

IN THE MATTER OF NICHOLAS EDMUND MICHAEL HATCHER, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr. R B Bamford (in the Chair)
Mr. D E Fordham
Lady Bonham Carter

Date Of Hearing: 6th June 1996

FINDINGS

of the Solicitors' Disciplinary Tribunal
constituted under the Solicitors Act 1974

An application was duly made on behalf of the Solicitors Complaints Bureau by David Rowland Swift solicitor of 19 Hamilton Square, Birkenhead on the 17th August 1995 that Nicholas Edmund Michael Hatcher of Ashford Kent might be required to answer the allegations set out in the statement which accompanied the application and that such order might be made as the Tribunal should think right.

On the 14th May 1996 a supplementary statement was filed by the applicant setting out details of a further allegation against the respondent. The allegations set out below contain all allegations contained in the original and the supplementary statements.

The allegations were that the respondent had been guilty of conduct unbefitting a solicitor in each of the following particulars namely that he had:-

- (i) failed to keep his clients properly informed;
- (ii) failed to provide adequately for the services to his clients on the closure of his offices or the change of his practice address;

- (iii) failed to deliver or delivered late Accountant's Reports notwithstanding Section 34 of the Solicitors Act 1974 and the Rules made thereunder;
- (iv) failed to keep accounts properly written up for the purposes of Rule 11 of the Solicitors Accounts Rules 1991;
- (v) contrary to Rule 8 of the Solicitors Accounts Rules 1991 drawn money out of client account other than as permitted by Rule 7 of the said Rules;
- (vi) utilised client's funds for the purposes of other clients;
- (vii) failed, on being required to do so, to produce his books of accounts for inspection by the Investigation Accountant of the Law Society contrary to Rule 27(2) of the Solicitors Accounts Rules;
- (viii) behaved in a fashion which compromised or impaired or was likely to compromise or impair his good repute or that of the profession;
- (ix) acted towards the Leeds Permanent Building Society in a way which was contrary to his position as a solicitor;
- (x) behaved in a manner which was unbecoming a solicitor in the Supreme Court;
- (xi) had been convicted of an offence of dishonesty in the course of his dealings with Leeds Permanent Building Society.

The application was heard at the Court Room No. 60 Carey Street, London WC2 on the 6th June 1996 when David Rowland Swift solicitor and partner in the firm of Messrs. Percy Hughes & Roberts of 19 Hamilton Square, Birkenhead appeared for the applicant and the respondent did not appear and was not represented. The evidence before the Tribunal included the admissions of the respondent set out in his letter of the 5th June 1996 addressed to the Tribunal by the respondent by fax. Details of the respondent's submissions as contained in that letter are set out hereunder.

At the conclusion of the hearing the Tribunal ORDERED that the respondent Nicholas Edmund Michael Hatcher of [redacted], Walton on Thames, Surrey, KT12 (formerly of [redacted] Ashford, Kent) solicitor be Struck Off the Roll of Solicitors and they further ordered him to pay the costs of and incidental to the application and enquiry to be taxed by one of the Taxing Masters of the Supreme Court.

The facts are set out in paragraphs 1 to 8 hereunder:-

1. The respondent born in 1954 was admitted a solicitor in 1981.
2. The respondent carried on practice on his own account under the style of Hatcher & Co. at 463 Oxford Road, Reading, Berkshire. On the 12th May 1993 the Adjudication and Appeals Committee of the Law Society resolved to intervene in the respondent's practice pursuant to Paragraph 1(1)(h) of the 1st Schedule of the Solicitors Act 1974. This intervention progressed on the 18th May 1993. After the

Intervention the respondent practised as a solicitor at the premises of Industrial Waste Consultants Ltd at High Wycome and from May 1993 at the premises of Wilj International Ltd. in Ashford Kent.

