

IN THE MATTER OF HUGH STEPHEN HAYCOCKS, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

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Mr A G Ground (in the chair)  
Mr S N Jones  
Mr M G Taylor CBE

Date of Hearing: 31st March 2005

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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 David Elwyn Barton solicitor of 5 Romney Place, Maidstone, Kent, ME15 6LE on 24th November 2004 that Hugh Stephen Haycocks, solicitor of Wellington, Telford, Shropshire, might be required to answer the allegations contained in the statement which accompanied the allegation and that such order might be made as the Tribunal should think right. The allegations were that the Respondent had been guilty of conduct unbecoming a solicitor in each of the following respects, namely:-

- (a) He has acted in breach of the Solicitors Accounts Rules 1998 in that contrary to the provisions of Rule 22 of the said Rules (Rules 7 and 8 of the 1991 Rules) he has drawn from client account monies other than in accordance therewith and utilised the same for his own benefit. It is further alleged that the Respondent did so dishonestly;
- (b) He altered a form of authority without his client's instructions, after it had been signed by his client. It is further alleged that he did so dishonestly;
- (c) Following an intervention into his practice on 27th October 2003 he failed to cooperate with the Intervention Agent appointed by the Law Society;

- (d) He failed to keep accounting records properly written up to show his dealings with client money, and office money relating to client matters, contrary to Rule 32(1) of the Solicitors Accounts Rules 1998;
- (e) He failed to carry out client account reconciliations as required every five weeks, contrary to Rule 32(7) of the said Accounts Rules;
- (f) He failed to keep such documents and other records as are required to be kept by Rule 32(9) of the said Accounts Rules.

The application was heard at the Court Room, Gate House, 3rd Floor, 1 Farringdon Street, London EC4M 7NS when David Elwyn Barton appeared as the Applicant and the Respondent did not appear and was not represented.

The evidence before the Tribunal included the Applicant's Notice pursuant to the Civil Evidence Act and the affidavits of Amanda Farman, Tony Matthew Green, Jayne Belinda Willetts and Graham Lewis Cox together with a Royal Mail special delivery counterfoil.

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

The Tribunal orders that the Respondent, Hugh Stephen Haycocks of Muxton, Telford, Shropshire, (formerly of Wellington, Telford, Shropshire) 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 £8,119.73.

### **Preliminary matter**

1. By letter of 28th March 2005 the Respondent sought an adjournment of the substantive hearing. He said that he was unwell and had been unable to deal with the proceedings against him to attend the hearing. He had been under stress. The actions of the Law Society and his subsequent bankruptcy had had a severe effect upon his health. He was unable to deal with even day-to-day matters. Over the previous few days he had been suffering from a severe bout of 'flu. The Respondent said he wished to defend the proceedings against him but had been severely handicapped in that he had been unable to afford legal advice and assistance.
2. The Law Society had taken more than a year following the intervention to prepare and institute proceedings against him and compared with that he had had very little time to prepare his defence.
3. He requested that the proceedings against him be adjourned to enable him to recover sufficiently to deal with the matter and obtain the appropriate legal representation.
4. In a letter dated 30th March 2005 faxed to the Tribunal's office at 9.09 am on 31st March 2005 the Respondent asked if the matter might be adjourned as requested and he sent a letter from Dr Jane Bright of the Charlton Medical Centre. That letter was dated 30th March 2005 and was addressed To Whom It May Concern. The letter took the following form:-

“I confirm that I am Dr Jane Bright, a general medical practitioner at Charlton Medical Centre Oaken Gates, and that Hugh Haycocks is one of my patients.

I confirm that I have seen and assessed Mr Haycocks today and that I have diagnosed a moderately severe depression. Due to his medical condition he is not fit to attend a tribunal or at present to prepare the case for his defence.”

5. The Applicant told the Tribunal that the letter received on the day before the hearing was the first application that the Respondent had made. He accepted that an adjournment would cause no prejudice to the Law Society. There had been an intervention into the Respondent’s practice.
6. The doctor’s note arrived on the day of the substantive hearing.
7. The Respondent had known of the substantive hearing date for some time.
8. The Applicant had written many letters to the Respondent dealing with evidential matters and the Respondent had not responded.
9. It was necessary to look carefully at the letter received on the morning of the hearing. It might have been expected that the Respondent should have provided something at an earlier date. The Tribunal might wonder what “moderately severe depression” was. The letter included an indication that the Respondent was not fit to attend the hearing but it was a matter for concern that such an opinion be provided on the date of the hearing when the Respondent had not made any earlier contact.
10. The allegations involved dishonesty, they were serious and should be dealt with, the case was well documented and the Respondent had been notified in advance.

