

IN THE MATTER OF JAMES DONALD RORY ANDERSON, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Miss N Lucking (in the chair)
Mr A Gaynor-Smith
Ms A Arya

Date of Hearing: 10th October 2007

FINDINGS

of the Solicitors Disciplinary Tribunal
Constituted under the Solicitors Act 1974

An application was duly made on behalf of The Law Society by Stuart Roger Turner, Solicitor Advocate of Lonsdales Solicitors, 7 Fishergate Court, Fishergate, Preston, Lancs, PR1 8QF on 28th November 2006 that James Donald Rory Anderson of Casa Blanca, 36 Park Road, London, N8 8TD (now of Tower Hamlets, London, E3), 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.

Stuart Roger Turner further applied for an Order that the decision of The Law Society's Adjudicator made on 13th December 2004 be treated for the purposes of enforcement as if it were contained in an Order made by the High Court.

The allegations against the Respondent were that he had been guilty of conduct unbecoming a solicitor in any or all of the following, namely:

1. That the Respondent failed to comply with an Adjudicator's Decision following a finding of Inadequate Professional Service made on 13th December 2004;
2. That the service provided by the Respondent to a client was so poor that it compromised or impaired or was likely to compromise or impair his duty to act in the best interests of his client and his proper standard of work, contrary to Practice Rule 1(c) and (e) Solicitors Practice Rules 1990;

3. That the Respondent failed to deliver a bill of costs to a client within a reasonable time of the matter concluding;
4. That the Respondent in allowing himself and his firm to be listed on the Bar Council's Withdrawal of Credit Scheme, compromised or impaired the good repute of the solicitors' profession, contrary to Practice Rule 1(d) Solicitors Practice Rules 1990;
5. That the Respondent failed to ensure compliance with an undertaking given on behalf of his firm;
6. That the Respondent allowed a cash shortage to arise on client account in the sum of £6,182.16, contrary to Rule 22(5) of the Solicitors Accounts Rules 1998;
7. That the Respondent failed to remedy promptly upon discovery breaches of the Solicitors Accounts Rules, contrary to Rule 7 of the Solicitors Accounts Rules 1998;
8. That the Respondent failed to file Accountant's Reports for the period 30th September 2005 on or before 30th November 2005; and for the period 31st March 2006, on or before 31st May 2006 and for the period 30th September 2006, contrary to Section 34 of the Solicitors Act 1974 and Rule 35 of the Solicitors Accounts Rules 1998 and the condition on his Practising Certificate; [as amended with the consent of the Tribunal]
9. That the Respondent failed to deal promptly and substantively with correspondence from The Law Society.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London, EC4M 7NS on 10th October 2007 when Stuart Roger Turner appeared as the Applicant and the Respondent did not appear and was not represented.

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

The Tribunal Orders that the Respondent, James Donald Rory Anderson of Tower Hamlets, London, E3 (formerly of Casa Blanca, 36 Park Road, London, N8 8TD), solicitor, be Struck Off the Roll of Solicitors and it further Orders that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £10,174.01

The Tribunal Orders that the Decision of the Law Society's Adjudicator made on 13th December 2004 be treated for the purposes of enforcement as if it were contained in an Order of the High Court.

The facts are set out in paragraphs 1 – 41 hereunder:

1. The Respondent, born in 1949, was admitted as a solicitor in 1974 and his name remained on the Roll of Solicitors. He did not hold a current practising certificate.
2. At all material times the Respondent carried on practice as a sole practitioner in the style of Andersons Litigation Solicitors latterly of Casa Blanca, 36 Park Road, London, N8 8TD.
3. The allegations arose from seven separate referrals by The Law Society of the Respondent to the Tribunal and the inclusion of one other matter.

