

IN THE MATTER OF KATHERINE ELAINE MOSS-DAVIES, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr A H B Holmes (in the chair)
Mr J C Chesterton
Mrs C Pickering

Date of Hearing: 15th 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 Rosemary Jane Rollason, solicitor and partner in the firm of Field Fisher Waterhouse, 35 Vine Street, London, EC3N 2AA on 14th December 2004 that Katherine Elaine Moss-Davies of West Lydford, Somerton, Somerset, (now alternatively c/o Catsham, Glastonbury, Somerset), solicitor, 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 that she:-

- (i) Removed client files and documents from the offices of her employer, Grenville J Walker Solicitors, without authority and that despite repeated requests to return those files and documents she retained them:
 - (a) after she left the employment of Grenville J Walker Solicitors in approximately December 2000;
 - (b) after she was suspended indefinitely from practice as a solicitor on 3rd April 2003.

- (ii) Failed when requested to return files and documents the property of Mrs D, her former client, for a period of approximately one year;
- (iii) Following her indefinite suspension from practice as a solicitor in 3rd April 2003, continued to hold client monies and papers with which, as a suspended solicitor who did not hold a current Practising Certificate, she was not permitted to deal;
- (iv) Failed to deal promptly and/or substantively with correspondence from the Office for the Supervision of Solicitors;
- (v) Failed to file an Accountant's Report with the Law Society in respect of her practice, KMD Solicitors, for the period ending 30th September 2002, contrary to Section 34 of the Solicitors Act 1974 (as amended);
- (vi) Failed to file an Accountant's Report with the Law Society in respect of her practice, KMD Solicitors, for the period ending 30th September 2003, contrary to Section 34 of the Solicitors Act 1974 (as amended).

By a supplementary statement of Rosemary Jane Rollason dated 3rd May 2005 it was further alleged against the Respondent that she had been guilty of conduct unbecoming a solicitor in that she:-

- (vii) Was in breach of the Solicitors Indemnity Rules 2002 in respect of her firm, KMD Solicitors, for the indemnity year 2002-2003;
- (viii) Failed to comply with a decision of an Adjudicator of the Law Society dated 7th January 2005 concerning a complaint by her former client, Mr W, made pursuant to Section 37A and Schedule 1A, paragraph 1(i) of the Solicitors Act 1974 (as amended);
- (ix) Failed to account to a client, Mrs B, for money due to her after reserving funds to cover payment of a Statutory Charge imposed by the Legal Aid Board, in breach of principle 12.13 of the Guide to the Professional Conduct of Solicitor 1999 (8th edition) ("the Guide");
- (x) Failed to account to Mrs B for interest due to her upon the balance of sale proceeds from her former matrimonial home, in breach of Rule 24 of the Solicitors Accounts Rules 1998;
- (xi) Failed to render a final bill of costs concerning Mrs B's divorce proceedings, which concluded in March 1998, in breach of Principle 14.06 of the Guide;
- (xii) Failed to forward Mrs B's divorce papers and/or file in respect of the administration of Mrs B's late father's estate to her or to her new solicitors upon request, in breach of Principle 12.13 of the Guide;
- (xiii) Failed to give a sufficient and satisfactory explanation of her conduct concerning Mrs B's complaint when requested to do so by the Law Society, in breach of Principle 30.04 of the Guide;

- (xiv) Failed to comply with a decision of an Adjudicator of the Law Society dated 5th January 2005 made pursuant to Section 37A and Schedule 1A, paragraph 1(i) of the Solicitors Act 1974 (as amended) in respect of a complaint made by her client Mrs B.

The Tribunal was requested to direct that the directions of the Adjudicators referred in allegations (viii) and (xiv) be treated for the purposes of enforcement as if they were contained in an Order made by the High Court.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London, EC4M 7NS on 15th September 2005 when Rosemary Jane Rollason appeared as the Applicant and the Respondent did not appear and was not represented.

During the hearing the Applicant submitted a bundle of correspondence and attendance notes ("RJR 7").

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

The Tribunal orders that the Respondent, Katherine Elaine Moss-Davies of West Lydford, Somerton, Somerset, TA11 7DL, (alternatively c/o Catsham, Glastonbury, Somerset) 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 £12,623.96.

The Tribunal orders that the Direction of the Adjudicator made pursuant to Section 37A and Schedule 1A, Paragraph 1(i) of the Solicitors Act 1974 (as amended) dated 5th January 2005 in respect of the complaint of Mrs B be treated for the purposes of enforcement as if it were contained in an Order made by the High Court.

The Tribunal orders that the Direction of the Adjudicator made pursuant to Section 37A and Schedule 1A, Paragraph 1(i) of the Solicitors Act 1974 (as amended) dated 7th January 2005 in respect of the complaint of Mr W be treated for the purposes of enforcement as if it were contained in an Order made by the High Court.

The facts are set out in paragraphs 1 to 98 hereunder:-

1. The Respondent, born in 1959, was admitted to the Roll of Solicitors in 1984. She was suspended from practice as a solicitor indefinitely following an Order of the Tribunal on 3rd April 2003.
2. The Respondent was the sole principal of her own practice, trading under the name "Moss Davies" until approximately September 1999. She then took employment as a solicitor with Grenville J Walker Solicitors of 45 & 55 East Street, Blandford Forum Dorset, until approximately December 2000. The Respondent then joined the practice of Chester & Co of 22 Argyle Road, Boscombe, Bournemouth, until May 2001. She then recommenced practice as the sole principal of her own firm under the style KMD Solicitors, practising from her home address.