### **The Tribunal’s decision on the adjournment application**

11. The Respondent’s letter seeking adjournment had been dated two days before the substantive hearing and had arrived in the Tribunal’s office by fax on the day before the hearing. That was the first communication received from the Respondent since the commencement of the proceedings. That letter put forward a number of reasons in support of the Respondent’s application for adjournment. The reasons were
  - 1) That the Respondent was unwell and unable to deal with the proceedings;
  - 2) That he was under stress;
  - 3) That he had been suffering from ’flu for the last few days;
  - 4) That he needed but was unable to afford legal advice;
  - 5) He had not had sufficient time to deal with his defence.

That letter did not in the Tribunal’s view provide adequate grounds for an adjournment. There was in relation to the claim of being unwell no formal medical report. The other grounds would not have justified an adjournment and the letter as a

whole and the grounds in it would not have satisfied the requirements of the Tribunal's policy/practice direction relating to adjournments. A copy of that policy/practice note had been sent to the Respondent when he was served with the disciplinary proceedings in December 2004. The Tribunal's office had sent him a further copy on the day before the hearing.

12. After that exchange of correspondence the Tribunal had received by fax on the morning of the hearing a letter from the Respondent enclosing a letter from Dr Jane Bright, a general practitioner, stating that she had seen and assessed the Respondent on 30th March and had diagnosed "moderately severe depression" and that due to his medical condition she considered that the Respondent was not fit to attend a Tribunal or prepare his defence.
13. This raised with the Tribunal a number of concerns.
14. The Tribunal did not consider that Dr Bright's letter was a reasoned opinion of an appropriate medical advisor as set out in the Tribunal's policy/practice note. It had been written by a general practitioner and not by a psychiatric consultant. It did not give any history of the Respondent's illness nor any details of treatment. It did not offer a prognosis.
15. The general practitioner's letter had been produced at the last possible moment. It was also inconsistent with the letter written by the Respondent received in the Tribunal's office on the day prior to the hearing which set out a number of grounds for adjournment which the Tribunal considered inadequate. The general practitioner's letter referred to depression and made no mention of the severe bout of 'flu to which the Respondent himself had made reference.
16. The allegations made against the Respondent were clear and he had had notice of them since the service of the disciplinary proceedings upon him on 14th December 2004. Not only had the Respondent had formal notice of the proceedings before the Tribunal on that date but there had, of course, been an investigation by the Law Society and correspondence addressed to him about the matter by the Law Society over a considerable period of time. The Law Society notified the Respondent of its decision to refer him to the Tribunal and it could not be said that the disciplinary proceedings served on him came to the Respondent as a surprise.
17. The Tribunal directs itself to dispose of its business as expeditiously as justice will allow in order to fulfil its fundamental duty to protect the public and the good reputation of the solicitors' profession. It will grant adjournments at the request of either party only when it is entirely satisfied that it would be right and proper so to do. The Respondent has made a last-minute application for an adjournment supported by inadequate medical evidence. The Tribunal concludes that having taken no part in the proceedings hitherto the Respondent was making an ill-considered and last-minute attempt to avoid the substantive hearing.
18. The Tribunal noted the words of Lord Justice Peter Gibson in Teinaz -v- London Borough of Wandsworth [2002] IRLR 721:-

"Applications for adjournments may have to be granted, however inconvenient, if not to grant an adjournment would cause injustice to the

litigant seeking the adjournment. But the Tribunal is entitled to be satisfied before granting the adjournment that the inability of the litigant seeking the adjournment that the inability of the litigant to be present is genuine and the Applicant has the burden of proving the need for an adjournment. Courts and tribunals have sometimes to consider applications to adjourn which look as if they may be advanced for insubstantial reasons in order to put off a hearing which the Applicant would rather not face up to. If medical reasons are advanced the Tribunal may well require production of a medical report or certificate in support of the application. If a report or certificate is produced the Tribunal is entitled to consider whether it sufficiently supports the reason of the adjournment which is relied upon. It is not obliged, in my judgement, to grant the application to adjourn simply because a medical certificate is produced, whatever its content.”

19. The Tribunal having considered the submissions of the Respondent, the nature of the allegations made against him, the submissions of the Applicant, the provisions of the Tribunal’s Practice Direction on adjournments, of which the Respondent had been aware, and the importance of dealing with cases without undue delay for the reasons set out above, has concluded that the interests of the public and the good reputation of the solicitors’ profession must take priority when balanced against the wishes of and insubstantial reasons for delay put forward by the individual solicitor. The Tribunal rejected the application for an adjournment and ordered that the matter proceed to the substantive hearing.

