Respondent was employed as an assistant solicitor with Tim Spencer & Co until March 1999 when he set up in partnership with Mr Spencer under the style of Devgun Spencer. In December 2000 Mr Spencer committed suicide and since that date the Respondent practised on his own account from his home address at Chingford, London. By the date of the disciplinary hearing the Respondent had ceased to practise as conditions limiting his ability to practise had been placed on his Practising Certificate.

Failure to comply with undertaking

3. In July 1997 Jeremy Kleinfeld, a partner in Richard Sandler & Co was acting for Mr and Mrs K under a Legal Aid Certificate.
4. On 11th July 1997, Mr Kleinfeld wrote to the Respondent at Tim Spencer & Co in connection with the transfer of the clients' instructions to that firm. By that date the Legal Aid Certificate had been transferred into the name of the Respondent, who was at the time an assistant solicitor in Tim Spencer & Co.
5. On 20th August 1997, the Respondent wrote to Richard Sandler & Co acknowledging receipt of the files and confirming "we will hold them to the undertakings detailed in your letter." The undertaking set out in that letter was:-

"Upon the conclusion of this matter, you will arrange for your law costs draftsman to incorporate the work undertaken by this firm a [sic] part of the combined bill, on the basis that we will of course be responsible for such proportion of your law costs draftsman's fee (provided this does not exceed 6.5% of profit costs plus VAT."

6. On 3rd April 2000 Mr Kleinfeld, who was by then a partner in Bowling & Co, the firm of Richard Sandler having been dissolved, wrote to the Legal Aid Board setting out his difficulties in getting any response from Tim Spencer & Co and requesting assistance.
7. On 5th May 2000 and 17th July 2000 the Legal Aid Board wrote to Tim Spencer & Co asking them to confirm the current position in respect of the proceedings. No

reply was received to those letters. On 6th September 2000 the Legal Aid Board wrote to the Office for the Supervision of Solicitors (The Law Society) to report this.

8. On 29th September 2000 Mr Spencer, who was then also practising in partnership as Silver Spencer, replied to The Law Society saying that there seemed to be confusion in the information chain. He confirmed that the matter had been transferred to Devgun Spencer.
9. On 2nd November 2000, the Legal Services Commission wrote to Bowling & Co confirming that the certificate had been transferred into the name of the Respondent of Devgun Spencer solicitors on 5th October 2000.
10. On 11th December 2000 Bowling & Co wrote to Devgun Spencer asking when the matter was likely to be concluded and when bills of costs would be submitted. No reply was received to that letter. Bowling & Co wrote again on 8th January 2001.
11. On 10th January 2001 the Respondent replied saying "We have arranged for the file to be costed. As soon as the bill is ready it will be submitted for taxation and payment."
12. On 13th March 2001 Bowling & Co wrote to Devgun Spencer requesting a copy of the draft bill. No reply was received. Bowling & Co wrote again on 10th April, 11th May, 26th June, 1st August and 24th September 2001.
13. On 10th October 2001, Bowling & Co wrote to the Legal Services Commission requesting their assistance.
14. On 5th November 2001 Bowling & Co, having been informed by the Legal Services Commission that the file had been lost, wrote again to Devgun Spencer offering to accept £1,000 in settlement. No reply was received. Further letters were written on 16th November and 30th November 2001. On 8th January 2002 Bowling & Co complained to The Law Society.
15. On 7th February 2002 The Law Society wrote to the Respondent setting out details of the complaint and requesting his response within 14 days. No reply was received. The Law Society wrote again on 14th March 2002 and in the absence of a reply wrote again on 28th March 2002.
16. On 16th April 2002 the Respondent spoke to a case worker at The Law Society who agreed to extend his time for replying for a further 14 days. This was confirmed by letter on 24th April in which it was emphasised that failure to reply to correspondence from The Law Society might be regarded as unprofessional conduct.
17. On 9th May 2002 the Respondent wrote to The Law Society explaining that at the time he gave the undertaking he was employed by Tim Spencer & Co and he was authorised to sign the undertaking on behalf of that firm. At the time the firm Devgun Spencer was formed, Mr Spencer also became a partner in Silver Spencer. The file was transferred to Silver Spencer to discharge the Legal Aid Certificate and prepare a final bill. The Respondent subsequently became aware that no work had been undertaken on the file by Silver Spencer. He then agreed to assist Mr Spencer by

finishing the work and preparing the file for billing. Unfortunately Mr Spencer committed suicide shortly thereafter.

18. In his letter, the Respondent confirmed that he then had possession of the file. He explained that Mr Spencer's death had left him with an extraordinarily heavy workload. He said that he would prepare a bill but could not commit himself to any timescale.
19. On 18th June 2002 The Law Society wrote to the Respondent requesting clarification of three matters. He did not reply. The Law Society wrote again on 16th July.
20. The Respondent replied on 18th July 2002. In that letter he gave further details of the background to the matter. He denied responsibility for the undertaking of August 1997 on the basis that he had given it on behalf of his principal.
21. In a letter of 6th August 2002 The Law Society asked if the file had been costed.
22. On 17th August 2002 the Respondent wrote to The Law Society saying:-

“I am presently working on the file to prepare for costing and once I have transferred all information to our computer system I intend to submit a rough scope of work to Mr Kleinfeld for his comments. This is to avoid further disagreements after the bill is prepared.