Allegations (i), (ii), (iii) and (iv)

3. Allegation (i) related back to the period when the Respondent was employed at the firm of Grenville J Walker Solicitors between September 1999 and December 2000.
4. On 6th December 2000 Grenville J Walker Solicitors wrote to the Respondent following a complaint from a client, Mr M, about the legacy he received from the estate of K B Minor. Mr M's complaint raised allegations that outstanding interest properly owed by Grenville J Walker Solicitors to him had not been paid, and that he was entitled to appropriate compensation from the firm for its delay in dealing with the matter. In its letter, Grenville J Walker Solicitors asked the Respondent to return Mr M's file "forthwith" in the absence of any "suitable authority to remove it elsewhere". It noted more than one month had passed since it had first raised the matter with the Respondent and reiterated its concerns that the Respondent had failed to write particular costs off the file.
5. On 2nd January 2001 Grenville J Walker Solicitors wrote another letter to the Respondent. In this letter, Grenville J Walker Solicitors requested that the Respondent return at least seven client files to it pending receipt of letters of authority from the clients in question authorising Grenville J Walker Solicitors to pass their files to the Respondent. Grenville J Walker Solicitors also asked the Respondent to confirm particular information relating to costs, invoices and other administrative matters about those and a number of other files at the same time.
6. On 7th March 2001 Grenville J Walker Solicitors wrote a further letter to the Respondent. This time Grenville J Walker asked the Respondent to return 18 files to it (including seven files it had previously requested from her) and emphasised to her that matters in which it (i.e. the firm) was instructed belonged to the firm, not to her. It also emphasised ongoing concerns about a number of matters: the Respondent's unauthorised removal of client files, title deeds and wills; missing files; files which the Respondent had returned to it incomplete; costs and administrative issues; files not known to the firm that had been worked on by the Respondent in the firm's name; and Mr M's complaint. The letter also notified the Respondent that the firm would refer its concerns to the Law Society if she failed to respond by 30th March 2001.
7. On 23rd April 2001 Mr G Walker wrote to the Law Society on behalf of Grenville J Walker Solicitors requesting assistance in dealing with the ongoing problems the Respondent was causing. Mr Walker advised the Law Society that the Respondent had removed client files, deeds and documents from the firm's offices without client authority and that the Respondent had only replied to one of the firm's letters to her about those matters.
8. On 11th November 2002, Grenville J Walker Solicitors responded to a letter from the OSS concerning a complaint from a Mrs B. The firm denied responsibility for problems Mrs B had experienced with her file, and asserted that it had never dealt with Mrs B until the Respondent began working for it. The firm denied all awareness of any involvement with Mrs B until the Law Society advised that Mrs B had complained to it about the firm's handling of her file. Although Grenville J Walker Solicitors acknowledged that it acted for Mrs B subsequent to the Society's involvement, it denied it had provided inadequate professional services to her prior to that and emphasised it had been unable to respond substantively to her about her

concerns because it had been unable to obtain her file from the Respondent. Finally, the firm reiterated its earlier request for assistance and support from the Law Society.

9. On 18th November 2002 Grenville J Walker Solicitors advised the OSS about another complaint it had received relating to a file of which the Respondent had conduct when she was employed by the firm. Again, the Respondent had removed the file from the firm without authority to when she left the firm's employment and had failed to return it despite requests to do so.
10. On 23rd December 2002 the OSS telephoned Mr Walker to explain its powers to him. During that telephone conversation Mr Walker re-emphasised that he was unable to contact the Respondent, that she had failed to return missing client files to his firm and that he was very concerned about her continuing behaviour.
11. Further correspondence and telephone calls followed between the OSS and Mr Walker. Subsequently on 10th March 2003 Grenville J Walker Solicitors provided further information to the OSS about another file that the Respondent had failed to return.
12. On 3rd April 2003 following a hearing before the Tribunal the Respondent was suspended from practice as a solicitor for an indefinite period. The basis for that suspension was that the Respondent had been found guilty by the Tribunal of conduct unbecoming a solicitor in that she had failed to deliver an Accountant's Report in respect of her firm, Moss-Davies, for the period ending 31st December 1999 to the Law Society.
13. On 30th May 2003 the OSS wrote letters to Grenville J Walker Solicitors and separately to the Respondent. In the letter to Grenville J Walker the OSS confirmed its understanding of Grenville J Walker Solicitors' concerns and requested copies of correspondence it had received from the Respondent as well as further information.
14. The OSS wrote to the Respondent advising it had received a complaint from her former employers about her and, accordingly, would investigate allegations that she had removed files from Grenville J Walker Solicitors without authority and failed to return those files when asked. It listed specific files and advised the Respondent that continuing failure to return the files and respond to Grenville J Walker's correspondence could amount to a breach of Practice Rule 1 of the Solicitors Practice Rules 1990.
15. The OSS requested the Respondent's full explanation of events within 14 days and also advised her that upon conclusion of its investigation the OSS might refer the matter for adjudication.
16. On the same day the OSS received a written complaint from Mrs D, a former client of the Respondent. She complained that the Respondent had retained her file and papers in respect of current property matters for a period in excess of one year, despite requests that she return them. By this time the Respondent had been suspended from practising.
17. On 6th June 2003 the OSS advised the Respondent by letter that it was aware of a further file she had allegedly removed from, and failed to return to, Grenville J

Walker Solicitors without authority. Accordingly, the OSS requested that she confirm the current position in relation to that file as well.

18. On 16th July 2003, in light of concerns that the Respondent might be providing legal services to clients whilst suspended from practice the OSS wrote to the Respondent enquiring about her present employment status.
19. The OSS appointed Mr M of Messrs Bevan Ashford to attend upon the Respondent and collect papers, pursuant to its powers under Section 44(b) of the Solicitors Act 1974 and to investigate the various issues of concern. On 1st August 2003 Mr M wrote to the OSS advising that:-
 - The Respondent continued to hold as many as 200 files, wills and/or deeds that may have been the property of Grenville J Walker Solicitors in her own storage facility;
 - The Respondent was awaiting payment in relation to one particular file to enable her to pay an accountant to finalise her firm's accounts;
 - The Respondent had provided five files relating to a Mrs B to Bevan Ashford;
 - The Respondent had denied allegations that she had "wiped" the computer system at Grenville J Walker Solicitors;
 - The Respondent was possibly operating a client account at either NatWest Bank plc or Lloyds Bank plc or alternatively branches of Lloyds TSB.

(There was a suggestion at this time as a result of statements made by the Respondent to Mr M that she may have been practising as a solicitor whilst suspended, but Mr M later confirmed in his letter of 1st March 2004 that no evidence of such practice was ultimately found on the files recovered from the Respondent.)