**The facts are set out in paragraphs 20 to 29 hereunder:-**

20. The Respondent, born in 1943, was admitted as a solicitor in 1968. At the material times he carried on practice under the style of Haycocks Clark at Wellington, Telford, Shropshire. On 21st October 2003 the Law Society resolved to intervene into the Respondent’s practice. The intervention was effected on 27th October 2003.
21. The Intervention Agent was Ms Willetts, solicitor of Rutland House, 148 Edmund Street, Birmingham, a partner with Hammonds Solicitors. The Respondent was under a duty to cooperate with the intervener.
22. Ms Willetts requested the delivery up of certain files. A letter from the Respondent dated 1st December 2003 showed that he made arrangements for files to be transferred after the intervention and he was not entitled to do this. The absence of cooperation by the Respondent left Ms Willetts with no alternative but to apply to the Court for an order, which she did. The Respondent’s failures added to the costs of the intervention which ultimately might have to be borne by the solicitors’ profession.
23. Mr Green, employed by Hammonds Solicitors as a finance manager, was involved in the intervention into the Respondent’s practice as part of Hammonds’ intervention team. During the process he personally dealt with the Respondent.
24. When the intervention first took place there was a need to know what financial records the Respondent had. The Respondent produced some deposit account

statements. He informed Mr Green that his firm's accounts were held on a computer system and Mr Green said he would need to look at that with the Respondent. Mr Green was given the password to get into the computer system. The Respondent's cashier was away from the office through sickness. When Mr Green entered the computer system he discovered that client balances and transactions had not been recorded for over a year.

25. After discussing the matter with Hammonds' computer department Mr Green concluded that he could not download the Respondent's computer package to one of Hammonds' computers and so he worked with the computer package at the Respondent's office. The Respondent told Mr Green that his method of reconciling his client account was to reconcile each file individually when a particular transaction had been completed. There were no up-to-date manual records in the working area occupied by the cashier. When eventually Mr Green was able to speak to the cashier she said that no records had been kept of the firm's transactions over the preceding 12 months. She confirmed that the Respondent reconciled individual files when matters were completed. The Respondent had asked the cashier to stop using the computer to record her accounting entries.
26. The lack of financial information had made it impossible for Mr Green to carry out a reconciliation of the Respondent's client account. He had been unable to ascertain whether there was sufficient money in the Respondent's client account to meet his liabilities to his clients.
27. The Respondent acted for Mr C in a claim against HSBC. Mr C signed a settlement form confirming that he accepted a sum of money from HSBC in settlement of his claim, but he did not add the words "Please make the cheque payable to Haycocks Clark". Those words were added by the Respondent without his client's authority.
28. On 16th June 2003 HSBC sent the Respondent a cheque for £7,956.74 in settlement. It was paid into the Respondent's client account. On 16th December 2003 (after the intervention) the Respondent wrote to Mr C to send him a cheque for £2,144.48 being the balance said to be due to him after the deduction of costs. The cheque was drawn on an account in the name of Mrs J Haycocks. The accounting records kept by the Respondent were so inadequate that it was not possible to see when the £7,956.74 was withdrawn from client account and transferred into Mrs Haycocks's account.
29. In an attempt to discover exactly what the movement of the money was, copy statements relating to the Respondent's client bank account had been obtained covering the period from just prior to his receipt of Mr C's money to the closure of the account. It was not possible to tell from them when the sum had been withdrawn, but there were round sum withdrawals in which this sum could have been included.

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

30. The Respondent had not kept adequate books of account and had withdrawn money from client account and had utilised the same for his own benefit and had in that respect been dishonest.

31. The Respondent had withdrawn money from client account relating to Mr C and had transferred it into his wife's account and that clearly indicated that he had behaved in that respect dishonestly.
32. Although the bank statements of the Respondent's client bank account had been scrutinised, the sum transferred into Mrs Haycocks's account could not be specifically identified but it was clear that at some time money was removed from client account and put into an account in the name of the Respondent's wife. The Respondent had had the benefit of that money during whatever period of time it had been in his possession. The Respondent had altered the form of authority signed by Mr C without Mr C's instructions. That was also an act of dishonesty.
33. The Respondent had not cooperated with the Intervention Agent appointed by the Law Society and his lack of cooperation had been such that she had been compelled to seek an Order of the Court to ensure his compliance.
34. It was also clear that no up-to-date accounting records had been kept by the Respondent to show his dealings with client money. It was clear that he had not carried out client account reconciliations on a five weekly basis as required by the Solicitors Accounts Rules.