However, you must appreciate that due to my heavy caseload, I can only work on this file at weekends and at present I work every weekend. Therefore I am unable to give a precise timescale but I can assure that I will use my best endeavour to bring this matter to a speedy conclusion.”
23. The Law Society by letter of 29th October 2002 asked the Respondent for further information, including confirmation of the current position with regard to the billing of Mr and Mrs K's file. There was no reply. The Law Society wrote again on 22nd November 2002.
24. On 6th January 2003, the Respondent sent a report to The Law Society to be placed before the Adjudicator. The report set out in detail the Respondent's background, the difficulties he faced following the death of Mr Spencer, the attempts he had made to recruit additional fee earners to assist him and his financial position.
25. On 22nd January 2003 the Respondent was notified of the Adjudicator's decision. On 3rd February 2003 he applied for a review.
26. The review was considered by the Adjudication panel on 10th April 2003 and that panel resolved to vary the Adjudicator's decision and to refer the Respondent's conduct to the Tribunal.

Complaint re property at Leighton

27. In about May 2000 the Respondent was instructed to act by Mr Y in connection with the purchase of a property at Leighton. Mr Y was obtaining a mortgage from Barclays Bank. The Respondent was instructed to act also on behalf of Barclays.
28. On 16th May 2000, the Respondent completed the Certificate of Title. The Certificate of Title confirmed that it was given as set out in the appendix Rule 6(3) of the Solicitors Practice Rules 1990 as if the same were set out in full.
29. The mortgage advance was completed on 24th July 2000.
30. The Appendix to Rule 6(3) of the Solicitors Practice Rules includes an undertaking in the following terms:-

“We...

 - (c) Will within the period of protection afforded by the searches referred to in paragraph (b) above:
 - (i) complete the mortgage;
 - (ii) arrange for stamping of the transfer if appropriate;
 - (iii) deliver to the Land Registry the documents necessary to register the mortgage in your favour and any relevant prior dealings;
 - (iv) effect any other registrations necessary to protect your interests as mortgagee.
31. On 8th January 2001 Barclays Bank wrote to the Respondent pointing out that they had not received the deeds and asking the Respondent either to return the deeds or complete and return the form attached to the letter. The Respondent did not reply. Barclays Bank wrote again on 5th March 2001 and on 21st May 2001, to which the Respondent did not reply.
32. Solicitors instructed by Barclays, Spencer Ewin Mulvihill (SEM), wrote to the Respondent on 13th July 2001. They asked for the deeds or an explanation for the delay.
33. The Respondent did not reply and SEM wrote again on 30th July 2001 addressing the letter to “the Complaints Partner”.
34. On 14th August 2001 the Respondent spoke to Ms Ewin at SEM and confirmed that he would deal with the application for registration and send it to the Land Registry by Friday of that week. Ms Ewin ascertained from the Land Registry that no application had been received.

35. Ms Ewin spoke to the Respondent on 4th September 2001 when he confirmed that the application for registration had been submitted to the Land Registry “last Tuesday”, i.e. 28th August 2001.
36. On 10th September 2001 Ms Ewin spoke to the Respondent and he confirmed that the application for registration had been sent to the Land Registry. The Land Registry told Ms Ewin that no application for registration had been received.
37. On 24th September 2001 the Respondent wrote to SEM explaining why the application had been returned by the Land Registry on two occasions. He said that a new application had been submitted that day, 24th September 2001.
38. On 12th October 2001 Ms Ewin made enquiries of the Land Registry which revealed they had not received the application back from the Respondent.
39. On 19th October 2001 SEM wrote again to the Respondent indicating that the position remained the same and as at 18th October 2001 the Land Registry had not received an application. The Respondent did not reply to those letters. SEM wrote again on 29th October 2001 and 7th November 2001. On 14th November 2001 the Respondent spoke to Ms Ewin and again confirmed that the Land Registry had received all documentation. The Land Registry told Ms Ewin that they had received nothing.
40. SEM wrote to the Respondent again on 20th November 2001, on which date Ms Ewin had again spoken to the Land Registry who confirmed they still had received no application.
41. On 26th November 2001 SEM complained to The Law Society.
42. On 28th November 2001 the Respondent sent the application for registration to the Land Registry, explaining that he had resubmitted the application after, for unexplained reasons, it had been returned. The Land Registry acknowledged receipt of the application on 29th November 2001 and indicated that it would take about five weeks to complete registration. On 3rd January 2002 the Land Registry wrote to the Respondent indicating that there was likely to be a delay of a further three weeks.
43. On 19th December 2001 The Law Society wrote to the Respondent about SEM’s complaint. The Respondent did not reply. The Law Society wrote again on 8th January 2002.
44. The Respondent replied by letter dated 25th January 2002 explaining the difficulties he had faced in dealing with the matter and other matters following his partner’s suicide. The Respondent indicated that he had lodged an application with HM Land Registry but he did not state the date of lodgement. Shortly thereafter he had received queries about the property from the Land Registry.
45. On 14th February 2002 the Respondent sent the deeds to SEM.