20. On 6th August 2003 the OSS wrote to the Respondent and requested that she release the documents Mrs D had complained about to her within 10 days. The following day the OSS wrote a separate letter to the Respondent requesting a response from her to its letter dated 16th July 2003 enquiring about her employment status. In the absence of a response, on 21st August 2003 the OSS reiterated its request for a response to that letter within a further 8 to 14 days.
21. On 1st September 2003 the OSS wrote again to the Respondent, this time seeking her response to its letters concerning Grenville J Walker Solicitors' complaints within 8 days (i.e. its letters dated 30th May 2003 and 6th June 2003). In that letter the OSS advised the Respondent that failing to respond to letters from the OSS might be regarded as unprofessional conduct, contrary to Principle 30.04 of the Guide.
22. The letter also advised the Respondent of its powers to obtain documents from her and that her ongoing failure to reply satisfactorily might result in the imposition of a condition on her Practising Certificate.

23. Following that, on 2nd September 2003 Bevan Ashford confirmed during a telephone conversation with the OSS that the Respondent had said she had “washed her hands” of the OSS and that she refused to confirm her intention with regard to her future employment. Bevan Ashford was sufficiently concerned about the Respondent handling client monies and papers that it telephoned the OSS to discuss those matters with it and the following day authorised the OSS to send its letter dated 1st August 2003 to the Respondent seeking an explanation of her conduct.
24. On 5th September 2003 in light of the further information it had received from Bevan Ashford the OSS wrote to the Respondent again seeking her explanation within 7 days upon various issues: that she was operating a client account despite not holding a Practising Certificate, that she might be conducting reserved activities whilst suspended from practice, that she was failing to respond to OSS correspondence and defaulting on payments to the Solicitors Indemnity Fund.
25. On 17th September 2003 Ms K, who stated that she was the Respondent’s sister, contacted the OSS. Ms K advised by telephone that the Respondent was unwell and in her opinion possibly suffering a “breakdown”. She also confirmed that the Respondent was not opening her mail and was not practising whilst suspended. Nevertheless, the OSS forewarned Ms K there was a possibility that it might ultimately have to intervene in the Respondent’s “practice” so as to be able to return files to clients who had been requesting them.
26. Following that, on 26th September 2003 the OSS wrote another letter to the Respondent. In that letter it acknowledged that it had spoken with the Respondent’s sister about its concerns, but was still concerned about the situation relating to files it had previously written to her about. The OSS reiterated its powers of intervention and requested a response to its letters to her dated 16th July, 7th and 21st August and 5th September 2003 referred to above, as well as its current letter, by 2nd October 2003.
27. In the absence of a response, on 2nd October 2003 the OSS advised the Respondent that it had referred her ongoing failure to address the concerns raised by Grenville J Walker Solicitors for formal adjudication. It attached a draft report and requested the Respondent’s written submissions about that within seven days.
28. The next day Ms K telephoned the OSS and explained that the Respondent remained unwell and reiterated that she had not been practising whilst suspended. Ms K advised the OSS that she would call in one week to discuss the possible transfer of client files and/or monies the Respondent held to an alternative solicitor.
29. On 10th October 2003 therefore the OSS telephoned Ms K to discuss the possible referral of the Respondent to the Tribunal in light of her ongoing failure to reply to OSS correspondence and the underlying concerns about the outstanding files. Ms K took that opportunity to reiterate her concerns about the Respondent’s health, but in light of her inability to provide any supporting medical evidence the OSS advised her that its report would still be supplied to the Adjudication Panel.
30. Further telephone conversations between the OSS and Ms K ensued. On 28th October 2003 Ms K confirmed in writing that she had returned all files relating to Mrs B to Bevan Ashford and would return files relating to three clients (including Mrs D)

to the clients themselves. The letter disputed the Grenville J Walker Solicitors allegations that the Respondent had removed client files from it.

31. On 11th December 2003, however, the OSS advised the Respondent that the matter had been referred for consideration by the Adjudication Panel. It supplied a copy of the memorandum and papers that would be considered by the Adjudication Panel to the Respondent and requested her written submissions in light of those within 6 days.
32. In the absence of any written submissions from the Respondent, on 16th January 2004 the Adjudication Panel considered the matter and, inter alia, it resolved to refer the Respondent's conduct to the Tribunal and to intervene in her practice.
33. On 1st March 2004 Mr M, who had now been appointed as the Law Society's Intervention Agent, wrote to the OSS confirming movements which had taken place on the Respondent's client bank account between 3rd April 2003 and 28th July 2003, i.e. in the period after her suspension from practice.
34. With the exception of several telephone conversations with the Respondent's sister, Ms K, the OSS had received no response from the Respondent in relation to any of the allegations.

Allegation (v)

35. On 10th April 2003 the OSS wrote a letter to the Respondent requesting that she provide her firm's Accountant's Report for the period ending 30th September 2002, which she should have submitted by 31st March 2003.
36. In the absence of a reply, on 6th June 2003 the OSS wrote again reiterating its request that she supply a copy of her Accountant's Report for the relevant period "without further delay".
37. By 28th July 2003 the OSS still had not received a response from the Respondent. Accordingly it reiterated its request for a copy of the outstanding Accountant's Report and requested the Respondent's explanation of her continuing failure to provide the report within 14 days.
38. On 28th August 2003 the OSS still had not received a response so it referred the matter for formal adjudication. It provided a copy of the report that would be considered by the Adjudicator to the Respondent and asked her to provide any written representations that she might like to make to the Adjudicator within 14 days. No response was received.
39. On 10th October 2003 the Adjudicator considered the papers and determined that the Respondent had breached Section 34 of the Solicitors Act 1974 by failing to supply a copy of an Accountant's Report for the year ending 30th September 2002 to the OSS.
40. The OSS had not received a response to any of its letters relating to this matter from the Respondent.

Allegation (vi)

41. On 19th April 2004, the OSS wrote a letter to the Respondent requesting that she supply it with an Accountant's Report for the period ending 30th September 2003, which was due by 31st March 2004.
42. In the absence of a reply, on 23rd August 2004 the OSS wrote a further letter to the Respondent reiterating its request and seeking her explanation for her continuing failure to supply the Report within 14 days.
43. The OSS had never received a response to any of its letters relating to this matter from the Respondent. In light of that the OSS determined to refer the Respondent's continuing failure to the Tribunal in September 2004.