3.
 - (i). The respondent conducted a general practice as Hatcher & Co. in Reading.
 - (ii). On the 7th May 1993 the Investigating Accountant of the Law Society attended at the respondent's office to inspect the books of account. The respondent did not attend and the premises were locked. The inspection could not proceed.
 - (iii). On the 12th May 1993 the Solicitors Complaints Bureau (the Bureau) was contacted by clients of the respondent who complained that his office was closed and that his whereabouts were not known. No arrangements to inform clients of the situation or to advise them were apparent.
 - (iv). The respondent's office had been repossessed but many files and papers had been left at the premises.
 - (v). An answering service attached to the telephone advised callers to telephone the respondent's home telephone number. Enquiries at the premises revealed that the respondent had left those premises some two weeks earlier taking many papers and documents with him. There were still no arrangements to inform or advise clients.
 - (vi). On the 12th May 1993 the Adjudication and Appeals Committee of the Law Society resolved to intervene in the respondent's practice on the grounds that the respondent had abandoned his practice.
4. The books of account then came into the possession of the intervening agent and upon notice the Investigating Accountant of the Law Society carried out an inspection of the respondent's books of account. A copy of the Investigating Accountant's Report of the 16th June 1993 was before the Tribunal which revealed that the respondent maintained two client bank accounts. There was a credit balance of £43,049.72 on the client account and a debit balance of £25,390.08 on the office account at the inspection date namely 30th April 1993. The respondent's books of account were not in compliance with the Solicitors Accounts Rules 1991. There were no entries in the clients' cashbooks after the 26th March 1993. A number of client ledgers appeared to be missing. It was not possible to state whether there were sufficient funds in the client account to meet the respondent's liabilities to his clients.
5. A report by the Law Society's Monitoring Unit following a visit on the 24th March 1993 had ascertained a minimum cash shortage of £2,263.64 arising as a consequence of debit balances on client account. Subsequent to the inspection by the Investigating Accountant the intervening agent ascertained a minimum cash shortage of £2,263.64 arising as a consequence of debit balances on client account. Subsequently to the inspection by the Investigating Accountant the intervening agent ascertained that the minimum shortfall was £3,513.83: the respondent's accounting records had not been kept in an orderly fashion and there was an absence of written records dealing with the movement of funds.

6. The respondent failed to deliver to the Law Society his accountant's report for the period to 31st May 1993 which report was due on the 30th November 1993.

7. (i). On the 20th December 1991 the respondent married Wendy Irene Maclaurin, nee Morison, who was also a solicitor admitted in 1989. For a period from 15th June 1992 until 31st August 1993 Ms Maclaurin was in partnership with the respondent in Hatcher & Co. Thereafter and until the intervention of the Law Society she was employed in the practice.

(ii). In March 1993 a property at Ascot was purchased by Wendy Irene Maclaurin for the sum of £67,500. The property was acquired with the assistance of a mortgage advance from the Britannia Building Society in the sum of £64,000 obtained by Ms Maclaurin following an application submitted by her and dated the 14th January 1993. In August 1994, the respondent purchased the property from Ms. Maclaurin for the sum of £88,000 with the benefit of a mortgage from the Leeds Building Society. The respondent subsequently sold the property for the sum of £92,500.

(iii). On the 29th January 1993, the respondent submitted a reference to Britannia Building Society as employer of Ms Maclaurin. In that reference he stated that Ms. Maclaurin had been "employed" by him for 7 months and had a basic gross salary of £22,500, i.e. that she was receiving a monthly gross salary of £1,875. He did not disclose his relationship with Ms. Maclaurin. On the 16th February 1993 the respondent wrote to the Inspector of Taxes for the Southsea district indicating that Ms. Maclaurin had been "recently engaged" and that her file should be passed to the Inspector of Taxes for the Reading district. On the 15th April 1993 the respondent wrote to the Inland revenue enclosing a cheque for £353.97 which included a sum of £158.84 in tax in respect of Ms Maclaurin who, the respondent said, was employed by the respondent from 1st January 1993 to 5th April 1993. A manuscript calculation made by the respondent on or about the 15th April 1993 shows that this was calculated on the basis of gross monthly salary of £500.00 for the months of January, February and March 1993. The respondent's office account records, albeit incomplete do not show any payments of salary to Ms Maclaurin.

(iii). The respondent purchased the Ascot property from Ms Maclaurin in August 1994 having obtained a mortgage from the Leeds Permanent Building Society. In order to obtain the mortgage the respondent completed and submitted an application form. The information provided in that application form was inaccurate and misleading in the following respects;

(a). The application was submitted in the name of Nicholas Edmund Morison-Hatcher stating that the respondent was "a corporate lawyer" earning £43,500 per annum and employed by Wilj International Ltd.

(b). The application stated that the respondent was married to Wendy Morison-Hatcher.

(c). The application stated the respondent's address to be that of the Ascot property although he did not live there.

(d). The application stated that the respondent had been in residence at Ascot for two months as a "sitting tenant" and that he was a tenant of Mrs Iris Maclaurin whose address was stated to be in London.