46. On 25th February 2002 SEM wrote to the Respondent pointing out various discrepancies. The legal charge was dated 24th July 2001 not 24th July 2000 and the name appearing on the deeds was “D” and not “Y”.
47. On 4th March 2002 The Law Society wrote to the Respondent asking him to confirm the precise date on which the application for registration had first been lodged. The Respondent did not reply. The Law Society wrote again on 12th April 2002.
48. By letter of 16th April 2002 SEM told The Law Society of the Respondent’s lack of response.
49. On 8th May 2002 the Respondent spoke to the case worker at The Law Society. He was informed that a response was required. The Respondent spoke to The Law Society again on 14th May 2002 when The Law Society agreed not to progress the matter that week.
50. The Respondent wrote a letter dated 20th May 2002 to The Law Society in which he indicated that the first application for registration had been submitted on 24th August 2001. That application was returned and a further application was submitted on 24th September. That was again returned and a further application was submitted on 28th November 2001.
51. The Law Society wrote to the Respondent on 5th June 2002 raising issues relating to supervision of staff. The Respondent did not reply and The Law Society wrote again on 4th July and 16th July 2002.
52. The Respondent wrote on 18th July 2002 indicating that his insurers had settled SEM’s claim for costs and said “as far as any outstanding matters are concerned I will write to you in the next few days”. The Respondent did not write further and on 16th September 2002 The Law Society wrote to him again requesting further information and copy documents.
53. On 8th October 2002 the Respondent spoke to The Law Society saying that he would respond within a week.
54. On 15th October 2002 the Respondent again spoke to The Law Society and agreed that he would respond by Wednesday 23rd October 2002. The Respondent did reply by letter dated 23rd October 2002. He explained some of the problems with the applications, in particular the application lodged had had the wrong enclosures.
55. On 6th November 2002 The Law Society wrote again to the Respondent requesting a response in respect of various outstanding points which were set out in the letter. The Respondent did not reply and The Law Society wrote again on 5th December 2002 enclosing a draft report.
56. The Respondent replied by letter dated 6th January 2003 enclosing a report in which he set out the difficulties he had had in qualifying and in setting up a practice and the difficulties caused by Mr Spencer’s death. He also set out the steps he had tried to take to resolve the situation, including attempting to recruit extra fee earners.

57. On 17th January 2003, The Law Society Adjudicator decided to severely reprimand the Respondent. Following the Respondent's request for a review the matter was considered by the adjudication panel on 10th April 2003. It decided to refer the Respondent to the Tribunal.

Failure to comply with the Solicitors Accounts Rules

58. On 19th January 2004 an inspection of the Respondent's books of account was commenced by an officer of the Forensic Investigation Unit of The Law Society (the FIO). His report dated 28th May 2004 was before the Tribunal and the officer of the FIO gave oral evidence to the Tribunal.
59. The Respondent provided the FIO with accounting records on 19th January 2004. The Respondent confirmed that the liabilities to clients figure as at 30th November 2003 was not the true position as he had not transferred money in respect of his costs from client to office bank account. The Respondent said that no money had been transferred from client to office account in respect of costs since 2000.
60. The FIO found that the books of account were unreliable because:-
- (a) The amount recorded as being a client balance in the list of client balances was wrongly stated in a number of matters when compared to the ledger cards;
 - (b) A number of entries had been omitted from the ledger cards;
 - (c) Transfers of costs had not taken place for a number of years and had not taken place largely since the year 2000;
 - (d) There were debit balances on client account;
 - (e) There were credit balances on the office side of the clients' ledger account caused by the non-entry of bills of cost.

The Respondent agreed with the above.

61. In the light of the Respondent's personal difficulties the FIO postponed the inspection to allow the Respondent time to complete his review of all the files. The inspection resumed on 1st March 2004. The FIO was provided with a list of liabilities to clients and copies of all ledger cards and bills. Office money totalling £77,308.51 had been retained in client account. The Respondent hoped to transfer that money to a "holding account". There was a further £12,238.57 which was due to be transferred to office account as billed costs. The FIO examined the ledger cards and a number of files and established that there were still errors in the amount said to be held on client account.
62. The Respondent subsequently produced a further listing which showed the amount to be transferred to the holding account was £78,514.56. The FIO checked a sample of the balances and all matters checked appeared to be correct.
63. The Respondent expressed regret that he had allowed his accounting records to become out of date.

Failure to deliver Accountant's Report on time

64. The Respondent's accounting period ended on 31st January. His Accountant's Report for the year ended 31st January 2004 was due on 31st July 2004.
65. On 30th July 2004 the Respondent sent an email to The Law Society requesting an extension of time of four weeks in which to file his Report. He explained that he had been suffering from ill health and had fallen behind. An extension of time was granted to 28th August 2004.
66. On 27th August 2004 the Respondent sent an email to The Law Society requesting a further four week extension for filing his Accountant's Report. A further extension to 25th September 2004 was granted. It was pointed out that if he required any more time, then he had to contact The Law Society in writing by 25th September 2004.
67. On 30th September the Respondent contacted The Law Society again and requested a further extension. He said he had delivered all his records to his accountant and that his accountant required a further ten days. The Law Society replied the same day pointing out that the request for a further extension had been made after the agreed delivery date of 25th September 2004 and it could not be granted. The Respondent was informed that if the Report were received over a month late, the late delivery would need to be referred to the Regulation Unit of the Compliance Directorate.
68. The Report was received by The Law Society on 17th November 2004.