Allegation (vii)

44. The Law Society wrote to the Respondent on 21st January 2005 putting to her the allegation that she was in breach of the Solicitors Indemnity Insurance Rules.
45. The letter explained that the Law Society had repeatedly tried to contact the Respondent regarding outstanding payments to the Assigned Risks Pool ("the ARP") for the firm of KMD Solicitors.
46. The letter set out the history, namely that on 13th March 2003 a proposal form was sent to the Respondent from the ARP for the indemnity period for the year 2002/2003. The Respondent was subsequently indefinitely suspended from practice on 3rd April 2003. On 21st May 2003 the ARP sent a chasing letter. On 12th November 2003 a further copy of the proposal form was sent. On 27th December 2003 a further chasing letter for the completed proposal form was sent advising that the ARP would set the level of premium due in the absence of a response.
47. No response was received and on 14th April 2004 the ARP set the level of the premium at £36,458.50 and requested payment from the Respondent. In the absence of payment, on 10th June 2004 the ARP wrote advising that a statutory demand was being prepared. This was served on the Respondent on 18th August 2004.
48. On 18th August 2004 the Respondent telephoned the ARP to advise that the firm of KMD Solicitors had ceased to operate in October 2002 without cover, and that she had been ill. The ARP advised that they were unable to amend the set amount equivalent to premium without a waiver from the Law Society, but that she needed to apply for cover first. In view of this the ARP sent a further copy proposal form by email.
49. On 20th September 2004 the ARP sent a chasing email for the completed proposal form and chasing letter. No reply to this correspondence has been received by the ARP and a bankruptcy petition was prepared. The Respondent did not reply to the Law Society's letter of 21st January 2005.

Allegation (viii)

50. The allegation related to a complaint by Mr W, a former client of the Respondent's firm KMD Solicitors. The full details were set out in the Adjudicator's Decision of 7th January 2005, a copy of which was before the Tribunal.

51. In summary the matter related to a property which Mr W had bought originally with a mortgage from the Halifax Building Society. In November 2002 Mr W remortgaged the property with the Cheltenham & Gloucester Building Society ("C&G"). On this occasion KMD Solicitors acted for Mr W and C&G.
52. In December 2002 Mr W wished to transfer the property into joint names with his wife and then to sell it. He instructed solicitors, Messrs Battens, to deal with the transfer and sale. It transpired when office copy entries in respect of the property were obtained that a mortgage was registered in the name of the Halifax, not C&G. The C&G mortgage had not been registered by KMD Solicitors. The position had to be resolved, causing significant inconvenience to Mr W in connection with the transfer and sale of the property. The C&G mortgage was finally registered on 20th June 2003. Mr W submitted a complaint about the matter to the OSS on 30th January 2004.
53. After the OSS had investigated the complaint it was considered by an Adjudicator, who made a finding that the services provided by KMD Solicitors in this case were inadequate because the firm delayed in registering the remortgage with C&G. The Adjudicator decided to direct that KMD Solicitors pay compensation in the sum of £500 to Mr W. The decision provided that both parties had a right to request a review of the decision within 14 days of notification of it. If there was no review then the directions were required to be carried out by KMD Solicitors within 7 days following the expiry of the review period.
54. The Law Society wrote to the Respondent and to Mr W on 19th January 2005 confirming the Adjudicator's decision in respect of Mr W's complaint and notifying them of their rights of the review. No request for a review was received from either party and on 2nd February 2005 the Law Society wrote again to the Respondent informing her that the review period had expired and that she was required to comply with the decision within 7 days and provide evidence of compliance. On 15th February 2005 in the absence of any communication from the Respondent the Law Society wrote again advising that a referral to the Tribunal would be considered unless the Respondent complied with the direction within 14 days of the date of the letter.
55. On 17th March 2005 the Law Society wrote to the Respondent stating that if she failed to comply with the decision within 14 days of receipt of the letter of 17th March and provide confirmation to the Law Society then the matter would be referred to the Tribunal without further notice. The letter was sent by special delivery and the Post Office's "Track and Trace" report showed that the item was delivered on 19th March 2005.
56. The Respondent had not complied with the Adjudication decision of 7th January 2005.

Allegations (ix) to (xiii)

57. These allegations and allegation (xiv) below related to a complaint by a former client of the Respondent, Mrs B. (Mrs B's matter was one of the client files which

Grenville J Walker Solicitors had alleged that the Respondent had removed from the offices of her former employer without authority and failed to return.)

58. Mrs B had also submitted a separate complaint to the Law Society concerning the Respondent's conduct of her matters and following consideration by an Adjudicator of the Law Society five specific matters arising from Mrs B's complaint were referred as allegations of conduct unbefitting for consideration by the Tribunal.
59. A copy of the Adjudicator's Decision dated 5th January 2005 in respect of Mrs B's complaint was before the Tribunal.
60. Mrs B had instructed the Respondent to deal with various matters on her behalf from 1993 onwards.
61. Mrs B first instructed the Respondent in relation to her divorce proceedings at a time when the Respondent was practising as sole principal of her firm, Moss-Davies. By 1996 Mrs B was becoming concerned about delays.
62. In January 1997 the Respondent applied for Legal Aid to deal with Mrs B's application for ancillary relief. A Legal Aid Certificate was issued on 22nd January 1997. Mrs B was still concerned about lack of progress in January 1998.
63. On 31st January 1998 Mrs B's father, Mr M, died. Mrs B instructed the Respondent in relation to the administration of his estate. Mrs B was executrix of the will.
64. In April 1998 Mrs B's divorce proceedings were finalised but there was no evidence from her files that the Legal Aid Certificate was ever discharged or a final bill prepared.
65. Mrs B's former husband claimed that property in which the late Mr M had lived was part of the matrimonial assets and therefore formed part of the ancillary relief proceedings. Consequently Mrs M's estate could not be fully wound up until the matrimonial proceedings were finalised. Ultimately a settlement was reached in those proceedings and the property concerned was sold.
66. The Respondent was instructed in relation to the sale of the property. On 16th October 1998 the Respondent wrote to Mrs B stating that she was enclosing a completion statement and an invoice, which Mrs B said she never received.
67. On 29th October 1998 the Respondent wrote to Mrs B enclosing a cheque for £195,753.74 representing Mrs B's share of the sale proceeds, less £5,000 on account of costs for payment of the statutory charge.
68. When the cheque was returned by the bank because of a discrepancy Mrs B asked the Respondent to retain the money rather than issuing another cheque, as she was in the process of purchasing another property. The Respondent was acting for her in that purchase. That purchase fell through, as a result of which the Respondent retained the money on her account until December 1998. Mrs B alleged that interest in respect of this amount was due to her for the period from 13th October to 3rd December 1998. This had never been paid.

