Chapter 1

The Lawyers

Mr E was no usual lawyer. He had studied composition at the Royal College of Music, and continued with the practice of performance art at the Royal College of Art. He was going to be a groundbreaking composer, but artists need to eat and an MA doesn't help.

He began working in the mailroom of London law firm Jansons (one of the oldest law firms in London, now no longer in existence), franking letters and delivering important memos to

the (big) desks of important people. He was also an outdoor clerk, not sitting in the park but dashing through the streets of London on his F W Evans bike, delivering vital writs to the High Court of Justice to be issued, depending on the mood of the court staff. One time, posting a writ to the court to be issued, it was returned, by post, as he hadn't included a stamped addressed envelope. It was simpler to attend the court offices, so that you could be humiliated in person.

Mr E was able to attend the auction of van Gogh's Sunflowers at Christies, in a side room with video link, when it reached a record breaking (for the time) £25m. The firm had a ticket for the action because a client's estate was selling a Bonnard painting, which didn't make £25m.

The law was always a stopgap measure pending a commission from the San Francisco Symphony Orchestra, and hotel rooms. It paid the rent and the rent was cheap. He had taken a secured tenancy in the days before Thatcher scrapped secured tenancies and his rent on a flat in London's Swiss Cottage, at the south end of Hampstead, was controlled by Camden Borough Council, forever.

He worked in law 3 days a week, writing music for the rest of the time until fame came knocking. And it did come knocking in the shape of film director Peter Greenaway. He had fallen out with long time collaborator Michael Nyman and was looking for a replacement. Mr E was commissioned to write the music for French produced TV film "Darwin". He took two weeks off work to get writing – took the phone off the hook. The first day he was disturbed by the doorbell buzzing, loudly. Furiously he opened the door to be greeted by no one, just a large box. His composer friend Matteo and wife Janet had made him meals to eat for the next week. Good Italian food. Janet made the jam

tart. He worked. He travelled to Amsterdam to record the music. Greenaway was happy. The next Greenaway outing was "The Baby of Macon" (a dreadful film) for which he never got paid. He travelled to The Hague to confront the film's executive producer over his payment. He was told that that very morning the company had filed for bankruptcy and that nobody would get paid. Greenaway is notorious for this, and Mr E was told that most collaborators insisted on payment upfront. But if you have no reputation you can hardly haggle. In the film world the two most important contractors were certainly paid, otherwise there would be no film – the lighting company and the provider of film stock, everyone else has to wait to get paid, if they are. Negotiations were made *after* the contract was signed. Mr E was thrown back into working full time at the office again. Five days a week.

The John Lewis Partnership is unusual for a department store. "The company is owned by a trust on behalf of all its employees — known as *Partners* – who have a say in the running of the business, and receive a share of annual profits, which was usually a significant addition to their salary. The JLP group is the third largest UK non-traded company by sales in the *Sunday Times* Top Track 100 for 2016. The chain's image is upmarket appealing strongly to middle and upper-class shoppers."[1] It is regularly voted the nation's favourite store, even if it doesn't pay its cleaners a living wage.

Before long Mr E became JLP Credit Management's go to lawyer. Not because of any special legal skills, but because he was a stayer, not a career lawyer. He didn't undertake their work as an articled clerk for six months and then move on to the probate department; he was there for the long haul, although he didn't know it. It was not a stepping stone to a glittering career in the City with a magic circle law firm earning

in excess of £1m a year, acting for banks and corporations, helping them avoid tax and money laundering regulations.

Mr E offered, besides the legal work, a regularity and reliability that JLP cherished. He handled all their defended debt recovery work and some liquor licensing for their stores' restaurants; and bankrupted wide boys. He came across some interesting and terrifying cases, until HSBC ruined his life.

The Pole was flapping like a fish out of water because Mr E had started the process to bankrupt him, and he was training to be solicitor. One weekend evening the phone rang while Mr E was in the bath. Mr E's wife asked the caller if she could take a message, and was simply asked if Mr E would be home on Monday evening.

On Monday evening the door-bell rang –

"I'm looking for Nicholas Wilson."
"That's me."
"Good…" followed by a spray of CS gas into his face. Running back the flat, shouting, his wife thought he had been stabbed. She couldn't get near him because of the noxious fumes emanating from him. The police and an ambulance were called. The police were furious because Mr E told them that he knew who was behind the attack but wouldn't tell them. It was obviously a warning. He was taken to hospital where his eyes were washed, but fortunately he was wearing glasses, with plastic lenses, which were etched over from the acid and unusable. He made the mistake on returning home, of taking a bath and washing his hair, which simply ensured that whatever the poison was spread all over his body.

On returning to the office the next day he told his boss of the attack – “You were lucky it wasn’t ammonia, as happened with a client of mine.” That was it. Later the Foreign Office warned that he was dealing with the East European mafia and dangerous people, meaning this story is locked away, for personal safety reasons. All proceedings were dropped with the agreement of John Lewis, and the Pole is now a practising solicitor.

The African prince paid an interior designer to furnish his big new house in West Hampstead. JLP used to offer a contract furnishing service - a service which they stopped providing when they realised that chancers would use them to cost a project, perhaps taking a week’s work, only for the customer to go elsewhere to knowingly undercut John Lewis.