1st Referral(Allegations 1 and 9)

4. The Respondent was the subject of a complaint made by a client, Mr AH. Mr AH was a director of an electronics company, CE Limited, and had instructed the Respondent to act on his company's behalf. On 1st July 2003 CE Limited's new solicitors wrote to The Law Society formally lodging a complaint that the Respondent had failed to account to their client for funds, in the sum of £10,350, which he had received on its behalf.
5. The Law Society wrote to the Respondent on 10th July 2003 to which the Respondent failed to reply prompting a further letter being sent on 26th August 2003. The Respondent also failed to reply to that letter.
6. The Law Society continued to investigate the complaint by corresponding with Mr AH and on 6th April 2004 they wrote again to the Respondent advising him that a report was being prepared for adjudication of the complaint made against him. The Respondent replied by fax on 16th April purporting to be unaware of any unanswered correspondence. The Law Society responded on 27th April reminding the Respondent that their letter of enquiry of 10th July 2003 remained unanswered.
7. On 9th November 2004 The Law Society wrote to the Respondent with a copy of the Report to be considered and requested a reply within 14 days with any further comments that the Respondent wished to make and have put before the Adjudicator. The Respondent failed to reply and so on 29th November The Law Society sent confirmation that the Report had been sent for adjudication. This took place on 13th December 2004.
8. A copy of the Adjudicator's Decision was sent to the Respondent on 10th January 2005. The Adjudicator found the professional service provided by the Respondent inadequate and not of the quality which it is reasonable to expect of a solicitor. Formal directions were given and these were:

"I direct Andersons Litigation Solicitors to pay to CE Limited the deposit interest specified on The Law Society's deposit interest certificate within fourteen days of notification of the sum due.

I further direct Andersons Litigation Solicitors to pay to Mr H the sum of £1,000 as compensation for the consequences of the inadequacies of service which I have identified.

I further direct Andersons Litigation Solicitors to refund the sum of £7,514.78, the costs and VAT in respect of the J matter.

I direct Andersons Litigation Solicitors to supply to CE Limited a copy of the VAT invoice showing the costs and disbursements and VAT which total £8,100 and which were received from First Assist.

I direct Andersons Litigation Solicitors to pay to CE Limited the balance of £4,905.45 which was showing due to the company from the H matter on the statement prepared by the solicitors in January 2004."

9. The Respondent had a right to request a review of the Decision within fourteen days of notification. If there was no request the decision had to be implemented by the Respondent within seven days following the expiry of the review period. On 31st January 2005 The Law Society, not having received a request for a review from the Respondent, telephoned the complainant who confirmed that the service award had not been received. However on 6th February 2005 the Respondent wrote by fax to The Law Society querying whether the matter was still under investigation or had been resolved. The Law Society replied on 10th February 2005 sending copies of letters of 9th and 29th November 2004 and 10th January 2005.
10. Nothing further was heard from the Respondent and so on 28th February 2005 The Law Society wrote again to the Respondent. The letter advised him they were considering a referral to the Tribunal unless he complied with the Adjudicator's Directions within fourteen days of that letter. The Respondent wrote on 3rd March 2005. He queried why the Report contained no reference to his letters of 1st May and 15th October 2004. The Law Society confirmed on 9th March 2005 that they had not received either letter and pointed out that they had not been re-submitted to them with the fax of 3rd March and asked for copies. The Respondent failed to reply and so on 21st March The Law Society wrote again asking for confirmation within seven days that the compensation for the inadequate professional services provided by his firm had been paid.
11. The Law Society received a further letter from the Respondent on 22nd March dated February 6th 2005 stating that a reply would be with The Law Society within the next few days. No further reply was received and so on 1st April 2005 the Chief Adjudicator decided that the Respondent should be referred to the Tribunal for failing to comply with an Inadequate Professional Service Decision.

