

IN THE MATTER OF RICHARD ANDREW NICHOLSON, solicitor's clerk

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

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Mr. D.W. Faull (in the Chair)  
Mr. D.J. Leverton  
Mr. R.P.L. McMurtrie

Date Of Hearing: 30th April 1996

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## FINDINGS

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

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An application was duly made on behalf of the Law Society by Andrew Christopher Graham Hopper solicitor of P.O. Box 7, Pontyclun, Mid Glamorgan on the 29th November 1995 that the Tribunal make an order directing that as from a date to be specified in such order no solicitor should except in accordance with permission in writing granted by the Law Society for such a period and subject to such conditions as the Society might think fit to specify in the permission employ or remunerate in connection with the practice as a solicitor Richard Andrew Nicholson of \_\_\_\_\_, Upper Norwood, London, SE19 \_\_\_\_\_ a person who was or had been a clerk to a solicitor or that such other order might be made as the Tribunal should think right.

The allegation was that the respondent had misappropriated funds received on behalf of his employers.

The application was heard at the Court Room, No.60 Carey Street, London, WC2 on the 30th April when Andrew Christopher Graham Hopper solicitor of P.O. Box 7, Pontyclun, Mid Glamorgan appeared for the applicant and the respondent did not appear and was not

represented. The Tribunal had before it a letter addressed to the applicant dated the 13th February 1996.

The evidence before the Tribunal included exhibit "RAN1", the before mentioned letter of the 13th February 1996.

At the conclusion of the hearing the tribunal ORDERED that as from the 30th April 1996 no solicitor should except in accordance with permission in writing granted by the Law Society for such a period and subject to such conditions as the Society might think fit to specify in the permission employ or remunerate in connection with the practise as a solicitor, Richard Andrew Nicholson of Upper Norwood, London, SE19 a person who was or had been a clerk to a solicitor and the Tribunal further ordered him to pay the costs of and incidental to the application and enquiry fixed n sum of £1,834.20 inclusive.

The facts are set out in paragraphs 1 to 4 hereunder.

1. The respondent, who was a not a solicitor, was at the material times employed as a clerk by the firm of Steel & Shamash solicitors of London SE1.
2. Following a report from the firm's auditors of certain matters of concern relating to the respondent's conduct an investigation of the firm's books of account was undertaken by an assistant to the Investigation Accountant of the Solicitors Complaints Bureau.
3. The report of the Investigation Accountant dated the 28th June 1995 was before the Tribunal. It revealed that the respondent had been employed by the firm from 1986 with responsibility for conveyancing and debt collection matters. He was dismissed on the 30th September 1994 following concern over his time keeping. Subsequent investigation of apparently overdue client bills disclosed serious breaches of the Solicitors Accounts Rules in matters dealt with by the respondent.
4. The respondent had conduct of property matters of various clients in connection with which, it had been discovered after his dismissal, that he had from 1990 misappropriated client and office funds totalling at least £2,600. The respondent agreed the matters with the partners although in some cases he disputed the amounts involved. On the 15th December 1994 funds of £2,693.35 received from the respondent's father were lodged in office bank account. The misappropriation had arisen primarily from the respondent's failure to lodge funds received from clients in cash either on account or in settlement of their bills in client or office bank accounts.

#### **The Submissions of the Applicant**

5. Although in the letter of the 13th February 1996 written by the respondent which was before the Tribunal he said that he would be unable to obtain work in a solicitors' office and indeed had not desire or wish to do so and in his opinion the disciplinary proceedings were entirely unnecessary, the Tribunal was invited to ask itself what the public would think if the Law Society did not institute proceedings against a solicitor's clerk who had acted in the manner of the respondent.

6. He had misappropriated monies entrusted to him by clients which those clients believed they were paying to the firm. That was unacceptable behaviour and it was right that the respondent's future employment within the solicitors' profession should be controlled.

### **The Submissions of the Respondent**

7. In his letter of the 13th February 1996 the respondent said that since January 1995 he had been unable to find employment and could not see that the situation would change in the foreseeable future. He confirmed he would not be attending the hearing and said that he failed to see why he should be ordered to pay the costs of the proceedings either in part or in full as he would be unable to obtain work in a solicitors' office and had no desire or wish to do so. He said in his opinion the proceedings were entirely unnecessary.
8. In an earlier letter addressed by the respondent to the applicant he set out the following points in mitigation;
- a) At the time when he took the monies, the precise figure of which he did not entirely agree, he was under considerable stress. His former wife was extremely financially demanding and they were in debt. He was trying to support not only his wife but also his mother-in-law who had moved into their two roomed flat for over a year increasing financial pressures and the respondent's depressed state of mind.
  - b) The respondent received a salary from his solicitor employers that was inadequate for the work of which he had to conduct. His salary had been discussed with his employers on a number of occasions who agreed that he was underpaid but took no action.
  - c) The respondent suggested that in his personal circumstances and depressed state of mind he believed he should have been more closely supervised, also in view of his age and qualifications.
  - d) All monies had been returned and the respondent could have done so earlier if he had been requested so to do by his employers.
  - e) The pressures upon the respondent contributed to his uncharacteristic and unbusinesslike behaviour.
  - f) The respondent had completely recovered from his depression. He had divorced his wife and had been relieved of financial pressures.

The Tribunal FOUND the allegation to have been substantiated, indeed it was not contested. The Tribunal are able to accept that the respondent had been subjected to considerable pressures which had adversely affected his mental state. However there is no pressure so great as to excuse the dishonest pocketing of monies paid to an employer firm in good faith by its client. The Tribunal give the respondent credit for his admissions and the mitigation placed before them. It is, however, right in the circumstances that the respondent's future employment within the solicitors' profession

should be controlled and the Tribunal made an order pursuant to Section 43 of the Solicitors Act 1974 and ordered the respondent to pay the costs of and incidental to the application and enquiry fixed in the sum of £1,834.20 inclusive of Value added tax and disbursements and the costs of the Investigation Accountant of the Law Society as the investigation was instituted only as the result of the respondent's activities and revealed no breaches on the part of the partners in the employers firm.

DATED this 18th day of *June 1996.*

on behalf of the Tribunal

*D. W. Faull*  
Chairman

*Findings filed with the  
Law Society on the 1st  
day of July 1996*