Prince’s interior designer ordered all furnishings and fittings from JLP and asked for all the merchandise to be stashed in the basement. The property had not yet had burglar alarms fitted, so ID went to the local police station and asked them to keep a watchful eye ever the property during the weekend. To be sure, all the merchandise disappeared from the basement, before the alarms were fitted.

The barrister sent Mr E a fax from his chambers, when faxes were a thing, threatening Mr E with all sorts of dire consequences if he proceeded with the issuing of a bankruptcy petition against his venerable self (barristers cannot be barristers if bankrupt). This presumably was meant to intimidate Mr E, with him being a barrister. Undeterred, Mr E replied by fax, on the fax number given on the barrister’s fax, stating that such a process was indeed about to issue. Pompous barrister was rather upset that his clerks had seen the fax - Mr

E had breached his confident confidentiality – but he promptly paid his bill to John Lewis.

This is how it was until an Asil Nadir lookalike partner at Jansons, a partner who shared the profits of the firm, asked Mr E to enter a judgment on a writ in the High Court for a £1.5m gambling debt. At the time gambling debts were unenforceable. The writ had never been delivered but a sworn affidavit was produced, stating that it had been. You cannot enter default judgment on a writ if the defendant has never received the writ. How could he defend himself? This detail was of no concern to Asil Nadir who expected Mr E to do his bidding.

Mr E was fed up with being asked to do dodgy things for this partner and regularly complained to the other partners. “He brings in clients”. And another “We’ve increased our insurance premium”. Mr E resigned. “We’ll just have to find another composer” said a sympathetic partner.

The day after Mr E left the police attended the firm’s offices to arrest Asil Nadir, who promptly disappeared to Australia, where it is believed he is still practising law.

Mr E moved on to a firm named Vizards, then Weightmans Vizards, then Weightmans. Lawyers often fall out then fall in with others. His bosses were now in Liverpool. The merger with Weightmans was not entirely welcomed by all, not least Mr E, who objected to the mediocre corporate mentality of Weightmans, whom he soon referred to as McWeightmans. Not appreciating the significance of a client like the John Lewis Partnership Mr E had to cope with inadequate IT facilities, based on an operating system known as Workaround™. Matters became serious and Mr E was being ignored by management and couldn’t do his work. He requested a meeting

with JL Credit Management and asked them to give his firm an ultimatum that if they didn't improve their systems they would take their work elsewhere. Disloyal, but should loyalty be shown to incompetence? The systems improved. Slightly. Then the real troubles started, the stress mounted and HSBC cast its shadow.

John Lewis had decided to sell their store card business to a bank. A commercial exercise known as white labelling. Waitrose may have its own brand of washing powder, which is cheaper than other brands, but probably made my Lever Brothers, and identical to a product at a higher price, with a brand name. In this case, credit provided under the John Lewis store card would actually be provided by the bank.

John Lewis sold their store card business to HFC Bank Limited. Unheard of, by Weightmans. This meant the end of the Credit Management department at JLP, who were all made redundant. It could also have meant the end of Weightmans and Mr E acting for the partnership.

HFC Bank was a strange creature. Known in the US as Household Finance Corporation it set up HFC Bank Limited in the UK in the 1970s. It did not operate as a normal bank providing current accounts, but specialised in sub-prime lending, making loans to people who couldn't get one anywhere else and targeting the poorer neighbourhoods where it set up shiny branches and dodgy deals. It already handled store card credit for other major UK stores – Dixons, Currys, PC World, Furniture Village, Courts, Halfords, B&Q etc. More significant than those accounts were HFC Bank and Beneficial Finance loans. This is where the real meat was, pure sub-prime lending. High upfront interest charges. Borrow £10k

over five years, default after two and get sued for £25k. Very profitable, especially if the bank paid no legal costs.

It was sup-prime credit that brought down the financial system in 2007/8 and one of the biggest players was Household Finance Corporation in the USA, who had already been ordered to pay $484m restitution "to settle allegations it cheated consumers on home loans…" and in Washington 11,000 mortgage holders "could receive payments for varying amounts they were overcharged through fraud…" [2]

HFC Bank was purchased by HSBC in 2003, heralding the financial crisis of 2007/8 by their legitimisation of sub-prime lending. HSBC Chairman Stephen Green said in 2009 "With the benefit of hindsight, this is an acquisition we wish we had not undertaken". A sentiment shared by Mr E.

Mr E was keen to meet these usurers and set up a meeting at HFC Head Office for 23 October 2013 at 12.00. His *fILOFAx*® diary entry reads Winfield, whereas the actual venue was Winkfield, near Windsor, near a castle. Nevertheless, he made the meeting.

Mr E invited Ian Evans to the meeting, the Senior Partner at Weightmans; in part because he's a corporate animal who knows how to get his ducks in a row and understands acronyms like KPI; and partly because he's clubbable in a rugby sort of way, a man's man. Chairing the meeting was HFC solicitor Duncan James Fraser Hamilton, who isn't.

The purpose of the meeting was to discuss Weightmans' and Mr E's continuing to act for John Lewis, or not. Hamilton confirmed that Weightmans could continue to act for JL

provided they did so “on the same basis as our other solicitors, Restons - apples for apples”.

