

IN THE MATTER OF DAVID ALLEN NICHOLS, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr. A G Ground (in the Chair)
Mr. R J C Potter
Lady Maxwell-Hyslop

Date Of Hearing: 8th April 1998

FINDINGS

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

An application was duly made on behalf of the Office for the Supervision of Solicitors by Geoffrey Williams solicitor of 36 West Bute Street, Cardiff, on the 29th April 1997 that David Allen Nichols of Diss, Norfolk might be required to answer the allegations contained in the statement which accompanied the application and that such orders might be made as the Tribunal should think right.

The allegation was that the respondent had been guilty of conduct unbecoming a solicitor in that he had been convicted upon indictment of offences of dishonesty and fined in respect thereof.

The application was heard at the Court Room No.60 Carey Street, London WC2 on the 8th April 1998 when Geoffrey Williams solicitor and partner in the firm of Messrs Cartwrights Adams & Black of 36 West Bute Street, Cardiff appeared for the applicant and the respondent appeared in person.

The evidence before the Tribunal included the admissions of the respondent.

At the conclusion of the hearing the Tribunal ordered that the respondent David Allen Nichols of Diss, Norfolk 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 fixed in the sum of £1,821.25p inclusive.

The filing of the order with the Law Society was suspended until the 8th May 1998.

The facts are set out in paragraphs 1 to 12 hereunder:-

1. The respondent, born in 1955, was admitted a solicitor in 1980. At the material times he practised in partnership under the style of Whiskers at Gate House, The High, Harlow, Essex.
2. On the 21st December 1995 in the Crown Court at Southend the respondent was tried and convicted upon indictment of handling stolen goods, namely an excise licence, and of fraudulently altering the same. He was fined £1,000 and £250 on each matter respectively.
3. The offences arose in the following circumstances.
4. The respondent had purchased a Range Rover which had previously been stolen. On the 27th March 1994 a visitor to Hatfield Forest witnessed an incident involving some dogs and a deer. The incident was reported to the Forest Wardens and enquiries commenced to trace the Range Rover bearing index number K6 TEM, as it was believed that the dogs belonged to the owner of that vehicle. During the enquiries it became apparent that there were two green Range Rovers both displaying that same index number. One vehicle, which appeared to be owned legitimately, bearing that index number was traced and enquiries continued in respect of the suspect vehicle.
5. On the 9th April 1994 a green Range Rover bearing index plate K6 TEM was again sighted at Hatfield Forest. The Forest Wardens identified the Range Rover and made notes of the interior and also made a note of the fact that it was displaying a tax disc expiring on 30th November 1994 serial number N1641758. The police were alerted, although not informed of the tax disc details until some days afterwards. Also on the 9th April the vehicle was stopped by police in Great Dunmow and upon inspection was discovered to be the stolen vehicle, the false index plate having been placed on top of the correct index plate.
6. The respondent maintained, indeed he continued to maintain, that he was unaware of the fact that the vehicle was stolen. He had seen it advertised and had met the seller on two occasions on the second of which he handed over £26,500 in cash to buy the vehicle.
7. A check on the tax disc serial number revealed that the disc was one of a batch of 10,000 which had been stolen in transit on or about the 23rd September 1993. The respondent had purchased the Range Rover on or about the 7th April 1993, some six months before the tax discs were stolen.
8. Upon a subsequent search of the vehicle, no tax disc was discovered. The respondent's explanation had been that the tax disc on his vehicle had expired on the 31st March

1994 and he had taken it out of the windscreen and taken it to his office in order to obtain a renewal, his office dealing with all of his motoring expenses.

9. It was understood that on a date prior to the stealing of the tax disc a post office date stamp had been stolen from a post office in Solihull: the expiry date on the stolen tax disc was November 1994.
10. The criminal charges had been based on the fact that the respondent had known or believed the tax disc to have been stolen. The actual tax disc which had been fixed to the windscreen had never been located.