2nd Referral

(Allegations 2,3 and 9)

12. On 19th September 2003 the former client sent a fax to The Law Society enclosing copies of various communications between his company's insurers, First Assist and the Respondent's firm. He complained that the Respondent had now failed to deal with his insurance claim following his litigation with the third party. The Respondent's claim letter dated 24th September 2001 to the insurers had left out the amounts claimed. The insurers had been waiting for many months for him to respond with more detailed information to settle the insurance claim. At no time, the client confirmed, had the insurers refused to pay.
13. The client sent a fax to The Law Society enclosing copies of more communications with his company's insurers, his new solicitors and the Respondent. In a letter of 15th January 2004 the Respondent wrote to the new solicitors with his utmost apologies enclosing a financial statement for his three accounts. In the statement the Respondent stated that on 11th September 2000 the sum of £10,350 was received by his firm from the third party. The balances were transferred resulting in a final debit.
14. On 17th March 2004 the client resent a fax to The Law Society enclosing copies of the communications between himself, his company's insurers and the Respondent's firm. He had requested his insurers to look into his company's claim for the unrecoverable costs of the Respondent who had put him on notice to pay his account within 30 days. The former client had also written to the Respondent requesting copies of his charges. The insurers had written again to the Respondent requesting breakdowns for the invoices to consider payment of the insurance claims. On 6th April 2004 The Law

Society wrote to the Respondent who had failed to respond to any of The Law Society's correspondence in the matter. The Respondent was asked whether he had made it clear to his client that he would take costs for one matter from money held in client account for another matter. The Respondent was also asked to explain why he had not given his client's insurers the required information for them to consider payment of the claim for costs. There was no reply from the Respondent.

15. On 8th April 2004 the client confirmed with The Law Society that the Respondent had at no time made him aware he would set off balances from one matter to another. In the two and a half years he had been chasing the Respondent for the money he had never received any invoices for work to be accounted for by way of set off. He also complained that the Respondent had failed to provide information to enable him to deal with the recovery of VAT. Furthermore he confirmed that he understood from the insurers that they were still awaiting a reply from the Respondent.
16. On 29th April 2004 the company's insurers wrote to the Respondent as they had not heard from him in answer to their questions on his claim for payment of his client's costs. They informed him that unless they heard from him within 21 days they would assume he was not pursuing payment of his invoice. As they did not hear from him during that time they did not pay the claim for unrecoverable costs.
17. On 13th December 2004 an Adjudicator of The Law Society decided to refer the Respondent's conduct to the Tribunal.

3rd Referral

(Allegation 9)

18. On 9th March 2003 Mr TH wrote to The Law Society complaining about the conduct of the Respondent. He told them that in an agreed settlement in 2001 he paid the Respondent £10,350 which had been cashed in June 2001. The Respondent acted for the company pursuing Mr TH for payment. Mr TH contacted the company direct and they told him that the Respondent had never paid them a penny of his money hence the reason why he continued to receive account statements showing the money as still being owed. Mr TH also said he had written directly on ten occasions but had not received a reply.
19. The Law Society wrote to the Respondent on 10th July requiring a detailed response within fourteen days to which the Respondent failed to reply and so a further letter was sent on 6th August 2003 requiring a response within eight days. This prompted a response on 21st August from the Respondent to which The Law Society replied on 2nd September requiring a more satisfactory response.
20. The Respondent failed to reply to that letter and so on 31st October 2003 The Law Society wrote again. A response was expected within seven days. On 9th November 2004 The Law Society wrote to the Respondent informing him that the matter was now being referred to an Adjudicator for a formal decision.
21. On 10th January 2005 the Respondent was notified of the Adjudicator's Decision which was to refer his conduct to the Tribunal for his failure to reply substantively and promptly to his professional body. No request for a review was received.

4th Referral(Allegations 4 and 9)

22. On 2nd November 2005 the Bar Council wrote to The Law Society with a complaint against the Respondent's firm. The Bar Council advised that under the Withdrawal of Credit Scheme 1988 (as amended) the Bar Council had issued a withdrawal of credit direction on 10th June 2005 in respect of the Respondent's firm on the grounds of non-payment of Counsel's fees.
23. On the same day The Law Society wrote to the Respondent seeking a detailed response to the complaint within two weeks i.e. by 16th November 2005. The Respondent failed to reply and so The Law Society wrote again on 17th November giving the Respondent seven days to reply.
24. The Respondent still failed to reply and so The Law Society wrote again on 25th November requiring a reply within eight days.
25. The Respondent still failed to reply and so on 9th December 2005 the Head of Investigation and Enforcement authorised the inclusion of this matter in the existing referral to the Tribunal.
26. On 8th May 2006 the Bar Council submitted to The Law Society a statement from Patrick Lawrence QC which confirmed that his fees were still outstanding.