Restons, based in Warrington, is a small firm specialising in chasing debts. It is owned by Christopher Reston, who lives in Andorra, which is a tax haven. He has a pilot’s licence and used to fly his own jet to the UK, for work. Mr E cycled. This was his jet:

Mr E was eager to know the basis of Restons’ contract and Hamilton explained that Weightmans would be sent the debt details, say £10,000. The firm could then add 16.4% to the debt in respect of their legal costs, which was 14% plus VAT at 17.5%. A letter would be written to the debtor claiming £11,640. If the debtor paid up straight away Weightmans

would send £10,000 to HFC, and them send them an invoice, marked paid, for £1,400 + VAT.

If HFC agreed to accept half the debt in settlement Weightmans would send them £5,000 and keep £820 for their costs. If the debtor paid nothing Weightmans would either sue them for £11,640 and then add on *further* costs allowed by the Court, or, if the debtor owned a property, invite the debtor to agree to a legal charge (mortgage) on the property, securing the debt and the illegal charge until the house was sold, or the debtor died.

Weightmans would try to avoid issuing proceedings wherever possible, as part of the deal was that the bank should incur no costs whatsoever. No court fees, no fees for private eyes, no travel expenses. All fees and expenses were to be paid by the poor debtor, or not. The solicitors were bankrolling the bank.

This is illegal. It is what is known as a contingency fee, where the solitors' costs are dependent on whether they are successful or not. It is very different from 'no win, no fee' agreements, where the client has to enter into a Conditional Fee Agreement with the solicitor, meaning that if successful the solicitor will raise a bill *based on the work done* which will usually be paid by the losing side, plus a 'success fee' – an uplift to reflect the risk the solicitor has taken on.

There is now, in English law, the possibility of entering into a Damages Based Agreement, whereby the solicitor *can* charge a percentage of any winnings, but that percentage must be taken from the 'winnings' – not added to the claim at the start of the action.

The Solicitors Code of Conduct, which is based on the Solicitors Act 1974, states the following:

2.04 Contingency fees

(1) You must not enter into an arrangement to receive a contingency fee for work done in prosecuting or defending any contentious proceedings before a court of England and Wales, a British court martial or an arbitrator where the seat of the arbitration is in England and Wales, except as permitted by statute or the common law.

41. A "contingency fee" is defined in rule 24 (Interpretation) as any sum (whether fixed, or calculated either as a percentage of the proceeds or otherwise) payable only in the event of success.

3

The charges are further illegal in that they breach the principle that solicitors are not allowed to take advantage of a debtor's lack of legal knowledge, or to claim for costs to which they are not entitled. The rule even gives as an example charging the cost of a letter when claiming repayment of a debt:

taking unfair advantage of an opposing party's lack of legal knowledge where they have not instructed a **(11.7)** *lawyer* ;
IB demanding anything for yourself or on behalf of your *client* , that is not legally recoverable, such as when you **(11.8)** are instructed to collect a simple debt, demanding from the debtor the cost of the letter of claim since it
cannot be said at that stage that such a cost is legally recoverable;

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In the example given above, if the debtor pays the debt immediately the cost of the letter (created automatically by Weightmans) is £1,460. Expensive lawyers.

Mr E told Duncan Hamilton that such an arrangement was illegal and asked if the bank had ever been challenged. "We were reported to the OFT (Office of Fair Trading) once, but we got away with it." Mr E had no reason to doubt that such an arrangement had been in place since HFC started up in the UK, in the 1970s.

Mr E had never heard of PPI (Payment Protection Insurance). In 2003 there were no phone calls or spam every day reminding you to claim your PPI. Hamilton explained how PPI worked and triumphantly claimed that HFC never paid out any claims. Mr E asked how this was possible. "Oh, it's simple. The premium is added to the debt, and paid monthly. If the customer is made redundant or becomes ill, the chances are they will have missed at least two payments of the premium. That invalidates the insurance. We never pay out." HFC was subsequently fined £1.09m by the Financial Services Authority for mis-selling PPI.

Mr E and Mr E senior partner, travelled together back to London. Mr E explained to Mr E that the contract terms were illegal and that Weightmans should not agree to them. Conversation was awkward. As the taxi approached Westminster Palace Mr E senior pronounced
"What a magnificent building"
"If you like neo-gothic"
"Whatever."

Conversation remained awkward at Weightmans for the next 2 years. Mr E continued to complain to whoever would listen that the contract was illegal. Immediately the work was in the bag Andrew Archibald Dawson Cox, a partner in Liverpool was put in charge of the HFC contract. Mr E and his team, especially

VJ, spent a year setting up the software and infrastructure to handle the now vastly increased workload. VJ was superb and Mr E arranged for the firm, against all their principles and instincts, to pay for her summer holiday. The workload vastly increased because the firm now handled all other accounts for HFC, on a 50/50 split with Restons – the "apples for apples". Cox would arrange lunches with the client, without troubling Mr E with an invitation. Mr E was being eased out.

However, the contract was won, and Mr E felt his future was secure and for the first time in his life bought a house; a two up, two down, in one the cheapest areas of London, Tottenham, but a house in a quiet cul de sac (bar the occasional gangland shooting) backing on to Chestnuts Park. Mr E was now single. He thought it was a handsome house, in its modest way. He decorated it and made it his own with art, Japanese pottery and African textiles; a small garden with herbs, and ferns, and a book lined office. As Cicero said, "If you have a garden and a library, you have everything you need". Things were looking good; HSBC an unknown threat.