Delayed unduly with a matter on behalf of a client, Mrs McN

69. On 23rd January 2002, Mrs McN instructed the Respondent in relation to her application for settlement in the United Kingdom on the basis of her marriage to a British citizen.
70. On 8th February 2002 the Respondent wrote to Mrs McN confirming his instructions. On the same date the Respondent wrote a separate letter to Mrs McN explaining how her matter would be financed. He stated that he was advising her under the Legal Help and Help at Court form (Legal Aid).
71. In February 2002 Mrs McN contacted the Respondent as she had been advised that she would need a National Insurance number to enrol on a course. He provided her with a letter addressed "To whom it may concern" in which he confirmed that he was instructed by her.
72. In April 2002 Mr and Mrs McN contacted the Home Office and were told that it had no record of an application on behalf of Mrs McN. Mrs McN contacted the Respondent the next day who said he had lodged the application but had not received any response from the Home Office.
73. In April 2002 Mrs McN informed the Respondent that her passport would expire in May 2002 and he advised her that that was no problem.

74. In June 2002 Mrs McN attended the Respondent's office to enquire about the progress of her application. He told her he had not received any response.
75. In February 2003 Mrs McN needed to obtain a National Insurance number for which she needed her passport. She had given it to the Respondent, and contacted him about this. He provided her with a letter dated 25th February 2003 confirming that he was instructed in connection with immigration matters.
76. On 22nd May 2003 Mrs McN went to the Home Office and was told that there was no record of her application. Mrs McN contacted the Respondent the same day and he said that he had sent the application to the Home Office by post.
77. After further conversations between the Respondent and Mrs McN the Respondent said he would complete another application. Subsequently, Mrs McN attended at the Respondent's office when he completed an application on her behalf. When Mrs McN told him that her passport had expired he told her that she would have to get it renewed.
78. On Tuesday 29th July 2003 Mrs McN delivered the necessary documents to the Respondent's office. She contacted him again on 30th July 2003 when she pointed out the Home Office were to introduce fees for such applications from 1st August 2003.
79. On 31st July Mr McN contacted the Respondent who told him that he did not have to deal expeditiously with the application as he was not being paid. Mrs McN collected her papers from the Respondent on or about 1st August.
80. Subsequently Mrs McN instructed Edmonds solicitors to act on her behalf. They lodged her application with the Home Office on 8th August 2003 together with a fee of £155.

Failure to provide a prompt and/or substantive response to correspondence from the Office for the Supervision of Solicitors (The Law Society)

81. On 2nd October 2003, Edmonds Solicitors, made a complaint to The Law Society on behalf of Mrs McN.
82. On 28th October 2003 The Law Society wrote to the Respondent asking for his response within 14 days. He did not reply. The Law Society wrote again on 17th November 2003 requesting a response within seven days. The Respondent did not reply and The Law Society wrote again on 27th November.
83. On 8th December 2003 the Respondent contacted The Law Society by telephone to say that he had now received the letters but because of a postal strike all of the letters had been delivered at once. He indicated that he hoped to get a response to The Law Society soon. Nothing further was heard from the Respondent and on 16th December 2003 The Law Society wrote again. The Respondent did not reply. The Law Society wrote further on 6th January 2004 indicating that a report would be prepared for consideration by an Adjudicator.

84. On 2nd March 2004 The Law Society sent the Respondent a copy of the report prepared for the Adjudicator and informed him that he had 14 days in which to submit comments.
85. On 17th June 2004 The Law Society wrote to the Respondent sending him a copy of the FIO's Report. His explanation of various matters raised in the report was requested within 14 days.
86. On 14th July 2004 the Respondent contacted The Law Society by telephone explaining that he had been ill. He said he would be preparing a response over the weekend. An extension of time was granted to 23rd July 2004. No response was received by 23rd July. On 28th July 2004 The Law Society wrote to the Respondent requesting a response within 10 days.
87. The Respondent did not reply. On 26th August The Law Society wrote to him informing him that this matter had been referred for formal adjudication and enclosed a copy of the report.
88. The matter was considered by the Adjudicator who referred the matter to the Tribunal.
89. In respect of the late delivery of the Respondent's Accountant's Report, The Law Society wrote to the Respondent on 24th November 2004 requesting his explanation within the next 14 days. The Respondent did not reply and The Law Society wrote again on 14th December 2004 pointing out that his failure to respond to the letter might be regarded as unprofessional conduct and requesting a reply within eight days. The Respondent did not reply.