Allegations 5 and 9

27. On 27th September 2006 The Law Society wrote to the Respondent following a complaint by the Bank of Cyprus that the Respondent had failed to ensure compliance with an undertaking given by the Respondent's assistant solicitor on 21st September 2004. A reply was requested within fourteen days.
28. The Respondent's assistant solicitor had given an undertaking to register a charge at the Land Registry and at Companies House. He had failed to do so and the Respondent had failed to reply to correspondence from the Consumer Complaints Service of The Law Society. On 4th October 2006 the Bank of Cyprus wrote to The Law Society with an update. They had now referred the matter to another firm of solicitors so that the outstanding conveyancing matters and registration of the Bank's Legal Charge could be resolved.
29. The Respondent failed to reply to the letter sent to him by The Law Society on 27th September and so a reminder was sent on 19th October requiring a reply within fourteen days. The Respondent had not provided The Law Society with an explanation for his failure to ensure compliance with an undertaking.

5th & 6th Referrals(Allegations 6, 7, 8 and 9)

30. An inspection of the books of account and other documents of the Respondent's firm was commenced on 13th January 2006 by an Investigation Officer of The Law Society and a copy of the resulting Report dated 23rd May 2006 was before the Tribunal. The Report noted the matters set out at paragraphs 31 to 35 below.

31. The books of account were not in compliance with the Solicitor's Accounts Rules in that there was a cash shortage on client account amounting to £6,182.16. The cause of the cash shortage was set out in the Report. The Respondent had made three over-transfers from client to office bank account.
32. In the CH Management Co matter £1,586.25 had been improperly withdrawn from client account on 2nd March 2004 causing a client account shortage of that amount. When asked why the shortage had not been rectified sooner the Respondent said that he "had not applied his mind to this issue and had allowed it to continue."
33. In the matter of A A Property Services Limited, £1,728.26 was paid into client account on 19th March 2004 and two transfers for that amount were made from client to office bank account on 19th and 30th March 2004 respectively. The second transfer caused a shortage on the client bank account of £1,728.26. The Respondent agreed that the second transfer caused a shortage in the client bank account, that he was aware he had a duty to rectify the shortage upon him becoming aware of it and that he had allowed it to exist for over two years.
34. In the third matter, MK and Partners, £2,867.65 was transferred from client to office bank account on 13th December 2004 in part payment of a bill totalling £3,369.49 (£2,867.65 plus VAT). On 14th December there was a further transfer of the full amount of the bill £3,369.49 from client to office account and referred to in the client ledger as "money incorrectly transferred". Only one bill was raised by the Respondent totalling £3,369.49. The Respondent agreed that the transfer of the smaller amount caused a shortage in the client bank account. He further agreed that he failed to rectify this shortage when he became aware of it and allowed it to exist for over fourteen months.
35. The Respondent's practising certificate was subject to a condition requiring him to file an Accountant's Report every six months. A report was due from the Respondent for the six month period ending 30th September 2005. The report was due to be filed on 30th November 2005 but remained outstanding. On 13th March 2006 a decision was made by a Manager of the Regulation Unit of The Law Society to refer the Respondent's conduct to the Tribunal.
36. Additionally the Respondent was required to file an Accountant's Report for the period ending 31st March 2006 on or before the 31st May 2006. That Report also remained outstanding.
37. On 11th July 2006 The Law Society wrote to the Respondent enclosing a copy of the Report requiring an explanation of the matters raised within it within fourteen days. The Respondent failed to reply and so a chasing letter was sent on 17th August 2006 requiring a reply within seven days. The Respondent failed to reply. The letter also asked for an explanation as to why the Accountant's Report for the period ending 31st March 2006 remained outstanding. On 6th September 2006 a decision by a Regulation Unit Manager of The Law Society was made for the inclusion of these matters into the existing referral of the Respondent to the Tribunal.