69. In October 1998 probate in relation to Mr M's estate was obtained.
70. In September 1999 the Respondent ceased trading as "Moss-Davies" and became an assistant solicitor at Grenville J Walker Solicitors. She did not inform Mrs B that she had moved to another firm until Mrs B had to go to sign some papers.
71. In May 2000 the final division of Mr M's estate took place between Mrs B and her brother. The Adjudicator's Report referred to Mrs B's concerns regarding the Respondent's failure to deal with a transfer of shares from the estate between Mrs B and her brother, the whereabouts of the share certificate and the payment of dividends. (These matters did not form part of the current allegations but were relevant to allegation (xiv) below.)
72. In November 2000 the Respondent left Grenville J Walker and became a partner at Chester & Co Solicitors. She took Mrs B's files with her but again did not inform Mrs B that she was leaving the firm. Mrs B contacted her through an old telephone number. Mrs B stated that although the sum of £7,000 was left in Grenville J Walker's client account by the Respondent, she was not informed. Grenville J Walker had no address for Mrs B and their only contact was the Respondent, who was refusing to answer their letters. Consequently they were unable to repay any monies to Mrs B until recently.
73. Chester & Co closed in mid 2001 and the Respondent began practising on her own account once again, this time as "KMD Solicitors".
74. As indicated above the Respondent retained the sum of £5,000 from Mrs B's divorce settlement to cover the statutory charge due to the Legal Aid Board. Although she had informed Mrs B some time previously that a bill of costs concerning the divorce proceedings was being prepared by a costs draftsman, no final bill was ever prepared and Mrs B was never informed how much it would be. An examination of the files showed no evidence of a final bill having been prepared, neither was there any evidence that Mrs B was kept informed in relation to costs.
75. Mrs B further stated that she paid £3,037.92 to the Respondent for the sale of her matrimonial property, representing her share of the costs. Mrs B alleged that no bills were ever submitted by the Respondent in respect of any of the matters in which she acted for her. The Respondent simply deducted monies from Mrs B's divorce settlement and informed her that an account was in the post. The account never arrived.
76. Mrs B requested from the Respondent her late father's papers and also the papers relating to her divorce. The Respondent failed to forward these. Grenville J Walker also wrote to the Respondent requesting that she forward the file relating to the late Mr M's estate but the Respondent did not comply with this request.
77. Mrs B stated that she made various telephone calls to the Respondent, who constantly assured her that she was doing all in her power to rectify the problems. However in February 2002 Mrs B became so frustrated at the Respondent's lack of response that she contacted the OSS. On the OSS's advice she wrote to the Respondent expressing her concerns in February 2002 and March 2002 but received no response.

78. When the OSS received Mrs B's formal complaint in April 2002 the Respondent was contacted on 1st July 2002. At that time she stated that most of her files were with the costs draftsman and that the monies held by Grenville J Walker related to the costing of the matrimonial file and that £5,000 of the money on client account related to the Legal Aid Board statutory charge. She said that the Legal Aid bill had not yet been finalised because of ongoing matters and problems with costs draftsmen. She said that she had not had the bill drafted because she could not give an undertaking to the costs draftsman, as she did not have the money, which was held by Grenville J Walker.
79. When Grenville J Walker were contacted regarding the complaint, they confirmed in June 2002 that whilst they had no files or papers relating to Mrs B's matters, there was an open ledger account relating to the estate of Mr M deceased and they had been holding the sum of £7,179.77 on designated client account since August 2000. They said they could not deal with the monies because they did not have an address for Mrs B.
80. Since that time, Grenville J Walker had paid a total of £6,550.83 to Mrs B, being the balance held on their account. Of this sum £5,000 represents monies retained by the Respondent for payment of the statutory charge with regard to Mrs B's divorce proceedings and £1,500 represents the costs initially set aside to cover Grenville J Walker's costs in respect of the work carried out by the Respondent relating to the administration of Mr M's estate. Grenville J Walker agreed to reduce their bill from £1,500 to £626.86 in the light of the very thin file which was recovered by the intervention agents. They therefore deducted £626.86 for payment of their costs.
81. Following the OSS caseworker's investigation the OSS wrote to the Respondent on 30th October 2002 setting out details of Mrs B's complaint and seeking an explanation within 14 days. In the letter, the Respondent was reminded of her professional obligation to reply to the OSS correspondence in accordance with Principle 30.04 of the Guide. She was further warned that failure to respond to the correspondence would lead to disciplinary action.
82. In the absence of a response from the Respondent, a chasing letter was sent on 6th December 2002. A further letter was sent on 3rd January 2003 requiring a response within the next 8 days and again referring to Principle 30.04 of the Guide.
83. In the absence of a response, a further letter was sent on 20th February 2003, when the Respondent was also warned that an application for intervention pursuant to paragraph 3 of the First Schedule of the Solicitors Act would be made, without further notice, to recover documents and monies relating to the complaint. The latter letter was sent to the Respondent's home address, whereas earlier letters had been sent to a PO box address.
84. On 28th February 2003 the OSS received a telephone call from the Respondent stating that she had not received the earlier letter because it went to the wrong address. She stated she received the second letter because it went to her home address and that she would be sorting matters out that weekend.
85. The Respondent telephoned again on 3rd March 2003 stating, inter alia, that she was not practising on her own account at the time and was working on an advice line. She

was doing work to finalise Chester & Co's files. When asked by the caseworker what was happening in relation to Mrs B's files, the Respondent stated she was not sure and would provide a response to the Law Society's letter concerning Mrs B's complaint by 17th March 2003.