Failure to comply with the direction of the Adjudicator

90. The report relating to the complaint by Mrs McN was considered by the Adjudicator on 14th April 2004 and he made the following directions:-

“I therefore direct Devgun Spencer to pay to Mrs McN general compensation of £1,200 and her losses of £155. For the avoidance of any doubt, I further direct Devgun Spencer to waive their right to recover any fees from Mrs McN.”

In the absence of any application for a review of this decision it was to be implemented within seven days following the expiry of the review period.

91. On 18th May 2004 The Law Society wrote to the Respondent asking him to confirm within seven days that he had complied with the Adjudicator's decision. No reply was received to that letter nor to a further letter of 27th May.
92. The Respondent had not complied with the Adjudicator's decision.

The evidence relating to the disputed allegation 8(i), namely that the Respondent wrongly retained money that he knew or ought to have known belonged to a third party

93. The Respondent was instructed by MR Ltd in proceedings in Central London County Court against FG Ltd in March 1999.
94. By order dated 16th December 1997 FG Ltd was given leave to defend on condition that £6,628.18 was paid into court. It was paid and the proceedings continued.
95. In March 1999 the Respondent indicated that his client would accept £4,000 plus costs in settlement of its claim. On 9th March 1999 FG Ltd offered £3,000 in full and final settlement. That offer was accepted.
96. The Respondent prepared a Consent Order and sent it to FG Ltd. Ms RS signed it on behalf of FG Ltd. The Order provided that upon the sending of the Notice of Discontinuance the sum in court of £6,000 be released to FG Ltd. The signed Order was sent by FG Ltd to the Respondent with a cheque in favour of the Respondent's firm for £3,000 on 12th March 1999. The Respondent acknowledged receipt on 18th March and confirmed that he had sent the Order to the court.
97. On 18th March 1999 the Respondent wrote again to FG Ltd advising that the Order had been returned by the court because the amount shown as the sum held by the court was incorrect. He enclosed a new Consent Order which showed the correct figure to be released to FG Ltd by the court was £6,628.18. In all other respects the Order was identical to the one signed on 9th March 1999.
98. Some 11 months later on 10th February 2000 the Respondent wrote to FG Ltd advising with regret that the Consent Order had been lost by the court and saying "Under the circumstances we enclose two further copies of the Consent Order and we would be grateful if you can sign both copies and return them immediately".
99. Ms RS signed the new Consent Order believing it to be in the same terms as the original Consent Order. The new Order however provided that the money in court should be released to the claimant's solicitors, Spencer Devgun, rather than to FG Ltd as provided in the two previous orders. Ms RS confirmed in a written statement that there had been no agreement between the parties to alter the terms of the settlement agreed in March 1999. When she signed the new Order she did not notice that it provided that the monies deposited in court should now be paid to the claimant's solicitors.
100. That Order was duly made by the court and dated 23rd March 2000. The money in court, which by then amounted with the addition of interest to £7,537.94, was received by the Respondent on 17th April 2000.
101. On 20th April 2000 the Respondent wrote to his client, MR Ltd, saying "we will soon receive from the court a sum of £6,628.18 which we will use to settle our various outstanding bills". The Respondent told the Tribunal that Mr Spencer had been responsible for drawing up bills of costs and dealing generally with those and other administrative matters and had billed and made up the ledgers in the FG Ltd matter.

The Respondent would have seen a copy of the bill in the file: he would not have checked it.

102. On 13th June 2000 the Respondent wrote to the liquidator of MR Ltd. In that letter he referred to the sum of £628.18 as interest accrued on the sum deposited in court and said there was no agreement on the division of interest accrued but suggested it was reasonable that it be paid to the claimant.
103. The Respondent continued to retain the money due to FG Ltd. He had transferred it to the “holding account”. This was an account opened by the Respondent into which he transferred money which he believed to be office money but he wanted to check that office account was its proper destination. He believed there was a balance of about £13,000 in that holding account.
104. The Respondent continued to hold this money in the holding account. He agreed that the court needed to be told what the terms of the Consent Order should have been and that the money should be paid to FG Ltd. He said that he would be happy to do that. He had not tried to hide the money or deprive anyone properly entitled to it. The Respondent had only learned of Ms RS’s evidence on the day before the hearing. Before that there had been no indication that FG Ltd did not fully agree with the terms of the Order as drawn.
105. In cross examination the Respondent accepted that he had quoted erroneous figures to the liquidator of MR Ltd. He believed he had not considered the right documents and as a result had made an error; he had not deliberately sought to conceal the true position.

The Submissions of the Applicant with regard to the disputed allegation 8(i)

106. The Respondent had sent what his covering letter purported to be a duplicate Consent Order to FG Ltd save to the alteration to reflect the sum of money held by the court. The Consent Order had in fact been drawn to provide for the monies paid into court by FG Ltd to be paid to the Respondent himself, acting for MR Ltd rather than its being repaid to FG Ltd as had been provided in the original Consent Order which, indeed, reflected the terms of the agreement made.
107. When the Respondent wrote to the liquidator of MR Ltd he misrepresented the position as the agreement with the defendants, FG Ltd, was that the sum of £6,628.18 should be paid to them. The correct accrued interest figure was £909.76 which in the absence of any agreement to the contrary was also due to the defendants.
108. This allegation was the most serious of the allegations made against the Respondent. The Respondent had produced no evidence to support his assertion that a new agreement had been negotiated with FG Ltd. The Respondent had made no mention of the new agreement when writing to FG Ltd with the amended Consent Order. It was inconceivable if other discussions had taken place that they would not be mentioned in the letter sending the new agreement to FG Ltd. It appeared that FG Ltd had not chased the conclusion of the matter. It also appeared that FG Ltd had not obtained legal advice but was acting in person through its finance director, Ms RS. It was clear that Ms RS expected the return of the monies paid into court.