7th Referral(Allegation 9)

38. On 19th April 2005 the Practice Standards Unit conducted a monitoring visit at the Respondent's practice. A nine page report was then sent to the Respondent under cover of a letter dated 10th May 2005.
39. The letter requested that the Respondent respond within 21 days to confirm implementation of the recommendations. The Respondent partially responded to the report by letter on 11th May 2006. However as could be seen from The Law Society's letter to the Respondent of 2nd June 2005 further action was required and a reply was requested in fourteen days. The Respondent failed to reply and so a chasing letter was sent on 9th August 2005. A further fourteen days was allowed for the Respondent to reply. Again he failed to do so and so a further letter was sent on 10th October 2005 in which the Respondent was requested to provide a response to the Practice Standards Unit Monitoring Visit Report as a matter of priority.
40. On 27th October 2005 having still not received a reply the Practice Standards Adviser telephoned the Respondent. The Respondent apologised for the delay as he had been having personal difficulties. He confirmed he would reply within 21 days. He failed to do so and so The Law Society wrote again on 18th April 2005 giving the Respondent yet another fourteen days to provide a response.
41. The matter was then transferred to the Regulation Unit and The Law Society wrote again to the Respondent on 13th February about his failure to reply requesting a response within fourteen days. The Respondent failed to reply to that and so a further letter was sent on 3rd March 2006. The Respondent also failed to reply to that letter and so on 17th March 2006 the Regulation Unit Manager decided to authorise the inclusion of this matter in the existing referral to the Tribunal.

The Submissions of the Applicant

42. The Applicant sought leave of the Tribunal, which was given, to amend allegation 8 to include an allegation of failure to file an Accountant's Report for the period 30th September 2006. The Applicant had notified the Respondent of his intention to do this in March 2007. The Applicant had served a Civil Evidence Act Notice on the Respondent and had received no counternotice.
43. The first three referrals to the Tribunal by The Law Society referred to the same matter in which complaints had been received from the Respondent's former client, his new solicitors and a third party.
44. There had been a series of correspondence by CE Limited's new solicitors to the Respondent in relation to what they considered was a failure by the Respondent to account to the company for funds received on its behalf.
45. Although the Respondent had in his letter of 3rd March 2005 referred to his letters of 1st May and 15th October 2004 (paragraph 10 above) and had referred to these in his statement sent to the Tribunal on 9th October 2007, the Applicant had never seen these letters until that statement. The Law Society had on 9th March 2005 told the Respondent that they had not received the letters and had asked for copies. In the Respondent's statement he had also alleged that he sent a letter on 25th March 2005

enclosing the letter of 15th October 2004. He had however been notified by letter dated 21st March 2005 from The Law Society that the time for review had expired.

46. The 2nd referral to the Tribunal related to the same matter. The client, AH, had legal expenses insurance and the Respondent should have sent to the insurer details of his costs not being paid by a third party under settlement. The Tribunal was referred to the Respondent's letter to the insurers First Assist dated 24th September 2001 in which the amount of the costs and the dates of the relevant hearings and case management conference were left blank.

47. Two and a half years later on 16th February 2004 the insurers had written:

"We have recently been in discussion with our aforementioned insured in respect of these two claims and your outstanding invoices, for which you have recently chased the insured for payment. The insured has asked us to consider these matters and therefore we have liaised with our Law Cost Draftsman and must raise various queries with you."

By this stage bills had been received. Although the insurers had some queries there was no suggestion they would not pay. The Respondent had not replied to the questions.

48. The 3rd referral to the Tribunal also related to the same matter. Mr TH had written to The Law Society:

"I have written to Anderson directly on 10 occasions and he has not had the decency to write back to me, I trust you can help in the matter."

49. On 21st August 2003 the Respondent had written to The Law Society:

"I do apologise for the delay in responding. Unfortunately this part of the file had been put into storage when we moved at the beginning of this year and had to be retrieved.

I have no professional relationship with this gentleman and I fail to see how he can bring a complaint because of a breakdown in relationships between myself and my former client."