Andrew Cox had other ideas. He was busy recruiting more staff at Weightmans' Liverpool office, without any reference to the erstwhile head of department Mr E, who didn't even have the new staff names and extension numbers. Cox's coup de grâce was to employ his wife, Jill Cox to take Mr E's job and manage the department. Jill Cox had no relevant experience or knowledge but this didn't prevent her from instructing Mr E to do things that were neither ethical nor even possible.

Andrew Cox would travel to London from Liverpool in his chalk stripe, tight fitting suit, legs akimbo, for meetings with Mr

E's team. He would discuss the contract and how much money the firm would make by adding illegal charges to debts – "kerching!". The bigger the debt, the bigger the take. On being told by Mr E that what the firm was doing was illegal, Cox exclaimed "Ah, Mr Ethical again!". And that's is how Mr E became known as Mr Ethical.

Mr Ethical had already been advised that the contract would not be discussed with him and he was particularly concerned considering he had just bought a house. This is from partner Gary Hay –

> Against this background, I do not think it is relevant or helpful to focus either upon the remuneration package we have with HFC nor upon your decision to buy a new property last year, neither of which I am prepared to discuss in the context of your future employment or otherwise.

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Mr Ethical replied –

> It is unfortunate that you are not prepared to discuss the most important and serious cause of my grievance and stress. (I am teased my Andrew Cox for being "Mr Ethical"). I think there has been a general reluctance to look at the contract with HFC precisely for the reasons I mentioned yesterday. The consequences of the nature of the contract are that there are things going on which are simply unprofessional and unethical.

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Mr Ethical continued to be a thorn in the backside of the lawyers who wanted to make a fortune from defrauding those who were already struggling with debt. His speciality was insolvency and he was in the High Court in London almost every day, such that the Bankruptcy Registrars (judges) greeted him by name at each hearing. He was asked by Stephen Baister, the Chief Bankruptcy Registrar to sit on the steering committee of the new Enterprise Act. He was going places, but was not happy with having to attend before these judges to justify documents that had been served on debtors that contained illegal charges. How to explain that?

One Wednesday Mr Ethical's London team, apart from him, received an email from Cox, calling them in to a meeting the next day. At the meeting they were told that they were being made redundant and that Friday would be their last day. They could leave. Mr Ethical had not been told that the team he had recruited and trained were being made redundant.

Mr Ethical had a prearranged holiday the following week, but when he returned to the open plan office where he had previously held court with his colleagues, it was now a storage room, with boxes full of files occupying the spaces where his colleagues had sat. Silent boxes. His desk was untouched and he was expected to sit there, with no work to do because it had all been transferred to the Liverpool head office. Some files remained and he was expected to pack them up for sending to Liverpool. He turned round and went home again, never to return, as it transpired. He considered that he had been constructively dismissed. His role and work had been removed from him. He was told that to justify his salary he had to find some new clients, having brought into the firm the biggest money-spinning client they had ever had. The client was HSBC.

This email to the relevant partners was ignored.

I am disappointed that my concerns about the arrangement with HFC have still not been addressed. I have expressed these concerns from the start and as I have pointed out, as the contract matures it is a major cause of stress for me which I am still experiencing. It seems I am expected to return to work and to forget the whole thing.
Gary has said that he is not prepared to discuss the contract. Mark has said if I have concerns they should be referred to the appropriate authorities. You have told me all along that there is no problem so I shall be grateful if someone would please explain to me why the contract is not unlawful for the following reasons:

1. It is a contingency fee arrangement which is forbidden by the solicitors rules.
2. Any costs orders are unenforceable as they are in breach of the indemnity principle.
3. It is champertous maintenance which is "contrary to public policy".

I know this is a pain but as I have said, the whole culture is making me ill and you have to take it seriously.

I would also be grateful for exact clarification of my role when I return to work.

Many thanks,
Nick

There was a stalemate, a standoff. A kind of gardening leave, but it was winter. Weightmans continued to pay Mr Ethical, who was officially off work with stress and anxiety. However, they "forgot" to pay him in December 2005 - because, Christmas. Who's in charge here? He realised the precariousness of his situation, in that if he resigned and took Weightmans to an Industrial Tribunal he would not receive any income for at least a year. He therefore informed Weightmans in January 2006 that he felt able (if not willing) to return to work. They informed him that they wished to obtain a psychiatric assessment before he returned to work, and sent him to see a psychiatrist in Harley Street. Clearly if they could establish that he was insane then any accusations about unlawful conduct would be discounted. The tactic backfired.

Mr Ethical attended a Dr Gill in Harley Street on 6 February 2006, for an assessment. He assessed that the doctor's room was rented, just for the purposes of using the Harley Street address. It was clearly used by many psychiatrists, on a rota.

Following the consultation he waited. And waited. He chased up Weightmans HR department for news, was he mad?

Hi Sue - it's now four weeks since I attended the psychiatrist appointment. Do you have his report yet? When do I come back to work?

I shall be grateful if you could please let me know the present position.

Many thanks, Nick

Hi Nick, I will be chasing up with Dr Gill this week.
I will keep you updated, as soon as I have received the report.
Kind Regards
Sue.

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Eventually, on 2 May, three months after the appointment Mr E received the report –

Hi Sue

I have received the report today thanks. However, you have sent the full report but not the summary "for use by his managers". I need to see this please. Your letter was presumably based on this summary. Please could you forward this asap.