109. In connection with this matter the Applicant said that it was a serious matter in respect of which it was open to the Tribunal to find a lack of probity and that the Respondent's behaviour smacked of dishonesty.

The Submissions of the Respondent in connection with disputed allegation 8(i)

110. The Respondent had not been accused of dishonesty. It was clear that the Respondent's deceased partner had been involved in the case in some way prior to his death. It was accepted that the events leading to this allegation did not reflect well on the Respondent's competence. He should have dealt with the matter without error as he was responsible for the conduct of the case. The Tribunal was invited to note that the Respondent had written to FG Ltd saying that the figure in the proposed Consent Order had been wrong and he enclosed a corrected copy. Nearly one year later he was making a similar point. If the Respondent had had any nefarious intention he had adopted an extraordinary method of perpetrating it. The Respondent had been without a full set of his papers and had believed, although a great deal of time had passed since the actual event, that the initial agreement had been renegotiated or alternatively there had been a straightforward error. The Respondent had not been guilty of any deliberate untoward conduct in respect of this matter.

The General Submissions of the Applicant

111. The Applicant accepted that this was a sad case. The Respondent had overcome substantial difficulties to qualify as a solicitor and had suffered difficulties in practising as a solicitor which had been compounded by the suicide of his partner in December 2000.
112. There had however been shortcomings on the part of the Respondent before his partner, Mr Spencer, died. These related not only to regulatory matters but also to the conduct of client matters.
113. The Respondent had been guilty of a consistent failure to reply to correspondence addressed to him by The Law Society. The Law Society had attempted to assist the Respondent by agreeing to extensions of time whenever they had been requested by him. The Law Society was placed in great difficulty in the absence of any response as it then did not know what the current position was.
114. An Adjudicator of The Law Society had made an award to the client, Mrs McN, and that had not been complied with and remained outstanding some 18 months later.

The General Submissions and Mitigation of the Respondent

115. The Respondent recognised that his actions concerning the admitted allegations were such that he temporarily fell below the high standard required of a solicitor.
116. The Respondent admitted the allegation of conduct unbecoming a solicitor in that he failed to provide a prompt and/or substantive response to correspondence from The Law Society and unduly delayed in dealing with a matter on behalf of the client Mrs

McN, and that he failed to comply with a decision of the Adjudicator dated 24th April 2004. The latter failure was purely financial.

117. The Respondent accepted that he failed to comply with the Solicitors Accounts Rules 1998 in that he failed to keep his accounting records properly written up and failed to transfer money in respect of costs from client account within 14 days of giving written notification of costs to the client. He failed to deliver his Accountant's Report for the year ending 31st January 2004 on time.
118. Two Law Society monitoring visits had been made to the Respondent's practice in January 2002 and 2003. Minor non-compliance issues had been addressed, but no real concerns had been expressed. None of the matters before the Tribunal had been identified.
119. As a result the Respondent was reasonably confident that his accounting methods were correct and the progress he was making in checking his records complied with the rules.
120. The FIO's first inspection came as a total shock. The Respondent did not agree with some aspects of the FIO's Report which he believed created a misleading and inaccurate impression of him and his practice.
121. The Respondent had not made the statement attributed to him by the FIO namely that he was frightened to transfer costs from client to office bank account because of his lack of knowledge of the Solicitors Accounts Rules. He had been frightened to transfer client money owing to his uncertainty as to the position following the allegations of fraud made against his partner and that partner's suicide.
122. The Respondent had been in the process of checking client balances. He had started that exercise before the monitoring visits and continued with it until 2004.
123. The Respondent discussed the possibility of opening a holding account at both monitoring inspections with the inspectors. They were both of the opinion that if he transferred money from the client account to a holding account then, as the holding account would not be covered by the Solicitors Accounts Rules, it was possible that it would be considered as a transfer into office account. The FIO had not been of the same opinion and as the Respondent was nearing completion of his checks he felt comfortable transferring the 'office' money into a holding account. During the intervening period the Respondent treated the holding account as a secondary client account and did not have access to the funds contained therein.
124. The Respondent had not been able to complete his checks and meet with his reporting accountant prior to the FIO inspection. All credit and debit entries were correct on all ledger cards at the time of the inspection.
125. The Respondent was not aware of any entries omitted from the ledger cards. He was aware that there were a few cards where having shown costs on the office side of the ledger card no entry was made to show a transfer of costs but this was precisely what the Respondent was checking at the time.