This was a mistaken belief on the part of the Respondent as was set out in the response of The Law Society dated 2nd September 2003.

50. Other than his response on 21st August there had been no response from the Respondent. Principle 30.04 of the Guide to the Professional Conduct of Solicitors set out a requirement to reply promptly and substantively to the professional body.
51. It was submitted that the three references referred to above were serious complaints at the high end of the spectrum of misconduct. The finding in respect of inadequate professional service was serious. To ignore the finding aggravated the matter. The Respondent had failed to seek review. The Law Society had been hampered by the Respondent's failure to respond at all or promptly or substantively and such a failure was serious and raised a concern that the public were perhaps at risk.

52. The 4th referral arose from complaints from barristers to the Bar Council and included a complaint from Patrick Lawrence QC. In his statement Patrick Lawrence QC had said:

"In short, this is not a case in which litigation has failed, and a solicitor has omitted to get monies on account, with the result that he is unable to obtain from his lay client a payment in respect of counsel's outstanding fees. It was a case in which the litigation was brought to a successful conclusion against a solvent and insured defendant, and in which the solicitor must have recovered substantial sums in respect of costs from the defendant's insurer...

The effect of Mr H's acceptance of the payment was that he was automatically entitled to his costs, such costs to be subject to assessment...

.....I recall that there was an assessment hearing, because Mr Anderson asked my clerk for some information as a matter of urgency, either immediately before the hearing or while it was taking place. I was not given any notice of the assessment hearing.....

.....Mr Anderson has ignored many fee notes and chasing letters.

Mr Anderson has largely ignored the Bar Council's Direction, and I understand has not responded to letters from the Conduct Assessment Unit.

Mr Anderson has not paid any part of the fees due to me, which amount to £35,316.12.....

.....Mr Anderson must have received a substantial payment pursuant to the costs order made in Mr H's favour in the proceedings following the acceptance of the payment in. He will also have received the £100,000 paid into court, and I do not know how much of that sum in fact reached the client. Mr D was insured by the Bar Mutual, and there is no question but that the costs found due on assessment will have been paid.

This, then, is a case in which a solicitor has deliberately failed to account to counsel in respect of fees which are due, and where the solicitor has received a payment from the other side in respect of those fees (or a substantial part of them). The solicitor has also contemptuously ignored many requests for information from clerks, the Bar Council and now the Conduct Assessment Unit.

To my mind there is no real difference between this type of case and cases in which a solicitor is guilty of the defalcation of client monies. In either case there has been dishonest retention of money that is due to another."

53. In the Respondent's statement of 9th October 2007 he had written:

"Mr Lawrence was a good friend of mine.....

"When the bill was taxed, it was reduced in size from about £180,000 to about £80,000. By that stage I had received a payment on account from the client but, anticipating a substantial sum from the assessment, had made no provision for Mr Lawrence."

The Respondent had essentially admitted this allegation.

54. The Respondent had a duty to satisfy professional disbursements and had been put in funds for that purpose but it appeared that he had taken those funds for his own profit costs. In addressing this allegation in his statement the Respondent had referred to being on the "brink of a nervous breakdown" and to receiving treatment for depression but there had been no evidence put forward of this at the time or now.
55. In relation to the complaint by the Bank of Cyprus the Respondent had written:
- "I accept that I did not deal with this properly and I accept that by the time that I was at Britannia Row my head was being inserted further and further into the ground. "
56. In relation to this matter the Respondent to his credit had begun to assist the Bank's new solicitors as shown by the Bank's letter to The Law Society dated 4th October 2006 and had signed the necessary statutory declaration to allow them to register the charge. Nevertheless the Respondent bore responsibility for his failure to comply with the undertaking given by his assistant solicitor.
57. In relation to the 5th and 6th referrals the Respondent had written in his statement:
- "Again I accept fault in these matters. They should not have occurred. They were discussed and explanations given at the time.
58. Whilst it was accepted that the Respondent had rectified matters it was submitted that there had been a failure to rectify promptly.
59. In relation to the outstanding Accountant's Reports these related to the client account. It was important that the Regulator received reports from an independent auditor to ensure that client monies had been handled properly. The Law Society had no idea of the state of the Respondent's client account, for example whether it had been returned to clients or whether there was still a balance.
60. The Practice Standards Unit Monitoring Visit Report gave a picture of the state of the Respondent's practice. In a letter dated 3rd March 2006 the Respondent was warned by The Law Society that his failure to respond to correspondence might result in disciplinary proceedings.
61. It appeared that the Respondent had woken up to the proceedings at 2.50 pm on the day before the hearing for the first time. Proceedings had been issued in December 2006. Save for recent correspondence in relation to the Respondent's attendance at the hearing the statement on the previous day was the first time the Respondent had responded to the issues.
62. The Tribunal was referred to the case of Bolton v The Law Society [1994] 1 WLR 512CA in which it was said:
- "Any solicitor who is shown to have discharged his professional duties with anything less than complete integrity, probity and trustworthiness must expect severe sanctions to be imposed upon him by the Solicitors Disciplinary Tribunal".