86. On 18th March 2003 in the absence of a response the OSS wrote to the Respondent requiring her reply within the next 8 days and warning her of the consequences.
87. On 27th March 2003 the OSS caseworker wrote to the Respondent confirming that a decision had been made pursuant to paragraph 3 of the First Schedule of the Solicitors Act 1974, advising that she now had seven days in which to deliver Mrs B's file and alerting her to the consequences of failure to comply.
88. Agents Messrs Bevan Ashford were appointed by the OSS under Paragraph 3 of the First Schedule to the Solicitors Act 1974 to take possession of all documents in possession of the Respondent relating to Mrs B's cases. On 18th June 2003 the Respondent left three files relating to Mrs B at the offices of Messrs Bevan Ashford, as confirmed by Bevan Ashford's letter of 19th June 2003.
89. Subsequently, on 30th July 2003 Mr M of Bevan Ashford attended the Respondent's home address and obtained further files relating to Mrs B entitled "re M Deceased", "Probate Documents", "Statements, accounts and workings out" and "Sale of H Farm". These files were returned to Mrs B on 4th September 2003.
90. Further communications with Mrs B followed and on 15th November 2004 the OSS wrote to the Respondent advising that Mrs B's complaint had now been referred for formal decision and attaching a copy of the caseworker's report and draft recommendations. The Respondent's comments on the report were invited within 14 days. No response was received from the Respondent.
91. The Adjudicator gave his decision on 5th January 2005. On 18th January 2005 the Respondent and Mrs B were advised of the Adjudicator's decision and of their right to seek a review within 7 days of 18th January 2005.
92. On 8th February 2005 the OSS caseworker wrote to the Respondent confirming that the review period had expired and that in respect of the professional conduct matters the file would be transferred to the Intervention and Disciplinary Unit.

Allegation (xiv)

93. In addition to the professional conduct issues referred to in the Adjudicator's decision of 5th January 2005, he also made findings pursuant to Section 37(A) and Schedule 1(A) paragraph 1(i) of the Solicitors Act 1974 (as amended) that the professional services provided by the Respondent's firm were not of the quality which was reasonable to expect as a solicitor. The issues identified were that the Respondent had:-
 - (a) Delayed in preparing a final bill in relation to a complainant's divorce proceedings;

- (b) Failed to keep the complainant reasonably informed in relation to costs and further failed to provide the complainant with any time scale in which a final bill relating to her divorce and ancillary relief matter was to be prepared;
 - (c) Failed to return papers to the complainant which had been requested in relation to the administration of her late father's estate and further failed to forward a file in that matter to the complainant's new solicitors;
 - (d) Failed to follow the complainant's instructions in that she failed to transfer shares into the complainant's name as instructed;
 - (e) Failed to keep the complainant informed as to progress (or reasons for the lack of it) in relation to the transfer of shares;
 - (f) Lost or mislaid papers belonging to the complainant.
94. The Adjudicator directed:-
- (i) That the Respondent pay compensation to Mrs B in the sum of £1,500;
 - (ii) That the Respondent be barred from submitting any bill or account to Mrs B in respect of any work carried out for her between 1993 and the date of the cessation of the retainer;
 - (iii) That the Respondent obtain a deposit interest certificate from her former client account bankers to cover the sum of £195,753.74 held between 13th October and 3rd December 1998, and further to add interest upon whatever figure was produced by such calculation between 4th December 1998 and 5th January 2005, and further to account to Mrs B for the total sum produced by such calculation within 14 days of the expiry of the review period relating to the Direction.
95. The parties were given a right to a review of the decision within 14 days of notification. In the absence of a review the decision was to be implemented by the Respondent within 7 days following the expiry of the review period. The decision was confirmed in the previously mentioned letter from the OSS dated 18th January 2005. The Law Society's letter of 8th February 2005 required that the Respondent confirm within 7 days that she had complied with the Adjudicator's first Direction to make compensation in the sum of £1,500 to Mrs B.
96. In the absence of a written response the Law Society wrote to the Respondent on 15th February 2005 stating that since she had not complied with that decision a referral to the Tribunal would be considered unless she complied within 14 days of the date 15th February.
97. In the absence of a response the OSS's letter to the Respondent of 11th March 2005 confirmed that in the light of her failure to comply with the professional service decision, the matter would be referred to the Tribunal for the institution of disciplinary proceedings.
98. The Respondent had not complied with the Direction.

The Submissions of the Applicant

99. The Respondent's letter of 15th September 2005 faxed to the Tribunal today had been the first communication from the Respondent since the adjourned hearing on 2nd June 2005. The letter showed that the Respondent was aware that the hearing was taking place, was not seeking an adjournment and was not advancing any reason why she was unable to attend.
100. The Applicant submitted to the Tribunal a bundle of correspondence from the Applicant to the Respondent. The adjournment had been granted on 2nd June on a last minute request from the Respondent, who had been urged by the Tribunal to make contact with the Applicant. After that hearing the Applicant had sent to the Respondent a full set of papers and had urged her through correspondence on several occasions to make contact. The Applicant had sent the letters to both addresses known for the Respondent. The Applicant did not accept the Respondent's assertion that she had had no help from the Law Society. She had been repeatedly urged to contact the Applicant but had not done so. The Applicant denied the Respondent's assertion that she had made an offer to the Applicant to visit the Law Society's offices but the offer had been refused (paragraph 122 below).
101. There had been a total failure on the part of the Respondent to deal with all kinds of matters and this was behaviour characteristic of the Respondent throughout. She had not faced up to her responsibilities.
102. The Applicant had served the appropriate Notices under the rules and had received no challenge to those Notices and therefore felt able to rely on the documentary evidence she had placed before the Tribunal. There had been no substantive response from the Respondent until her letter dated today.
103. In relation to allegations (i) to (iv) the history of the correspondence with the Respondent was fully set out in the documentation and demonstrated the extent of her failure to respond to the requests of all parties, her former employer, her former client Mrs B and her regulatory body. The correspondence amply demonstrated the difficulty and inconvenience she had caused to those parties by effectively ignoring her responsibilities.
104. Ms K had suggested that the Respondent was ill but there had been no communication from the Respondent confirming this until her letter of today's date and no medical evidence had been produced. In any event her conduct extended back over a long period of time, during some of which she appeared to have been employed and working as a solicitor. Further, she did not appear to have been unwell at the time of the visit of Mr M to her in August 2003.
105. In relation to allegation (i) the Respondent had removed files which were not her property without authority from the offices of Grenville J Walker. Despite repeated requests she failed to return them, evidently causing inconvenience to her former firm and to clients. She continued to retain those files after she was suspended from practice as a solicitor and, as a solicitor with no current Practising Certificate, she was

not able to deal with those files. The Respondent had failed to act in the best interests of clients and failed to uphold the good reputation of the solicitors' profession.