126. The Respondent had concentrated his checks on the client column of the ledgers.
127. The Respondent admitted that his accounts were unreliable but only because neither he nor his accountant had completed checks. Such errors as there were amounted to minor posting errors.
128. The Respondent needed to sort out files as Mr Spencer had been in the habit of taking files home and they were never returned in the same state. The Respondent was frightened that the alleged fraudulent activities at Silver Spencer might also have taken place in his own firm. He was also frightened to find himself in such circumstances and that his clients might suffer as a result.
129. The Respondent had relied heavily on Mr Spencer and found it very difficult to cope without his help.
130. The Respondent regretted then and he still regretted the fact that it became necessary for him to check his files through the actions of others. He particularly regretted that the unfortunate matters took place when he was at his most vulnerable and when he needed to concentrate on re-establishing himself as a sole practitioner.
131. The Respondent did express regret that he had taken so long to complete things.
132. The Respondent did seek advice from the Ethics department of The Law Society but they were unable to offer any practical advice.

The Respondent's Mitigation

133. The Respondent was born in Kenya and came to the United Kingdom with his parents in 1961. He qualified as an Electrical Engineer in 1971 and worked in that industry until 1983 when he was forced into early retirement owing to a spinal problem that caused him to become permanently disabled.
134. On his retirement on medical grounds the Respondent became unemployable. He suffered pain constantly and without strong painkillers he was unable to sit for prolonged periods of time. He takes medication in order to cope with day to day life. As a consequence of this medication the Respondent was unable to concentrate continuously and thus his productivity was very low. He normally worked for at least eight to ten hours per day but his effective work output was the equivalent to two or three hours of an able bodied person. The Respondent worked at least a six day week. The Respondent's total weekly work output was equivalent to about two days of work of an able bodied person.
135. The Respondent had about 20% mobility and when outdoors he used a wheelchair. He did not use the wheelchair in his home as it was well adapted for his needs.
136. On becoming disabled the Respondent decided to study law. He was greatly supported by the hospital staff. Special arrangements were made for the Respondent by The Law Society.

137. The Respondent was then unable to find articles. Eventually he found a local firm prepared to employ him on a condition that he obtained a waiver of The Law Society's minimum pay rule. The Respondent successfully applied for a waiver. He completed his Articles without any remuneration. The firm had no adaptation at all and he could not use the toilet. During this period he existed on an income support benefit. Subsequently he qualified as a solicitor.
138. The Law Society had always been fully aware of the Respondent's problems.
139. As a consequence of his disability and health problems, the Respondent had to programme his work very carefully and maintain a careful watch on his workload. The Respondent's work involved a lot of court work.
140. Mr Spencer had been a very good employer and a good business partner and the Respondent relied on him very heavily. Throughout their relationship the Respondent never had a cause to suspect or doubt his motives. When Mr Spencer died suddenly, the firm was left in an extremely vulnerable position. He panicked for fear of being unable to manage. The Respondent was very mindful of his limitations. He wondered then how he was to survive.
141. The Respondent had more than one attempt to set up a partnership. None proved successful for a number of reasons.
142. After Mr Spencer's death the Respondent was so engrossed in his own difficulties that he paid little or no attention to the reasons behind his suicide. On one occasion in court the Respondent met a fellow solicitor who knew Mr Silver (Mr Spencer's partner in the firm Silver Spencer). He told the Respondent of The Law Society's intervention into that firm, allegedly for some fraudulent dealings. This was a serious shock to the Respondent who became concerned for his own practice as he relied on Mr Spencer for managing all financial matters, including the client account. The Respondent had always trusted Mr Spencer fully and could not believe that he could possibly be involved in fraudulent dealings.
143. The Respondent was concerned that he might be exposed to difficulties for being in breach of the Solicitors Rules. He sought telephone advice from the Ethics Department of The Law Society and was advised that there was no provision in the Rules to assist with such a difficulty but nevertheless he should examine the records to ensure they were correct and accurate. The Respondent opted for the safest option which was to examine the files and satisfy himself that all previous transactions were in compliance with the Solicitors Accounts Rules.
144. This was a mammoth exercise which only the Respondent could undertake satisfactorily. He had employed temporary staff unfamiliar with his practice and he spent time supervising them. The Respondent had also to cope with the difficulties created by two failed attempts to form a partnership. He was working seven days a week, between ten to twelve hours per day. He spent most of his waking hours either working from his desk or lying in bed using a laptop computer.
145. In November 2003 the Respondent was informed that his bid to renew his Legal Services Commission franchise was unsuccessful. He appealed against the decision.

In June 2004 he was informed that his appeal was successful and the contract was reinstated.