The submissions of the applicant

11. The respondent had been convicted of criminal offences involving dishonesty. Whilst accepting that the convictions did not relate to criminal behaviour at the highest end of the scale, in the submission of the applicant the Tribunal should consider the Judgement of the then Master of the Rolls Sir Thomas Bingham (as he then was) in the matter of Bolton -v- The Law Society in the Court of Appeal handed down on the 6th December 1993 and in particular when he 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. Lapses from the required high standard may, of course, take different forms and be of varying degrees. The most serious involved proven dishonesty, whether or not leading to criminal proceedings and criminal penalties. In such cases the Tribunal have almost invariably, no matter how strong the mitigation advanced for the solicitor, ordered that he be Struck off the Roll of Solicitors." He went on to say "It is important that there should be full understanding of the reasons why the Tribunal make orders which might otherwise seem harsh. There is in some of these orders a punitive element: a penalty may be visited on a solicitor who has fallen below the standards required of his profession in order to punish him for what he has done and to deter any other solicitor tempted to behave in the same way. Those are the traditional objects of punishment, but often the order is not punitive in intention, particularly is this so where a criminal penalty has been imposed and satisfied. The solicitor has paid his debt to society. There is no need, and it would be unjust to punish him again. In most cases the order of the Tribunal will be primarily directed to one or other or both of two other purposes. One is to be sure that the offender does not have the opportunity to repeat the offence..... The second purpose is the most fundamental of all: to maintain the reputation of the solicitors' profession as one in which every member, of whatever standing, may be trusted to the ends of the earth. To maintain this reputation and sustain public confidence in the integrity of the profession it is often necessary that those guilty of serious lapses are not only expelled but denied re-admission..... Because orders made by the Tribunal are not primarily punitive, it follows that considerations which would ordinarily weigh in mitigation of punishment have less effect on the exercise of this jurisdiction than on the ordinary run of sentences imposed in criminal cases.....The essential issue ... is the need to maintain among members of the public a well-founded confidence that any solicitor whom they instruct will be a person of unquestionable integrity, probity and trustworthiness..... The reputation of the

profession is more important than the fortunes of any individual member. Membership of a profession brings many benefits, but that is a part of the price."

12. The applicant accepted that the respondent not only had denied his guilt throughout, but had indicated to the Tribunal that he believed that he would be able to establish sustainable grounds for a successful appeal against his conviction. The respondent would place such matters before the Tribunal in his mitigation.

The submissions of the respondent

13. The respondent had purchased the Range Rover vehicle at a time when he was suffering divorce proceedings and he needed a vehicle which was capable of carrying loads. His practice had been responsible for the running costs. He had driven the vehicle on a regular basis particularly in connection with his practice as a solicitor often visiting Courts when it was recognised as his vehicle for about one year before any problems arose. The Police had stopped him in Great Dunmow almost exactly four years before the disciplinary hearing.
14. At the time the Police requested the respondent to produce the documents, but his office had them. The tax disc had run out in March 1994, he had taken it off the windscreen and handed it in to his office to arrange for its renewal. In fact the Police never found the stolen tax disc which they alleged had been on his vehicle.
15. Despite his protestations of innocence, the Jury convicted him of two offences.
16. Subsequent to his conviction the respondent had been approached by a senior Police Officer who indicated that the stolen tax disc in question had been recorded as being in the possession of another person. If the respondent could establish that, it would be fresh evidence which had not been before the Court at the time of his trial and represented a very material matter. The respondent was pursuing avenues of enquiry to try to establish details of the whereabouts of the tax disc in question and whether it had been used in evidence to convict another person of criminal offences.
17. The respondent's efforts had been hampered because of matters of confidentiality and in particular the Data Protection Act. The respondent had sought and had been granted an adjournment of the disciplinary hearing to give him more time to try to put together sufficient evidence to enable him to make an appeal against his conviction. That had been in October 1997 and the respondent had come to accept that the Tribunal could not properly delay dealing with the disciplinary allegations in the light of its duty to protect the public and maintain the perception of the public of the good reputation of the solicitors' profession.
18. The respondent had practised as a county prosecuting solicitor before entering private practice.
19. No allegation had been made against the respondent that he had not maintained the highest professional standards.