106. In relation to allegation (ii) Mrs D's complaint of May 2003 related to the Respondent not having responded to her communications concerning her current property matter and having retained her file and papers. Again, from Mrs D's letter, the distress and inconvenience caused was apparent. The Respondent's conduct again was not in the best interests of Mrs D and failed to uphold the good reputation of the solicitors' profession.
107. In relation to allegation (iii) the Respondent was found by Bevan Ashford upon their visit in August 2003 to have retained client papers and monies after she was suspended from practice on 3rd April 2003. In March 2004 Bevan Ashford confirmed that the Respondent's client bank account statements showed movements on her client bank account after that date. Whilst suspended, and whilst without a current Practising Certificate, she had no authority to deal with these matters and should have made appropriate arrangements for the transfer for the papers and monies.
108. In relation to allegation (iv) the correspondence exhibited demonstrated that the Respondent had failed throughout the history of this matter to respond promptly, substantively or at all in response to the numerous communications from the OSS seeking explanations about the issues of concern. It was a fundamental professional obligation for a solicitor to respond to correspondence from his or her regulatory body. This was an important aspect of the Law Society's ability properly to monitor and regulate the profession and to maintain public confidence in it. It was not acceptable for a solicitor simply to ignore such correspondence as the Respondent had over a long period. A number of the letters had given specific time limits and had set out the consequences of failing to respond.
109. In relation to allegations (v) and (vi) the Respondent had never submitted the Accountant's Reports in question as required by Section 34 of the Solicitors Act 1974 and Rule 35 of the Solicitors Accounts Rules 1998.
110. In relation to allegation (vii) it was submitted that the Respondent was by her conduct in breach of the Solicitors Indemnity Rules 2002. Rule 8 provided that a firm which did not have qualifying insurance outside the Assigned Risks Pool must apply to enter the Assigned Risks Pool before the start of the relevant indemnity period, which in this case commenced on 1st September 2002. The Respondent had further failed to pay the Assigned Risks Pool premium set by the Assigned Risks Pool manager.
111. The Respondent had failed to comply with the directions of the Adjudicators in relation to Mr W and Mrs B. The Respondent again in her letter today had said that she had supplied Mrs B with a copy of the completion statement in respect of the sale of the property but Mrs B had said that she had not received this.
112. The Tribunal was referred to the comments of the Adjudicator in his decision of 5th January 2005 in relation to Mrs B:-

"Finally I propose to address Mrs B's concerns by way of a compensatory direction. I consider she has been particularly badly treated in this case, following a total lack of information and clarity in relation to several issues which would have come at a

difficult time in her life. I am particularly concerned about the failure to account to her in relation to any of the work carried out on her divorce and matrimonial affairs generally and the failure of Mrs Moss-Davies to deal adequately or at all with her affairs following the death of her father and in particular the failure to ensure the smooth transfer of shareholdings and other assets at a time when Mrs B would have undoubtedly been distressed as a result of her loss. I also consider Mrs B's concerns to have been exacerbated by Mrs Moss-Davies' failure to take any identifiable step to attempt to address or conciliate her concerns. All these matters have been taken into account in the formulation of my remedies below."

113. The Applicant was not alleging dishonesty against the Respondent, rather the case presented a continuing catalogue of failure by the Respondent to accept the responsibilities which ran alongside the benefits belonging to a profession. The Applicant submitted that the Respondent's letter of 15th September 2005 contained partial admissions to allegations (ii) and (iv).

The Submissions of the Respondent

114. The Respondent's submissions were contained in her letter dated 15th September 2005 faxed to the Tribunal on the morning of the hearing.
115. The Respondent stated that it was pointless for her to argue her case as the Law Society had never accepted anything that she had said. She submitted that the Law Society had refused her access to files to respond to the allegations.
116. She denied removing files and documents from Grenville J Walker and said that she was being blamed for files that had gone missing.
117. She accepted that there was a delay in Mrs B's file of papers being returned to her, stating that this was due to the Respondent being unwell and unable to deal with any issues. The Respondent said she might have had the file for a total of a year but part of that time included work on it.
118. The Respondent said that whatever monies and papers she had held after 3rd April 2003 and whatever correspondence she had failed to deal with was as a result of her illness at the time. She said she had never been asked to provide any evidence of this and could have done so.
119. The Respondent alleged difficulties in the circumstances of her employment with Grenville J Walker and with Chester & Co and said she had informed the Law Society of this. She said that the cause of her illness was the stress brought about by her treatment in those firms and being "brushed off" by the Law Society, who would not get involved.
120. With regard to the supplementary statement the Respondent said she had not been aware of any adjudication relating to Mr W or Mrs B and had not seen the papers. She further said that she had not seen correspondence relating to the indemnity insurance which was presumably dealt with during her illness. She set out a copy of her recent letter to the Law Society in relation to the Assigned Risks Pool and denied practising without insurance.

121. The Respondent said she was unable to respond to allegations in respect of Mr W as she did not have the file and that the same applied to the allegations concerning Mrs B except that the Respondent remembered giving to Mrs B an account and statement, an estate account and a completion statement. She said she had informed Mrs B about her change of circumstances. She said she did not hold any money for Mrs B and that the money had been transferred to Chester & Co.
122. The Respondent said that she had offered to visit the offices of the Law Society but this offer had been refused. She would still be prepared to do this in order to sort out the issues for the sake of the clients. She said that nothing had been done with any deliberateness or calculation on her part, rather she had been mentally confused and unable to do anything rational.

The Findings of the Tribunal

123. The Tribunal considered carefully the Respondent's letter of 15th September 2005 and the submission of the Applicant that it contained certain partial admissions. The Tribunal considered that it was important that any admissions before the Tribunal be in the clearest terms and in the circumstances would treat all the allegations as denied.
124. The Tribunal considered carefully the documentation before it. The Respondent had submitted no documentary evidence to support her letter, either in respect of the allegations themselves or in respect of her health. The documentation provided by the Applicant was clear and the Tribunal noted that there had been no challenge by the Respondent to the Notices served by the Applicant. The Tribunal therefore accepted the Applicant's documentation and, applying the highest possible standard of proof, found the allegations substantiated on the basis of the documentation. The Tribunal had been greatly assisted by the clear and detailed nature of the Applicant's documentation.