Many thanks, Nick

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Since it had been a long time since the appointment Mr Ethical wrote an email to Dr Gill on 3 May at 5.33 am (stress) –

Dear Dr Gill,

I have finally received a copy of the report you prepared following our meeting on 06/02/06. The report is fair and accurate for which I am very grateful.

However, I shall be grateful if you could please let me know when this was sent to Weightmans.

Many thanks,

Sincerely
Nicholas Wilson

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Dr Gill replied at 5.45 am (i.e. 12 minutes later) –

on "date of report " p5 or shortly after.

best wishes

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The “date of report” was 7 February 2006, which means that Weightmans sat on the report for 3 months wondering what to do, knowing that Mr Ethical wished to return to work. The

report did not reveal that the trouble maker was mentally unstable –

b) Is Nick competent at this time to be giving complex advice to clients? At the moment, I do not have evidence that he lacks competence to carry out his work.
He presented as a highly intelligent professional person at interview and there was no sign of intellectual limitations. He gave a very clear account and had all the facts and legal aspects of his perceived predicament at his fingertips.

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This was bad news for Weightmans. A partner had told Mr Ethical that his threat to take them to an Employment Tribunal, which is a public forum and at which his grievance about the illegal contract may be publicised, was “tantamount to blackmail”.

At the close of the meeting on 13 October, Nick again confirmed that he felt the compensation due to him should be in region of £100,000.

It was because of this demand that we suggested to Nick when we met in August that he should seek independent legal advice. We felt it was important for him to gain a realistic prospective upon the potential value of any claim that he may have.

The fact that Nick has not reported the so called "illegal" contract to the Law Society from more than one year is we believe significant. The fact that he sought to negotiate himself a body of work based upon that contract is also significant. The fact that, notwithstanding his protestations, he has not resigned from Weightmans demonstrates that there is no substance to his argument in this regard and his attempts to threaten the firm if they do not give him adequate compensation are tantamount to blackmail. Moving forward therefore we suggest that this argument, in particular, should be put in prospective.

Mr Ethical had just bought a house, he was hardly going to resign or blow the whistle and possibly lose his house, if there was a possibility that the contract could be made legal. However, in order to eliminate the accusation of blackmail, in view of the fact that it was clear that Weightmans were not going to address the illegal contract and given that any goodwill had clearly broken down, Mr Ethical wrote to the HR department –

Dear Sue

Report of Dr Gill

I am now in a position to reply to your letter of 11 April having finally received a copy of Dr Gill's report.

Dr Gill's report states:

".....if these differences could be resolved this would be likely to be beneficial to his health overall."

"From a medical point of view, there are no reasons in my opinion to keep him off work any longer."

"Mr Wilson will experience benefit to his health and wellbeing if the differences, which he perceives, between himself and his employer can speedily be resolved through negotiation."

"I can only add my suggestion that the perceived differences of opinion between the patient and employer should be addressed as speedily as possible."

Dr Gill has confirmed that he sent the report on 7 February (you stated in an email of 6 March that you had not yet received it) and that despite the firm's previously stated position that their priority was my health and speedy return to work, and despite Dr Gill's recommendations, you have done nothing for three months.

Contrary to your interpretation of Mark Whittaker's letter to Bindmans of 24 October 2005, his letter sets out that in his view there is sufficient work for me, including a development role.

I have now written to the Law Society to ask them to adjudicate on the legality of the contract with HFC and thus whether there is sufficient work at a suitable level for me on my return.

I will be in further contact shortly and in the meantime shall be grateful if you could please send me the summary report of Dr Gill previously requested.

This is the letter to the Law Society*. The whistle was now blown. Who would hear it?

* At the time of writing this letter, Mr E was unaware of the Rule forbidding solicitors from adding charges they are not entitled to, referred to above. So where he says, "up to this point there is no difficulty" he is wrong.

[redacted]

Consumer Complaints Service
The Law Society
Victoria Court
8 Dormer Place
Leamington Spa
CV32 5AE

03 May 2006

Dear Sirs

Weightmans and HFC Bank Limited

I am employed by Weightmans as a Litigation Manager. For over 20 years I have handled debt recovery work for the John Lewis Partnership. About three years ago John Lewis sold their customer accounts to HFC Bank Limited (the Bank) and Weightmans continued to act for the Bank.

However, in my opinion the contract they have entered into with the Bank is irregular and I believe unlawful. It has been a cause of great stress for me and I have been off from work, initially on sick leave, for 10 months now.

I would like the Law Society to adjudicate on whether the contract is lawful or not because the bulk of my work at Weightmans concerns the Bank so that my whole future employability is at stake. Despite raising my concerns with Weightmans on a number of occasions they have never explained to me why they consider that the arrangement is legitimate.

The contract terms are as follows:

- When a debt is received in the office from the Bank 16.4% is added to the debt as Weightmans fee. This figure includes a percentage for VAT. So for a £10,000 debt the total will be £11,640.
- A letter before action is written to the debtor demanding payment of the total sum, without any explanation as to the additional fees. They are justified in the small print of the Bank's terms and conditions by a statement that if the account goes into default the Bank is entitled to claim legal costs on an indemnity basis.

I accept that up to this point there is no difficulty. However:

- If the debt is not paid proceedings are then issued for the sum of £11,640 plus the fixed costs allowed by the Court.