20. The respondent recognised that he appeared before the Tribunal having been convicted of two criminal offences involving dishonesty and accepted that the Tribunal would not go behind those convictions despite the consistent protestations of his innocence.
21. The respondent invited the Tribunal to accept that his involvement in those matters had nothing to do with him in his capacity as a solicitor and did not concern any relationship with a client nor did it involve his practice, any employee of his practice or his family.
22. The respondent had done all he could to assist the Law Society in its investigation and had been entirely co-operative with the applicant.
23. Much capital had been made at the time that a local solicitor had been prosecuted. The matter was common knowledge amongst all of the respondent's professional colleagues none of whom raised any objection to his continuing to practise as a solicitor and appear in the local courts in that capacity.
24. With regard to the Judgement of the former Master of the Rolls in the Bolton -v- The Law Society case, the Tribunal was invited to take the view that those remarks were addressed in a case which had been based upon the behaviour of a solicitor in the discharge of his professional duties in his capacity as a solicitor. The Tribunal was invited to take note of the unique circumstances of the respondent's convictions which did not arise during the course of his practice as a solicitor or in the discharge of his duties as such.
25. The respondent invited the Tribunal to impose a sanction which fell short of the striking off. He said only one outcome would restore his good reputation, namely a successful appeal against his conviction.
26. If the Tribunal were minded to impose the ultimate sanction, they were asked to take into account the fact that the respondent had two equity partners and a family who should be considered as well as a large number of staff who relied upon his practice for their livelihood. The Tribunal's determination that the respondent should be removed from the Roll would have serious repercussions on many other people. If the Tribunal did decide to make a striking off order, then the respondent asked for some delay in its coming into effect in order that he might ensure that the affairs of his clients did not suffer and he had an opportunity to put his house in order.
27. A transcript of the Judge's sentencing remarks in the Crown Court at Southend was not available as it appeared the relevant tape had been mislaid. The Tribunal was invited to take note of the letter addressed by His Honour Judge B P Pearson to the applicant dated the 1st December 1997 who confirmed that he remembered the case very clearly. He recalled at the time of the commission of the offences the respondent was undergoing a domestic crisis, he was of hitherto good character and the Learned Judge believed the respondent would not err again. He also said that he had hoped that any disciplinary proceedings brought against the respondent would not result in the ultimate sanction but that his words should not be taken in any way as seeking to restrict the freedom of other better qualified than he to judge and apply professional standards. He confirmed that remained his position.

The Findings of the Tribunal

The Tribunal found the allegations to have been substantiated, indeed they were not contested. The Tribunal have of course paid heed to the respondent's continuing protestations of innocence. He believed he was able to establish new evidence which would lead to his being granted leave to appeal and ultimately in his convictions being quashed. The Tribunal had on an earlier occasion agreed to adjourn the hearing of the allegations to give the respondent more time to complete his enquiries.

Some six months had passed since the adjournment hearing and the Tribunal did not feel able to leave the matter in abeyance for a longer period of time. It had a duty to protect the good reputation of the solicitors' profession and it followed from that that it had a clear duty to deal with applications before it with due expedition. Indeed the respondent himself very properly accepted that. The Tribunal had noted that the respondent continued to make endeavours to uncover evidence that would support the fact of his innocence.

Despite their acceptance that the offences of which the respondent had been convicted were perhaps at the lower end of a scale of seriousness, the fact remained that the respondent had been found guilty after trial of criminal offences which involved dishonesty and that was something which the solicitors' profession would not tolerate in the case of one of its members.

The Tribunal ordered that the respondent be Struck off the Roll of Solicitors and further ordered him to pay the applicant's costs in an agreed fixed sum.

The Tribunal noted that the respondent would continue with his enquiries and if in due course he was successful in his quest to have the criminal convictions quashed then there was provision in the Solicitors Act 1974 and the Tribunal's own Rules of Procedure for an application to be made for restoration to the Roll.

The Tribunal considered it in the interests of the respondent's clients that he be given a period of time during which he might assist them to arrange their affairs in an orderly fashion and to that end the Tribunal determined that the filing of the order with the Law Society might be suspended until the 8th May 1998.

DATED this 27th day of May 1998

on behalf of the Tribunal



A G Ground
Chairman