### **The Findings of the Tribunal**

35. The Tribunal found all of the allegations to have been substantiated. The Tribunal applying the two part test in Twinsectra Ltd -v- Yardley and Others [2002] UKHL 12 reached the conclusion that the Respondent had acted dishonestly.

### **Previous Findings**

#### 8<sup>th</sup> March 1973

36. On 8<sup>th</sup> March 1973 the Disciplinary Committee constituted under the Solicitors Act 1957 had found the following allegations to have been substantiated against the Respondent in that he had:-
  - (a) failed to comply with the provisions of Section 30 of the Solicitors Act 1957 as amended by Section 9 of the Solicitors Act 1965 and of the Accountant's Report Rules 1967 in that the accounting period specified in the Accountant's Report delivered by him on 12<sup>th</sup> July 1972 terminated more than six months before the date of delivery thereof;
  - (b) been guilty of conduct unbefitting a solicitor in that:-
    - (i) he practised as a solicitor without holding a current Practising Certificate;
    - (ii) notwithstanding an assurance given on 25<sup>th</sup> January 1972 that he would be forwarding the necessary papers in connection with his Practising Certificate within ten days following that letter, he failed so to do or to

give proper consideration and attention to letters received from the Law Society;

- (iii) having accepted instructions in the liquidation of S S Ltd failed to carry out those instructions and failed to give proper attention and consideration to his client's affairs;
- (iv) failed without sufficient reason to reply to letters in connection with a matter in which he was acting.

On that occasion the Disciplinary Committee imposed a penalty of £500 upon the Respondent and ordered that he pay costs.

17<sup>th</sup> January 1989

37. On 17<sup>th</sup> January 1989 the following allegations were substantiated against the Respondent namely that he had been guilty of conduct unbecoming a solicitor in that he had:-

- (a) been guilty of delay in the administration of estates;
- (b) failed to reply to letters from other solicitors and from the Solicitors Complaints Bureau and from various other parties;
- (c) failed to comply with directions of the Adjudication Committee of the Solicitors Complaints Bureau;
- (d) failed promptly to pass over monies and documents the property of a Trust to solicitors acting for the Trustees of that Trust;
- (e) failed to keep clients properly informed;
- (f) unduly delayed in the conduct of divorce proceedings.

The Tribunal in 1989 appreciated the candour of the Respondent in admitting his shortcomings but were dismayed at his total disregard for correspondence from the Solicitors Complaints Bureau. Although he had not been guilty of dishonesty his failure to deal with cases with a reasonable degree of expedition and his failure to deal with correspondence addressed to him from many quarters was calculated to bring the reputation of the solicitors' profession into disrepute. The Tribunal were further concerned that the Respondent had had complaints against him in this matter which bore not a little resemblance to the allegations substantiated against him in 1973. The Tribunal were further dismayed that the Respondent appeared not to have heeded the warning implicit in the earlier decision of the Disciplinary Committee. The Tribunal gave serious thought as to whether the Respondent should be permitted to continue in practice as a sole practitioner or at all: his neglect of his client's business and his failure to reply to correspondence were quite unacceptable. They recommended to the Law Society that should a Practising Certificate be granted to the respondent in the future, then his practice should be limited to practice in approved employment or in an approved partnership. The Tribunal took a serious view of the Respondent's neglect of clients' matters and regarded the fact that the respondent had consistently ignored the many letters addressed to him by the Solicitors Complaints Bureau as particularly serious.

The Tribunal on that occasion ordered that the respondent be suspended from practice as a solicitor for a period of twelve months and that he pay the Applicant's costs. The



Respondent appealed that decision and the Divisional Court substituted a fine of £2,000 for the period of suspension.

16<sup>th</sup> October 2003

38. On 16th October 2003 the Tribunal found the following allegations to have been substantiated against the Respondent. The allegations were that he had been guilty of conduct unbecoming a solicitor in each of the following respects, namely:-
- (a) He compromised or impaired, or was likely so to do, his good repute and that of the solicitors' profession as a consequence of the placing of his name on the list of solicitors from whom credit was withdrawn pursuant to the Withdrawal of Credit Scheme Direction of the General Council of the Bar;
  - (b) He compromised or impaired, or was likely so to do, his good repute and that of the solicitors' profession as a consequence of his failure to reply to correspondence from Counsel's Clerk and the Bar Council;
  - (c) He failed to reply to correspondence from the OSS;
  - (d) He failed to comply with a decision of the Adjudicator dated 22nd August 2002;
  - (e) He failed to reply to correspondence from Gould Fowler and Co, Solicitors;
  - (f) He failed to comply with an undertaking given to the OSS in a letter dated 8<sup>th</sup> December 2000.