- Weightmans pay all Court fees and disbursements. The Bank is never invoiced for these fees directly and if they are recovered from the debtor Weightmans will raise a pro forma invoice. The Bank never pays Weightmans anything.
- However much is recovered from the debtor Weightmans then raises a pro forma invoice to the Bank for their fees. So, in the example, if £8000 is ultimately recovered Weightmans will retain 16.4% of that sum and raise the appropriate invoice.

According to my knowledge and experience this arrangement is unlawful for the following reasons:

- It is in breach of Practice Rule 8 concerning contingency fees.
- Any costs orders made are in breach of the indemnity principle.
- It is champertous maintenance.

I have put these points to Weightmans previously and they appear unable or unwilling to address them.

The contract is highly profitable to Weightmans with Bank debts in excess of £100m. It is for this reason that they are able to risk writing off Court fees and to fund the whole operation.

I have a copy of the draft contract if you wish to see this.

I would be grateful for the Law Society's guidance in this matter because, as previously stated, my employment rests on the issue.

I look forward to hearing from you in due course.

Yours faithfully

Nicholas Wilson

Knowing that he had probably thrown his career away, on the same day as sending the letter to the Law Society, Mr Ethical used his credit card to purchase a copy of 'Dimanche', a one-off newspaper published by French artist Yves Klein in 1960 and which contained the first published image of "Leap Into The Void".

Immediately there was a problem with Mr Ethical's report to the Law Society –

Private and Confidential
Mr Nicholas Wilson
[redacted]

The Law Society

1 June 2006

Dear Mr Wilson

Report about Weightmans

Thank you for your letter of 3 May 2006.

Although it appears that they are not personally involved in the matter, a senior partner of Weightmans is a member of the Council of The Law Society and Weightmans undertake work on behalf of The Law Society. In the circumstances, we will be referring the report of misconduct for investigation by an independent panel solicitor external to The Law Society. Panel solicitors are independent from The Law Society and undertake work for us from time to time.

After years of Workaround™, incompetent, corporate arrogance, complacency and inactivity, Weightmans hauled Mr Ethical into a meeting within a week, to inform him that he was now "redundant".

Mr Ethical knew that Weightmans would never have him back in the office after he reported them to the Law Society. He also knew that the cap on damages for unfair/constructive dismissal was £70,000. However, in whistleblowing cases, under the Public Interest Disclosure Act 1998, there is no limit to the damages that may be awarded. Mr Ethical made it quite clear to Weightmans that he intended to apply to an Employment Tribunal for a substantial award for damages, because of his dismissal as a whistleblower.

During his period off with illness Mr E had instructed Bindmans solicitors to help in negotiating a return to work, or proper compensation. Weightmans made it clear that they expected him to continue to carry out the illegal work and that refusal *in itself* would count as disciplinary matter –

The HFC Contract

Nick now says he feels unable to handle the HFC bankruptcies (identified as part of his role at (1) above) because he considers the contract to be illegal. We have already stated on numerous occasions that we do not accept Nick's argument but he has confirmed his refusal to undertake the work. This of itself gives rise to a fresh employment issue.

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In other words, carry out illegal work or be sacked. HSBC was powerful.

By now, finally, Weightmans realised that they had a problem. If indeed the matter did go to a public Employment Tribunal their cover would be blown and the damages could be substantial. Mr Ethical also knew that a tribunal hearing would take at least a year to be heard. He had just purchased a house and a further year of stress and no income was not attractive. Weightmans suggested mediation, a private hearing that could be arranged very quickly. The purpose of mediation is to reach a settlement that both sides can live with. Mr Ethical agreed. That wasn't Mr Ethical's first mistake. On the signing of a Compromise Agreement the parties have a binding contract setting out the terms.

Mr Ethical instructed a specialist employment lawyer, Alain Cohen of Ashby Cohen. A man that only dealt with employment law and he predicted, accurately, what would happen at every stage of the mediation. The most recent offer in settlement Mr Ethical had received from Weightmans was £14,000. Members

of his sacked team had received more than that. It was less than one third of his annual salary.

This is the schedule of loss drawn up by Alain Cohen for the mediation. There is a calculation included under the Gourley Principle, a standard formula used in employment claims which was unknown to Weightmans' Employment partner Steve Peacock.

NICHOLAS WILSON

SCHEDULE OF LOSS

Basic award	8 years x 290	2,320
	1 year x 290 x 1.5	435
		2,755
Notice period 3 months net	3 x 2,600	7,800
		10,555
Loss of wages to date 1 month	2,600	2,600
Future losses Estimate time out of work 9 months	9 x 2,600	23,400
Future losses on anticipated income for 7 years – anticipated income £1,500 per month	1,100 x 84	92,400
Amount to be grossed up under Gourley Principle Based on £126,355 - £30,000 = £96,355		64,236
Total		193,191
Personal Injury		15,000
		£208,191

Highly relevant for the future of the Mr Ethical story are these two statements made by Weightmans in their opening submissions to the mediation.

Weightmans is a law firm with 5 offices and about 700 people including 80 partners. The turnover of the firm in the last financial year was £37.6m. The principal legal business undertaken by the firm is litigation and the majority of the clients come from the insurance industry or related sectors.

