

IN THE MATTER OF JOHN WILLIAM HUGHES, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

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Mr A N Spooner (in the chair)  
Mr W M Hartley  
Lady Bonham Carter

Date of Hearing: 28th September 2004

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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 Victoria Jane Hunt, solicitor employed by The Law Society at Victoria Court, 8 Dormer Place, Leamington Spa, Warwickshire, CV32 5AE on 16<sup>th</sup> June 2004 that John William Hughes solicitor of Dodbrooke, Millbrook, Torpoint, 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 he had been guilty of conduct unbefitting a solicitor in that:

- a) the Respondent acted as a solicitor without there being in force a Certificate issued by The Law Society contrary to Section 1 of the Solicitors Act 1974.
- b) the Respondent operated a client account when he did not hold a Practising Certificate in breach of Rule 23 of the Solicitors Accounts Rules 1998;
- c) the Respondent failed to keep accounts records properly written up since September 2003 in breach of Rule 32(1) of the Solicitors Accounts Rules 1998;

- d) the Respondent failed to prepare reconciliation statements since April 2003 in breach of Rule 32(7)(c) of the Solicitors Accounts Rules 1998;
- e) the Respondent carried on practice without indemnity insurance cover from 1<sup>st</sup> September 2003 in breach of Rules 4 and 5 of the Solicitors Indemnity Rules 2003;
- f) the Respondent failed to respond to correspondence from The Law Society promptly or at all.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London, EC4M 7NS on 28<sup>th</sup> September 2004 when Victoria Jane Hunt appeared as the Applicant and the Respondent did not appear and was not represented.

At the commencement of the hearing the Tribunal heard submissions as to due service of the proceedings and was satisfied that the Respondent had been served with notice of the substantive hearing date.

The evidence before the Tribunal included the oral evidence of Mr Sutherland. During the hearing the Applicant submitted a bundle of correspondence from herself to the Respondent.

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

The Tribunal Orders that the Respondent, John William Hughes of Dodbrooke, Millbrook, Torpoint, solicitor, be Struck Off the Roll of Solicitors and they further Order that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £2,146.00.

**The facts are set out in paragraphs 1-15 hereunder:**

1. The Respondent born in 1942 was admitted as a solicitor in 1969 and his name remained on the Roll of Solicitors .
2. At all material times the Repondent practised as a solicitor on his own account under the style of Coodes-Torpoint, solicitors of 2 Fore Street, Torpoint, Cornwall, PL11 2AA until intervened into by The Law Society on 20<sup>th</sup> May 2004. The Respondent's Practising Certificate was terminated on 9<sup>th</sup> January 2004.
3. On 12<sup>th</sup> January 2004 The Law Society wrote to the Respondent to request details of his indemnity insurance. The Respondent did not respond. On 20<sup>th</sup> January The Law Society wrote again and again the Respondent did not respond. On 28<sup>th</sup> January The Law Society wrote a final letter to the Respondent but again he did not respond. On 9<sup>th</sup> February 2004 The Law Society telephoned the Respondent who at that time confirmed that he was unable to confirm that he had insurance cover.
4. On 1<sup>st</sup> March 2004 a caseworker from the Regulation Unit of The Law Society wrote to the Respondent seeking his confirmation as to whether he had continued to practise uncertificated and requested details of Coodes-Torpoint's qualifying insurers. The Respondent was requested to respond within eight days. The Respondent failed to respond to this letter.