146. About 90% of the Respondent's work was publicly funded: he could not have continued without a LSC franchise. The refusal to renew caused his two staff members to find alternative employment. The Respondent's practice collapsed and he was plunged into further serious difficulties.
147. Because the Respondent worked from home it had been difficult to recruit staff.
148. As a result of the stress caused by the collapse of the practice the Respondent became ill and he was unable to maintain his previous work output. He was able to return to his normal work routine only in November 2004. This caused a backlog of work.
149. Just when the Respondent was beginning to make some progress he was advised of The Law Society's decision to impose an immediate condition on his Practising Certificate.
150. Since the reinstatement of his LSC contract the Respondent made strenuous efforts to find a partner or merge with another firm. The Law Society's action made this very difficult.
151. The last four years had been very difficult for the Respondent and he found working as a sole practitioner particularly difficult. He had continued to try to find a partner. Prospective partnerships and mergers remained possibilities, but had not crystallised into a firm arrangement.
152. The Respondent planned to recruit a trainee in June 2005, and had a particular trainee in mind. Before the difficulties with his contract, the LSC offered the Respondent funding to employ a trainee on the basis that the LSC would pay 75% of the salary. The trainee would have been required to enter into a contract whereby he agreed to remain with the firm for three years after completing his training.
153. The Respondent was fully aware of his abilities and his limitations. He had made constant efforts to recruit a partner and despite set backs had continued with his search. He also made efforts to merge with another firm but without success.
154. The Respondent worked long hours, his work output was less than one third of an able-bodied person. He needed more time to comply with Regulations than an able-bodied solicitor.
155. The Respondent considered that he could be criticised for being over-cautious, given his personal circumstances and the circumstances of his firm, but he needed to exercise considerable care to ensure that his clients' interests were protected at all times. The only way he could achieve that was to check each file thoroughly and to ensure that all bills had been issued and that they were correct and all money transactions on each ledger card were correctly recorded. This was a lengthy and a time consuming exercise but given the serious nature of the allegations made against Silver Spencer, the Respondent considered that that was the minimum he should do to protect himself and his clients.

156. The FIO made another inspection of the Respondent's firm in 2004. The Respondent had implemented all of his requirements following the first inspection. In January 2005 the FIO gave a clear report.

The Decision of the Tribunal as to the disputed allegation 8(i)

157. The Tribunal found allegation 8(i) to have been substantiated. The Tribunal found that the terms of the Consent Order had at no time been renegotiated. The new Order contained a term which had not been agreed between the parties and had not been drawn to the attention of the signatory on behalf of FG Ltd as would normally have been expected. For whatever reason the erroneous new Consent Order was produced and submitted for signature. The inevitable outcome was that a wrongful payment had been made to the Respondent. The Respondent had not ensured the despatch of the monies released from payment into court to FG Ltd who were entitled to such monies and it followed that as the Respondent continued to hold those monies he had over a number of years wrongly retained money which he knew or ought to have known was due to a third party, namely FG Ltd.

The Tribunal's Findings with regard to the admitted allegations

158. The Tribunal found the admitted allegations to have been substantiated.

The Tribunal's Decision and its reasons

159. The Tribunal had listened with great care to the evidence and the submissions.
160. The Tribunal gave the Respondent credit for making the effort to come to the hearing. He was wheelchair bound and the attendance had not been particularly easy for him.
161. The disputed allegation 8(i) was the most serious allegation which the Respondent faced. The Tribunal looked at the documents and considered the explanations given. The Tribunal was in no doubt that allegation 8(i) was substantiated- indeed that was almost conceded by the Respondent. In connection with this matter the Respondent had demonstrated a clear lack of probity. His actions in connection with the MR Ltd and FG Ltd matter fell far short of those expected of a solicitor, but no allegation of dishonesty had been made against the Respondent. It has to be said that the Tribunal was not impressed with the Respondent's evidence. It was a matter for regret that he appeared still to think that this was not a matter for which he should be criticised.
162. As to the rest of the allegations which were admitted they represented a catalogue of failures on the part of the Respondent.
163. It is a serious matter when a solicitor ignores correspondence addressed to him by other solicitors and particularly his own professional body. It is also a serious matter not to comply with an award made to a client by the solicitors' professional body.
164. Clients had been let down. The breaches of the solicitors accounts rules had occurred over a period of time.

165. The Respondent was candid in his admission that he was not equipped to practise as a sole practitioner. In any event that was abundantly clear. The Law Society had already and entirely properly imposed restrictions on the Respondent's Practising Certificate as to the way in which he may practise.
166. Having considered all of the matters before it the Tribunal concluded that it would only fulfil its duties to protect the public and the good reputation of the solicitors' profession by imposing an indefinite suspension from practice upon the Respondent to run from the date of the hearing.
167. The Tribunal wished to make it plain that should the Respondent in the future seek to have the indefinite suspension brought to an end then the Tribunal in addition to having regard to the appropriateness of lifting the suspension in the light of these Findings, would be unlikely to reach a decision favourable to the Respondent unless satisfied that the basis on which he might be permitted to resume practice would not involve risk to the public or the good reputation of the solicitors' profession.
168. After hearing submissions from the parties the Tribunal concluded that it would be right that the Respondent pay the costs of and incidental to the application and inquiry to include the costs of the investigation officer. The Applicant invited the Tribunal to fix those costs in the inclusive sum of £14,968.56. The Respondent did not dispute that figure. The Tribunal therefore made a formal written order which was handed down at the conclusion of the hearing namely that the Respondent be suspended from practice as a solicitor for an indefinite period to commence on 13th September 2005 and that he should pay the costs of and incidental to the application and inquiry fixed in the sum of £14,968.56.

Dated this 14th day of October 2005

On behalf of the Tribunal

D J Leverton
Chairman