39. In its written Findings dated 27th November 2003 the Tribunal said:-

“The Tribunal had listened carefully to the Respondent's submissions and had given very careful consideration to the appropriate penalty. The Respondent had admitted all the allegations. The Tribunal had given serious consideration to imposing the ultimate penalty on the Respondent. This was the Respondent's third appearance before the Tribunal although it was accepted that his first appearance had been a very long time ago. The Tribunal in 1989 had considered whether the Respondent should remain in practice as a sole practitioner or at all. The Tribunal had noted all their comments. In defence of the Respondent the Divisional Court had substituted a fine for the penalty imposed in 1989 but the Tribunal was entitled to take into account the comments of the Tribunal on that occasion and the similarity of the allegations in failing to deal with correspondence and to comply with a direction of the regulatory body. The Respondent had not put forward any satisfactory explanation for his shortcomings. There was some mitigation put forward in respect of the Gould Fowler and Co files and Mr Radevsky of Counsel in that the files had been taken away from the Respondent. There was no excuse for his failure to communicate that fact to those involved. The Respondent himself had said that there had been no excuse in the matter of Mr Monson of Counsel nor in his failure to comply with the direction in relation to the payment to Mr MK. No dishonesty had been alleged against the respondent and the Tribunal would not impose the ultimate sanction. The Tribunal

was however concerned that the Respondent did not appear to have learned a lesson either from his previous appearances or from the institution of these proceedings. The Tribunal was concerned to note that his payments to Mr Monson and to Mr MK had only been made immediately prior to his appearance before the Tribunal. The Tribunal had a duty to protect the public and to protect the reputation of the profession. The Tribunal had no doubt that that reputation had been damaged by the Respondent's persistent failure to deal with matters. Mr MK had been kept waiting for well over a year for the payment of a significant sum of money which the Respondent had been directed to pay by an Adjudicator of the Law Society. The regulatory measures which controlled solicitors were there for the protection of the public and solicitors could not choose to ignore the regulatory body in this way. In all the circumstances the Tribunal considered that it was not appropriate for the respondent to continue to practise. The appropriate penalty was one of indefinite suspension. The Tribunal considered that should the Respondent apply to the Tribunal for a lifting of the suspension any future Tribunal would look very carefully at how such an application addressed the seriousness of the allegations and the fact that this was a repetition of earlier behaviour on the part of the respondent.

The Tribunal made the following order:-

The Tribunal order that the Respondent, Hugh Stephen Haycocks of 1 Park Street, Wellington, Telford, Shropshire, TF1 3AA solicitor, be suspended from practice as a solicitor for an indefinite period to commence on the 16<sup>th</sup> day of October 2003 and they further order him to pay the costs of and incidental to the application and enquiry to be subject to detailed assessment unless agreed."

### **The Decision of the Tribunal and its Reasons**

40. At the hearing on 31st March 2005 the Respondent's behaviour as alleged and found was shocking. He appeared to have acted with complete disregard for the requirement to comply with the Solicitors Accounts Rules and in particular the necessity to keep full complete and proper records and effect regular, not longer than five-weekly, reconciliations of client account. The Respondent had dishonestly added words without the client's knowledge to a document which had already been signed by a client. The situation where the Respondent sought to pay a client some money out of his wife's bank account after there had been an intervention into his practice was extraordinary and was further evidence of the dishonest misappropriation of that money. Not only did the Tribunal deprecate the Respondent's behaviour in this respect, but in respect also of his failure to cooperate with the Law Society's Intervention Agent.
41. These matters had arisen when the Respondent already had an unfortunate history of three appearances before the Tribunal.
42. Taking all of these matters into account and bearing in mind its duty to protect the public and the good reputation of the solicitors' profession the Tribunal concluded that the Respondent was unfit to be a solicitor and it was right to order that the Respondent be struck off the Roll of Solicitors and they further ordered that he should pay the costs of and incidental to the application and enquiry.

43. The Applicant had provided a schedule of costs which he had served on the Respondent. The Tribunal considered that the costs sought were entirely reasonable and in order to save time and further unnecessary expense it ordered the Respondent to pay those costs in the fixed sum sought.

Dated this 30th day of April 2005  
On behalf of the Tribunal

A G Ground  
Chairman