(e). The application stated that the respondent had lived at an address in South Africa for the three years prior to the application and indicated that he had resided at that address in South Africa for six years prior to June 1994. In reality the respondent had resided in the United Kingdom, practising as a solicitor in London from June 1987 until September 1991, then in Camberley from September 1991 until June 1992 and practised in Reading as set out above.

(f). The application stated that the respondent had no financial commitments although in April and May 1993 there were defaults on credit cards amounting to £4,284 and in October 1993 a bank default amounting to £967.

(g). The application stated that the respondent had never fallen behind with rent or mortgage payments when in reality, his office premises had been repossessed as set out above and there had been arrears on his mortgage account with Woolwich Building Society in respect of his property at Reading Road, Blackwater which resulted in proceedings for possession of the property instituted on behalf of Woolwich Building Society. The respondent surrendered possession to the Woolwich Building Society shortly before the Court hearing which was fixed for the 11th June 1993. The property was subsequently sold by Woolwich Building Society in September 1993 but there was a shortfall resulting in a loss for which the respondent remained liable.

8. (i). On the 13th February 1996 the respondent appeared before the Crown Court sitting at Reading and on his own admission was convicted of an offence of dishonestly obtaining the sum of £80,856.30 from Leeds Permanent Building Society by deception using false representations.

(ii). The respondent was jointly indicted with another and sentence was deferred until the conclusion of the Trial of that other. Despite listings on the 18th March and 29th April 1996 that Trial had not proceeded at the date of the disciplinary hearing.

The Submissions of the applicant

9. The mortgage obtained by the respondent was improperly obtained and would not have been granted if the Leeds Permanent Building Society had known the true position.

10. The application submitted to Leeds Permanent Building Society was signed and submitted by the respondent who owed a duty to treat Leeds Permanent Building Society with frankness and honesty consistent with his position as a solicitor. He failed in that regard and as a consequence the Building Society was misled. The respondent asserted that he did not complete the details on the application but submitted it blank alleging errors were made by employees of the building society in

noting telephone conversations. Even if that were true, and the applicant did not concede that, the respondent owed a duty to Leeds Permanent Building Society consistent with his position as a solicitor to ensure that the application submitted under his signature was accurate and complete and did not contain matters that would mislead the Building Society. The Society was entitled to presume that the contents of a document signed by a solicitor had been completed and or checked by that solicitor prior to the submission.

11. It was serious conduct unbecoming a solicitor for a solicitor to be convicted of a criminal offence involving dishonesty. The respondent's sentence could not be put before the Tribunal, but in the submission of the applicant it was likely to reflect the gravity of the offence and the fact that the respondent had acted in a sinister manner.

The Submissions of the respondent (contained in the beforementioned letter addressed to the Tribunal dated the 5th June 1996)

12. During the time that the respondent ran his practice of Hatcher & Co. (for about a year) he worked an average of sixteen unrelenting hours each day and sometimes as long as twenty hours. That situation led to his collapse on the 10th February 1993. Even from his hospital bed he had no option but to continue working unaware that he was, in fact having a nervous breakdown. That condition had never fully abated in view of the continuing stress to which the respondent had been subjected. He found that he was barely able to recall some of the more significant events of that year.
13. The respondent said that he had not abandoned his practice. He agreed to return the practice to the gentleman from whom he had bought it in June 1992. The transfer back took place in mid April 1993. The solicitor to whom the practice was transferred failed to deal with any Hatcher & Co. matters and did not answer letters or calls from the respondent; at the same time he locked the respondent out of the premises. The respondent had managed to retrieve some of his files and had made arrangements for the files to be collected by the intervenor. He believed that he had done the best for his clients that could be done in extremely difficult circumstances. He had come to realise that there were other better options but in his then mental state he failed to consider them.
14. As a result of the intervention the respondent lost the client whose premises he was then occupying. That involved a loss of income in the region of £90,000 which would have resolved his financial difficulties. The respondent appealed against the intervention but was forced to withdraw when the Bureau told him that the Law Society would suspend his Practising Certificate if he pursued the appeal. At that time the respondent's new employers had made it one of the conditions of his continued employment that he held a Practising Certificate.
15. The respondent had received two visits for Financial Services Act compliance the first being early December 1992. A number of deficiencies were pointed out to the respondent and he instructed his accountants to sort matters out and devise a proper system. At the end of March 1993 a full inspection of the respondent's accounts took place which revealed a shortfall of approximately £3,000.00 The Investigating Accountant reported that considerable efforts had been made to bring the accounts up

to standard. The respondent was surprised that a deficiency had been found and discovered on investigation that most of it was attributable to conveyancing cases in which he had inadvertently paid estate agents' fees without making a corresponding deduction from the respective payments to clients.