Weightmans now undertakes a substantial volume of debt recovery work for HFC. The Liverpool office employs over 30 people on this work. The client relationship is handled by Andrew Cox, a partner based in Liverpool, and the team is run by Jill Cox.

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Finally we deal briefly with the contract with HFC: it is important that we focus on the bigger picture of trying to resolve differences at the mediation rather than considering the allegations of illegality in the contract. Essentially as we have maintained throughout, this is a contract where we are paid a fixed fee for each matter. We also pray in aid the fact that the contract has been operated by HFC for a considerable period and similar terms have been used by another firm, Restons. If necessary we can expand on this aspect at the mediation. We will bring the agreement with us to the mediation.

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So, the firm had recruited over 30 people to handle the "substantial volume" of work for HFC, having made five people redundant.

Also, Weightmans, in pre-emptive defence of any illegality, state that similar terms have applied between HFC and another firm Restons, for a considerable period. Mr Ethical believes since the 1970s. If they are doing it, why shouldn't we? We too could have jets.

At the time of the mediation Mr Ethical remembers that the firm handled 70-80,000 cases for HFC worth about £100m in debt, therefore, *potentially* £16.4m in fees. It would transpire (see Chapter X) that since the 1970s over £1bn in illegal charges were added to accounts. HSBC took over HFC in 2003 and wanted some of the sub-prime action.

The way mediation works is that both parties meet with the mediator at the start to present their case. The mediator explains the process, and then the parties and their advisors go to separate rooms. The mediator acts as a shuttle between the parties, shuttling between the rooms conveying offers, suggestions etc. It was a tough day. Alain told Mr Ethical that when he, Mr E, was angry, it was controlled and constructive anger (repressed), but that Weightmans' Managing Partner, Patrick Gaul, in the other room, was red with fury and throwing his briefcase about the room.

At about 8.00 pm at the end of a very long day a settlement was agreed.

Subject to compliance by the Employee with the terms of this Agreement, the Company shall pay to the Employee the sum of **£102,763**, of which **£82,763** shall be paid in respect of termination of the Employee's employment and **£20,000** shall be paid in respect of the Employee's claim for Personal Injury (the "**Settlement Payment**") payable by the Company as follows;

a) **£54,000** payable within 21 days of receipt by its solicitors of this Agreement duly signed by the Employee and the certificate signed by his Relevant Independent Advisor, subject to normal deductions for tax and national insurance on the relevant part thereof in accordance with clause **3.1** below; (the "**Compensation Payment**").

b) **£48,763** which shall be payable by the Company, subject to normal deductions for tax and national insurance, in 24 equal monthly instalments on the 24th day of each month, with the first instalment to commence on the 24 September 2006. The monthly value of the Severance Payment is referred to herein as ("the **Monthly Severance Value)**".

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The Compromise Agreement reached crucially contained a "confidentiality clause", a gag preventing Mr Ethical from discussing any of the affairs of the business, on threat of paying back the compensation.

9 Confidentiality

9.1 The Employee and the Company agree to keep the facts, terms and circumstances of this Agreement strictly confidential and not to disclose the same to any third party (other than professional advisors and /or as required by law, and in the case of the Employee his immediate family and his partner).

9.2 The Employee confirms and acknowledges that following the termination of his employment he remains bound by a duty of confidentiality to the Company. For the avoidance of doubt the Employee undertakes that he will not at any time following the termination of his employment, (save insofar as necessary to respond to any investigation by the Law Society, any statutory obligation or any order of a Court or statutory tribunal of competent jurisdiction), without the consent in writing of the managing partner of the Company being first obtained, either alone or in association with any person, firm or company or corporation or otherwise directly or indirectly make use of or divulge to any person, firm or company or corporation (and shall use all reasonable endeavors to prevent the use publication or disclosure of) any confidential information concerning the Company including any business or financial information in relation to the

Company or details of any contracts (including contracts for the provision of legal services), protocols, retainers or arrangements between the Company and any of its clients, customers or suppliers which shall have come to his knowledge during the course of his employment by the Company.

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The gagging clauses in these agreements remain very controversial. Arguably they have no force law.

"...there is no confidence as to the disclosure of an iniquity. You cannot make me the confident of a crime or fraud, and be entitled to close up my lips upon any secret which you have the audacity to disclose to me relating to any fraudulent intention on your part."[23]

Effectively this means that you cannot contract with someone to agree to keep quiet a fraud, even if the fraudster is your client.

This was a good settlement, an improvement on the £14,000 final offer from Weightmans. With the upfront payment Mr Ethical paid off some debts, and, confident of finding another job, bought a Japanese tea bowl by Hori Ichiro and a print by Philip Guston*

* Long since sold, in 2013 Mr Ethical paid for entry to the Jerwood Gallery, Hastings, which was holding a small Guston exhibition, to look at the exact same print he had sold.

After nearly a year, in 2007 the Solicitors Regulation Authority, which had come into being after Mr Ethical's report to the Law Society, adjudicated and found that Weightmans, in particular Andrew Cox, had breached the rules in that the charges constituted an unlawful contingency fee. They didn't say "unlawful", but the "Practice Rules" are based on the Solicitors Act 1974, so if you breach the act, it's unlawful –

The Panel **FOUND** that Andrew Cox had breached Practice Rule 8.