5. On 16<sup>th</sup> March 2004 a caseworker in the Regulation Unit telephoned the Respondent who confirmed that he had received the letter of 1<sup>st</sup> March 2004 and said that he had decided to give up practice. He was advised by the caseworker that he should not be present in the firm operating client account. The caseworker advised the Respondent to get a locum in and that he should speak to the Solicitors Assistance Scheme. The Respondent was advised of the seriousness of the matter. The caseworker followed up the telephone call with a letter dated 16<sup>th</sup> March requesting a response to the letter of 1<sup>st</sup> March by 23<sup>rd</sup> March and warned the Respondent that the power of intervention has arisen and that this was a serious matter. No response was received by 23<sup>rd</sup> March.
6. On 23<sup>rd</sup> March 2004 an inspection of the Respondent's books of accounts was carried out by an Investigation Officer of the Forensic Investigations Unit, Mr Richard Sutherland. A copy of the Report produced by the Forensic Investigations Unit was before the Tribunal.
7. The Report indicated that the firm's books of accounts had not been written up fully since 26<sup>th</sup> September 2003 in breach of Rule 32(1) of the Solicitors Accounts Rules 1998. The Investigating Officer found that no comparison of balances on client cash account with balances on the relevant bank statements or comparison of the total of client ledger account with the cash account balances had been carried out since April 2003 and, consequently, no reconciliation statements had been prepared since April 2003 in breach of Rule 32(7)(c) of the Solicitors Accounts Rules 1998.
8. The Investigating Officer indicated that he could not attempt to calculate the Respondent's total liability to clients or even calculate the minimum liability at the date of the inspection.
9. However the Investigating Officer was able to establish that between 9<sup>th</sup> January 2004 and 22<sup>nd</sup> March 2004 client account had been charged with 77 payments, totalling £2,611,853.89, all of which were transacted whilst the Respondent practised uncertificated and thus was in breach of Rule 23 of the Solicitors Accounts Rules 1998.
10. The Investigating Officer asked the Respondent if he was aware that his Practising Certificate had been terminated on 9<sup>th</sup> January 2004 and the Respondent indicated that he was aware but felt that he owed it to his clients to continue to work for them. On 25<sup>th</sup> March the Respondent confirmed to the Investigating Officer that he had 25 ongoing conveyancing matters and five probate matters. He told the Investigating Officer that he was unable to renew his Practising Certificate because he was unable to obtain indemnity insurance at a reasonable cost.
11. During the inspection on 23<sup>rd</sup> March, the Investigating Officer raised with the Respondent the issue of the lack of professional indemnity cover and the Respondent confirmed that he had applied for a quote for cover for 2003/2004 and that it was £20,000. Because of cash flow problems, the Respondent said he was unable to meet the cost. The Respondent confirmed that he had not made any application to the Assigned Risks Pool and therefore agreed with the Investigating Officer that he had been carrying on practice since 1<sup>st</sup> September 2003 without any professional indemnity cover (in breach of Rules 4 and 5 of the Solicitors Indemnity Rules 2003).

12. On 13<sup>th</sup> April 2004 a letter was sent to the Respondent enclosing the Forensic Investigation Report and asking the Respondent to provide answers to specific questions arising out of the findings of the Report within seven days. On 21<sup>st</sup> April 2004 the Respondent contacted The Law Society and requested an extension which was granted to 26<sup>th</sup> April 2004. However no response was received by 26<sup>th</sup> April and on 7<sup>th</sup> May 2004 the Society notified the Respondent that the caseworker was referring the Forensic Investigation Report for Adjudication and the Respondent had until the close of business on Monday 17<sup>th</sup> May to make any representations. Nothing was received by 17<sup>th</sup> May. The Report of 31<sup>st</sup> March (along with a memorandum prepared by a caseworker summarising her findings) was faxed to the Chairman and panel member of the Compliance Board at 10.21 am on 18<sup>th</sup> May. The Board resolved by way of delegated powers to intervene into the Respondent's practice and refer the Respondent's conduct to the Tribunal. Later that same day, at 3.19 pm, the Respondent sent a faxed response to the Society but the Compliance Board did not see his comments as they were not received in time. The Respondent's comments were before the Tribunal.
13. In response to the Society's letter of 1<sup>st</sup> March the Respondent photocopied the original letter and wrote upon that letter confirming that whilst practising uncertificated he acted in conveyancing and probate matters.
14. On a separate piece of photocopy paper which was attached to the Report the Respondent commented in respect of the Forensic Investigation Report:
- "the Report is fairly and accurately represented. I recognise my default which has been brought about by ill health and as a consequence of insufficient funds to continue".
15. In response to the letters of 13<sup>th</sup> April and 7<sup>th</sup> May the Respondent wrote saying:
- "I admit I have been in breach of the Rules. However may I inform you that it was my intention to cease in practice at the end of December 2003. That did not work out but my demise will be end July 2004. You mention intervention but what is the point as there is so little to be cleared up. I am not, never have been and would never be a thief so far as clients' money is concerned. I must add that The Law Society blackmailed me into paying the indemnity fund a deductible prior to granting my Practising Certificate for 2002/2003".

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

16. The Respondent had indicated to the Tribunal that "some allegations" were admitted. The admissions had not been specified and the Applicant would therefore treat all the allegations as not admitted. The Applicant had sent to the Respondent a Civil Evidence Act Notice and a Notice to Admit documents without receiving a response from the Respondent. The Applicant would therefore rely on the documents.
17. In relation to allegation (a) the Applicant referred the Tribunal to the Affidavit of Angela Hunter, Head of Registration at The Law Society dated 23<sup>rd</sup> August 2004 confirming that the Respondent had practised uncertificated from 9<sup>th</sup> January 2004.