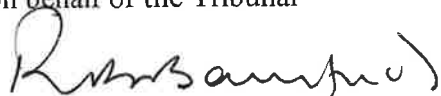
16. After the intervention the intervening agent initially reported that the accounting records "barely existed" but later went on to say that that was because he had not yet found them. The intervener had written to the respondent's employers stating that there was no evidence of dishonesty on the part of the respondent. The payments out of the Law Society's Compensation Fund only just exceeded the £43,000 recovered from client account.
17. The facts relied on by the applicant were the same as those relied upon by the prosecution in the Criminal Court. It related to a mortgage application to Leeds Permanent Building Society made in May 1993 (not in June as stated). The respondent believed his income would reach that referred to in his application and he had vacated his earlier property following the departure of his wife while the mortgage was in arrears. If he had been asked he would have made a full disclosure of his circumstances.
18. The mortgage application was completed personally by the manager - not by the respondent - after a very perfunctory interview. It was not complete when the respondent signed it and foolishly he did not read it before he appended his signature. He could not remember the questions he was asked but did remember that he answered honestly. The respondent wished to point out that Leeds Permanent Building Society were fully aware of the respondent's practising name under which he had held three mortgages with them. They had the last address which he held such a mortgage. That was not, as the applicant suggested, an address for his landlady.
19. The respondent described himself as a "Corporate Lawyer" because that was his job title. He did not intend to mislead anyone and certainly did not intend to steal.
20. The respondent made the mortgage application to secure a home for himself and his family not to finance a speculative deal.
21. The valuation of the property represented an accurate assessment of its worth. All instalments were paid and up-to-date at the time of the sale. The mortgage was redeemed in full from the sale proceeds including penalties for early redemption.
22. The matters referred to by the respondent in his defence took place before the Law Society indicated its interest in the matter. No complaint was made by Leeds Permanent Building Society even after they became aware of the Law Society's investigation. The criminal charges were brought against the respondent as a result of a complaint made by the Law Society.
23. No party had sustained any loss.
24. In every respect the respondent treated the mortgage as an ordinary mortgage which was what he believed it to be.

25. The respondent did not act for the Building Society nor for himself in connection with the transaction.
26. The respondent denied that he had abandoned his office. He was sincerely sorry for his clients who were inconvenienced at the time.
27. The respondent admitted the breaches of the Solicitors Accounts Rules but denied any implication of want of care. There had been mistakes but no dishonesty.
28. The respondent said that he denied the allegations made in connection with his criminal conviction. He said that in despite of his plea in the criminal proceedings, he was not a dishonest person. He was forced into a position where he had to plead guilty in the hope of minimising the risk to his family, livelihood and liberty. During fifteen years as a solicitor, the respondent had worked extremely hard to promote the image of the profession, particularly by stressing the constructive benefits of legal advice.
29. The respondent had made a mistake when he moved from the City to provincial practice, of which he had never had experience. The Law Society did not offer meaningful support.
30. The respondent believed that the Law Society had mercilessly pursued him for three years in the apparent belief that he was a villain. As a result the respondent had suffered a massive loss of income and a huge intervention bill. His family had been brought to its knees, and his two young children had been threatened with homelessness. The respondent had been convicted and possibly his future had been taken away. No concern was shown for the respondent's state of mental health.
31. There had been no complaints about the respondent's performance as a solicitor and no claim had ever been made against the Indemnity Fund in respect of his work.

The Tribunal FOUND all of the allegations to have been substantiated. The Tribunal have noted the respondent's submission that he had been under extreme pressure and that he had suffered a nervous breakdown. The respondent had not produced any evidence in support of that contention. The Tribunal accept that it might go some way to explain his regulatory breaches, but the Tribunal could not ignore the fact that the respondent had been convicted of a serious criminal offence involving dishonesty. In such circumstances he could not be permitted to remain on the Roll of solicitors and the Tribunal Ordered that he be Struck Off the Roll and further ordered that he pay the costs of and incidental to the application and enquiry.

DATED this 9th day of July 1996

on behalf of the Tribunal



R B Bamford
Chairman

*Findings filed with the
Law Society on the 10th
day of July 1996*