Previous appearances of the Respondent before the Tribunal

125. On 2nd January 1997 the Tribunal had found allegations to have been substantiated against the Respondent. The allegations were that the Respondent had been guilty of conduct unbecoming a solicitor in each of the following circumstances, namely that she had:-
- (i) failed to reply to correspondence from the Legal Aid Board;
 - (ii) failed to deal promptly with correspondence received from the Solicitors Complaints Bureau (subsequently to become the OSS).

The Tribunal on that occasion had accepted that the Respondent had had personal difficulties. The Respondent was ordered to pay a fine of £1,000 together with the Applicant's costs.

126. On the 16th October 1997 the Tribunal found an allegation that the Respondent had been guilty of conduct unbecoming a solicitor in that she failed to deal promptly with

correspondence received from the OSS to have been substantiated. On that occasion the Tribunal said:-

“The Tribunal could not disguise its dismay at having the Respondent appearing before them again to face an allegation that she had ignored correspondence addressed to her by her own professional body only months after she had been dealt with for similar failures. Again the Tribunal was well aware of the Respondent’s personal difficulties but which she had indicated were now hopefully behind her. The Tribunal felt that in the unusual circumstances it could deal leniently with the Respondent and imposed a fine upon her and ordered her to pay the Applicant’s costs. In view of the Respondent’s earlier appearance the Tribunal felt that the fine had to be at a higher level than that imposed on the previous occasion.

The Tribunal had been given assurances by the Respondent that she had taken steps to ensure that she would in future deal promptly with correspondence sent to her. The Tribunal accepted the assurances and encouraged the Respondent to set up a system whereby she was prompted to respond to letters which caused her difficulty at an early date. The Tribunal made it very plain indeed that if the Respondent were to appear before them on a third occasion, having similar allegations substantiated against her, then they would be extremely unlikely to be able to adopt such a lenient stand.

The Tribunal ordered the Respondent to pay a fine of £1,500 together with the Applicant’s costs in a fixed sum.”

127. On 3rd April 2003 the Tribunal found substantiated an allegation against the Respondent that she had been guilty of conduct unbefitting a solicitor in that she had failed to deliver to the Law Society an Accountant’s Report in respect of her firm Moss-Davies Solicitors for the period ending 31st December 1999 contrary to Section 34 of the Solicitors Act 1974. On that occasion the Tribunal said:-

“The Tribunal considers that the Respondent has been a master of prevarication and delay. It notes that the current matter has been subject to adjournment.

Despite a very long period of time during which the Respondent should have regularised her position, she has not done so. The Tribunal consider that it would be inappropriate both in terms of protecting the public interest and in terms of protecting the good reputation of the solicitors’ profession for the Respondent to be permitted to continue in practice as a solicitor until she has filed the outstanding Accountant’s Report.

In all of the circumstances, the Tribunal considered it appropriate to order that the Respondent be suspended from practice as a solicitor for an indefinite period. They wish to make it plain that the Tribunal would be most unlikely to give favourable consideration to an application for the indefinite period of suspension to be lifted unless the Respondent can demonstrate that she has filed the outstanding Accountant’s Report. The Tribunal further ordered that the Respondent should pay the Applicant’s costs in the agreed fixed sum.”

128. The Tribunal on 15th September 2005 was dismayed to note that the Respondent had appeared three times before the Tribunal previously to face allegations similar to some of those before the Tribunal today. The Tribunal noted the comments of the Tribunal in 2003 that the Respondent had been “a master of prevarication and delay”. The Respondent in her letter to the Tribunal of 15th September 2005 was continuing to assert that the fault was that of others. She appeared to have taken no active steps to address the allegations or to deal with the outstanding issues despite the comments of the Tribunal on 2nd June 2005 and the extensive correspondence from the Applicant since that date. The only response from the Respondent had been a letter faxed to the Tribunal on the morning of the hearing with no supporting documentation and no medical evidence. The allegations before the Tribunal were of a serious nature. The Respondent in relation to these matters and in relation to matters previously before the Tribunal had shown a total disregard for the need to address outstanding issues. Compliance with regulatory matters and replying to correspondence were an essential part of a solicitor’s practice because behind them lay the need of the profession to protect clients’ interests. In this case it was clear that clients had suffered. Two clients were awaiting payments from the Respondent ordered by the Adjudicator and it was clear that the Respondent’s former clients and particularly Mrs B had suffered as a result of the Respondent’s inadequacies. The Respondent’s letter of 15th September showed that she had still not accepted her own responsibility in these matters. The Respondent appeared to have learnt nothing from her three previous appearances before the Tribunal. The cumulative effect of those appearances together with the Respondent’s failures in respect of the current substantiated allegations was a matter of grave concern and in the interests of the protection of clients it was right that the Respondent cease to be a member of the profession whose reputation had been damaged by her conduct. The Tribunal would also grant the enforcement orders in respect of the outstanding Adjudicators’ directions noting that, although the Respondent in her letter said she had not been aware of any adjudication relating to Mr W or Mrs B, she had clearly been aware of these matters at the latest when the papers had been re-sent to her after the hearing of 2nd June 2005 and appeared to have taken no steps at all to deal with the matters.

129. The Tribunal made the following Orders:-

The Tribunal orders that the Respondent, Katherine Elaine Moss-Davies of West Lydford, Somerton, Somerset, TA11 7DL, (alternatively c/o Catsham, Glastonbury, Somerset) 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 £12,623.96.

The Tribunal orders that the Direction of the Adjudicator made pursuant to Section 37A and Schedule 1A, Paragraph 1(i) of the Solicitors Act 1974 (as amended) dated 5th January 2005 in respect of the complaint of Mrs B be treated for the purposes of enforcement as if it were contained in an Order made by the High Court.

The Tribunal orders that the Direction of the Adjudicator made pursuant to Section 37A and Schedule 1A, Paragraph 1(i) of the Solicitors Act 1974 (as amended) dated 7th January 2005 in respect of the complaint of Mr W be treated for the purposes of enforcement as if it were contained in an Order made by the High Court.

Dated this 24th day of October 2005
On behalf of the Tribunal

A H B Holmes
Chairman