The Respondent had clearly been aware of the situation regarding his Practising Certificate as shown by his comments to the Investigating Officer (paragraph 9 above). The Respondent had, prior to the inspection, been advised by The Law Society by letter of 1<sup>st</sup> March 2004, of the seriousness of the matter and had been warned of The Law Society's power to intervene. There was no doubt that the Respondent had been put on notice as to the severity of the situation. His handwritten confirmation on the copy of the letter of 1<sup>st</sup> March 2004, which he faxed back to The Law Society, that he had acted in conveyancing or probate matters and that he had held himself out as a solicitor, was in the submission of the Applicant, a clear admission that he had acted as a solicitor in contravention of the Solicitors Act 1974. The Respondent had not indicated that he disputed the contents of the Forensic Investigation Report.

18. In relation to allegation (b) the Respondent had been warned by a Law Society caseworker in the telephone call on 16<sup>th</sup> March 2004 not to operate client account. The 77 payments from client account identified by the Forensic Investigation Report showed that he had contravened Rule 23 of the Solicitors Accounts Rules 1998.
19. Allegations (c) and (d) were substantiated by the Report. It was right to say however that the Compensation Fund had indicated that no claims had been made in respect of the Respondent's practice following the intervention.
20. In relation to allegation (e) the Tribunal was asked to note the Respondent's comments to the Investigating Officer (paragraph 10 above). The Law Society had written three times to the Respondent requesting details of his indemnity cover without response. He had been warned in the letter of 28<sup>th</sup> January 2004 that unless he responded the matter would be referred to the Office for the Supervision of Solicitors. Again the Respondent had not contested the relevant facts.
21. In relation to allegation (f) the Respondent had not replied to the letters from The Law Society of 12<sup>th</sup>, 20<sup>th</sup> and 28<sup>th</sup> January. There had been no response to the further letters of the 1<sup>st</sup> March, 16<sup>th</sup> March, 17<sup>th</sup> April and 7<sup>th</sup> May until the Respondent's fax of 18<sup>th</sup> May. There had been a clear failure and delay in responding to correspondence. Even where extensions had been given the deadlines had not been met.
22. Where the Respondent had made comments, as in his responses to Mr Sutherland, he had made a frank admission of the breaches of the Rules and this was confirmed in his written comments referred to at paragraphs 12-14 above.
23. No client had suffered loss but the breaches of the Rules committed by the Respondent were fundamental to the practice of a solicitor. Clients were entitled to expect solicitors to hold a Practising Certificate, to have indemnity insurance in place and to handle their accounts properly.
24. The Applicant sought her costs in the sum of £2,146.36 a schedule of which had been sent to the Respondent.

**The oral evidence of Richard Duncan Sutherland**

25. Mr Sutherland, a Forensic Investigation Officer with The Law Society confirmed that the Applicant's submissions in relation to his Report dated 31<sup>st</sup> March 2004 were accurate and confirmed that his Report was an accurate and a true reflection of what he had found during his inspection.

**The Findings of the Tribunal**

26. Having carefully considered the documentation the Tribunal was satisfied that the allegations were substantiated. These were extremely serious matters. The Respondent had practised as a solicitor whilst knowing that he had no Practising Certificate and no indemnity insurance. Most seriously, despite a specific warning from The Law Society not to operate his client account, he had made 77 payments from client account totalling in excess of £2,600,000. Although the Tribunal had heard that no claim had in fact been made on the Compensation Fund the potential loss to the profession was enormous. The Respondent had not attended the Tribunal nor arranged representation nor sent any submissions in mitigation. The Tribunal had noted his comments to Mr Sutherland and his written comments faxed on 18<sup>th</sup> May 2004 but these did not in any way excuse his conduct. The Tribunal in the absence of mitigation had to take the gravest view of such serious matters. The Applicant had rightly outlined to the Tribunal the expectations of the public when they consulted a solicitor that the fundamental requirements of practice would have been complied with. In the interests of both the public and the profession the Respondent should not be allowed to practise as a solicitor.
27. The Tribunal Ordered that the Respondent, John William Hughes of Dodbrooke, Millbrook, Torpoint, solicitor, be Struck Off the Roll of Solicitors and they further Ordered that he pay the costs of and incidental to this application and enquiry fixed in the sum of £2,146.00.

DATED this 29<sup>th</sup> day of November 2004

on behalf of the Tribunal

A N Spooner  
Chairman