This succinctly stated how The Law Society considered the Respondent's conduct which resulted in seven referrals to the Tribunal.

The Submissions of the Respondent

63. The Respondent's submissions were contained in his statement sent to the Tribunal by email on 9th October 2007 to which the Respondent attached correspondence which he said had not been exhibited by the Applicant. In relation to the Applicant's assertion that the Respondent's letters of 1st May and 15th October 2004 had never been received by The Law Society the Respondent said that he was aware that correspondence to The Law Society went missing even if it was faxed, or was not responded to. In particular he said that an e-mail from him of 5th May 2005 set out clearly the history of the complaint giving rise to the first allegation. He said he had difficulty trying to understand the meat of the second allegation.
64. The Respondent gave details of the three matters in which he acted for AH and in particular of two problems which arose on the I matter, the first being that he received bad instructions as to the state of the contract between his client and AH's company and the second being that the Respondent had failed properly to deal with the claim for costs when AH lost that case. He had voluntarily written off about £5,000 costs to reflect his shame and embarrassment at these failures. The Respondent said that he had written that amount off not having heard from the OSS for some months. If he had appreciated what was coming he would have billed the client for the full amount due and been able to set it against the monies now being claimed. The Respondent said he could not understand the mathematics of the claim or the suggestion that he had in any way short changed the client.
65. The Respondent said that neither the Applicant nor the OSS had understood the matter and stated that it was usual with this client for any remaining balance to be carried forward to fund the next case. The Respondent did not recall seeing half the correspondence between the OSS and AH.
66. In relation to the 3rd allegation the Respondent said that he had been unaware at the relevant time that a further response was due from him and there had been no indication from the Inspector who visited in December 2003 and January 2004 that anything else was outstanding.
67. In relation to the fees for Mr Lawrence the Respondent said that what Mr Lawrence had said was substantially correct but that he was not aware of the full extent of what had happened and gone wrong. The Respondent referred to the difficulties in the litigation and his poor health at the time. He said that when the bill was taxed it was reduced in size substantially. By that stage the Respondent had received a payment on account from the client but anticipating a substantial sum from the assessment had made no provision for Mr Lawrence. He accepted that he should have contacted Mr Lawrence and explained what was happening and apologised for not doing so.
68. The Respondent referred to the problems he had found with his accounts after making his bookkeeper redundant and said that he had called in The Law Society immediately. The Respondent still felt that a substantial sum was unaccounted for but he could not see where it was.

69. In relation to the Bank of Cyprus the Respondent had received assurances from his assistant solicitor when he left that there was no further action to be undertaken. The matter had eventually been resolved. The Respondent had understood that during the period when the matter was with his firm the bank's position had been protected. At the time he was dealing adequately with his clients but not dealing adequately with administration type problems.
70. The Respondent put forward in mitigation details of his health problems. In addition, by 2004, following the disastrous taxation and a claim for unfair dismissal brought by his bookkeeper, the Respondent was suffering from depression. Plans the Respondent had made to improve the administrative and accounting side of his practice were unsuccessful.
71. The Respondent had closed his office and sold his home to put funds into the office. He had no assets left. He lived alone in rented accommodation. He had employment from two ex-clients. He had lost his profession, his family and his home.
72. The Respondent apologised for his failings and acknowledged that on occasions he had buried his head due to his inability to handle his professional problems along with his clients' problems and the total lack of support and other problems at home.

The Findings of the Tribunal

73. Insofar as the Respondent had not admitted the allegations the Tribunal found them to have been substantiated.
74. The Tribunal had considered carefully the written submissions of the Respondent and all the documentation.
75. In relation to allegations 1-3 the Tribunal was not persuaded by the Respondent's arguments. Allegation 1 had been substantiated as a matter of fact. The Respondent had not complied with the Adjudicator's Decision.
76. In relation to allegations 2 and 3 the Tribunal was satisfied from the documentation that these allegations were substantiated. The client had confirmed that the Respondent had not made him aware that he would have set off balances from one matter to another. The Respondent had not accounted to his client for the sum received from Mr TH, who had also complained to The Law Society. He had not given his clients' insurers the required information in respect of costs and the Tribunal noted in particular the Respondent's letter dated 24th September 2001 which he had sent out simply with blanks where the information should have been completed.
77. Allegation 4 was substantiated on the documentation and the Tribunal noted the comments of Mr Patrick Lawrence of Queen's Counsel. The Respondent had admitted the circumstances of the non-payment of Mr Lawrence in his statement but had shown no understanding that the taxation down of costs did not remove his obligation to pay Counsel. The Respondent's apology in relation to this matter was confined to not keeping Counsel informed.
78. Allegation 5 was substantiated on the documentation. The Respondent had put forward his explanation in his statement and the Tribunal noted this. Nevertheless the Bank had been obliged to refer the matter to another firm of solicitors to be resolved.

79. In relation to allegations 6 and 7 while the Tribunal noted that the Respondent had rectified matters his accounting procedures had been lax and the Respondent had allowed the cash shortage to continue for a prolonged period.
80. Allegation 8 was substantiated on the documentation. This was a matter of concern. The system of Accountant's Reports was there to protect the public and to reassure the public that the Regulatory Body was monitoring solicitors' handling of client accounts. The Respondent had totally failed in his obligations to comply with this requirement.
81. Allegation 9 was clearly substantiated. The Tribunal had carefully noted the Respondent's submissions in relation to additional documentation he said he had sent to The Law Society but it was clear that the Respondent had indeed, as he himself had said, buried his head in the sand on many occasions. Failure to reply to The Law Society prevented The Law Society from carrying out its responsibilities to deal with complaints and to investigate matters of concern.
82. Nine allegations had been substantiated against the Respondent. These were serious matters which caused the Tribunal great concern. The Tribunal was further concerned that even in his statement of the previous day the Respondent did not appear to accept the gravity of his misconduct. He had made reference to ill health including depression but had put forward no medical evidence in support. He had failed in his obligations to clients, third parties and The Law Society and had fallen far short of the high standards required of solicitors. The Applicant had referred the Tribunal to the case of Bolton v The Law Society. That case made clear the duty of the Tribunal to maintain the reputation of the profession. Given the seriousness of the matters substantiated against the Respondent the Tribunal was satisfied that it was right to strike his name off the Roll of Solicitors. The Tribunal would also make the Enforcement Order sought, the Respondent having failed to pay to the client the money due to him. The Tribunal would also Order the Respondent to pay the Applicant's costs in the sum set out in the schedule which the Applicant had served on the Respondent.
83. The Tribunal Ordered that the Respondent, James Donald Rory Anderson of Tower Hamlets, London, E3 (formerly of Casa Blanca, 36 Park Road, London, N8 8TD), solicitor, be Struck Off the Roll of Solicitors and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £10,174.01
84. The Tribunal Ordered that the Decision of the Law Society's Adjudicator made on 13th December 2004 be treated for the purposes of enforcement as if it were contained in an Order of the High Court.

DATED this 17th day of December
on behalf of the Tribunal

Miss N Lucking
Chairman