The **REASONS** were that

1 Mr Cox on behalf of Weightmans had drawn up an agreement by which the firm were instructed to recover debts on behalf of their client. Their fees were calculated as being 16.4% (inc vat) of the outstanding debt such monies and any other disbursements to be added to the amount to be recovered from the debtor. However where the debt due could not be recovered, either in part or at all, the firm did not seek to recover their costs from their client but instead had simply waived these costs.

2 The Panel considered that in the circumstances the firm had acted in breach of Practice Rule 8 because, in practice, their fees were dependent on whether they were successful in recovering the monies to their client and, as a result, their own costs. Where they were not successful they did not charge. The Panel were satisfied that this amounted to a contingency fee

3 However the Panel noted that this had happened in only a small number of cases and that Mr Cox on behalf of the firm had now renegotiated the contract with the client so as to ensure that any future agreement was compliant with the Rules.

4 The Panel **DECIDED** on the facts of this case to make a finding that Andrew Cox had breached Practice Rule 8 but to take no further action.

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So, the Solicitors Regulation Authority found that the fraud only occurred in "a small number of cases". Weightmans had already stated they did a substantial amount of work for HFC and employed 30 staff to do it. As Weightmans automatically added the 16.4% to the debt on receipt there were no exceptions to the cases where the charges were added. It would later transpire (Chapter X) that an analysis of public records would show that in the relevant period (since HSBC's

take over in 2003) over £200m in the illegal charges were added.

Following the farcical adjudication of the SRA Mr Ethical upped sticks and moved to Hastings. He was now receiving a regular income from the monthly compensation payments and a reasonably regular income from writing music for the Guardian website. His mortgage was halved.

HSBC had heavily invested in HFC and its US cousin, Household International:

HSBC

Bottom-fishing

HSBC embraces a predatory lender

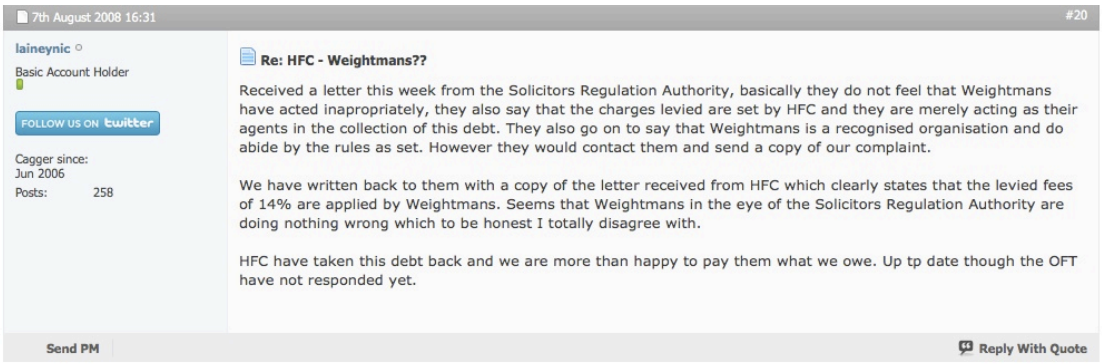
Nov 21st 2002 Timekeeper Like 0 Tweet

"THIS is as bad a company as you can imagine." So a senior regulator in America describes Household International, a consumer-finance company that HSBC, a global bank, agreed to buy last week. Household International is viewed by some of its customers and by state attorneys-general across America as a predatory lender. A report from Washington's Department of Financial Institutions in April listed its practices, which, it says, may include forging customer signatures on expensive, unsuitable insurance contracts. Although Household Finance rejects the charges, it has reached a preliminary agreement with most state attorneys-general to pay nearly half a billion dollars back to its customers, and to reform its business methods.

For HSBC, a British-based bank that prides itself on its respectability, Household is an odd choice of partner. In recent years, HSBC's strategy has been to push into wealth management. Household's customers, however, have an average household income of only $45,000-60,000, and over a third do not have credit histories good enough to qualify for a "prime", or mainstream, loan.

The worldwide credit crisis, caused by sub-prime lending of the kind in which HFC specialised, caused freelance work to dry up and Mr Ethical sought other sources of income. He was

employed at a now defunct law firm in Brighton, Arscotts, as a consultant to set up and manage a small department specialising in PPI claims. In the course of this work he discovered that Weightmans were *still* adding the illegal charges to accounts and the SRA were telling debtors that Weightmans "abide by the rules" - one year after they had adjudicated that they had breached the rules.



By this time, 2009, the Consumer Credit Act 2006 had come into force. This created a new provision relating to Unfair Relationships (s140A). The illegal charges were clearly "unfair" because they breached the Office of Fair Trading Guidelines on debt recovery:

Charging for debt collection

2.9 Charges should not be levied unfairly.

2.10 Examples of unfair practices are as follows:

a. claiming collection costs from a debtor in the absence of express contractual or other legal provision

b. misleading debtors into believing they are legally liable to pay collection charges when this is not the case, for example, when there is no contractual provision

c. not giving an indication in credit agreements of the amount of any charges payable on default

d. applying unreasonable charges, for example, charges not based on actual and necessary costs

e. applying charges which are disproportionate to the main debt.

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Mr Ethical realised he could assist debtors recover the illegal charges without having to breach the confidentiality clause in his agreement with Weightmans, because it didn't matter that the charges were illegal, they were patently unfair. He would set up a business to assist people in recovering the charges, which in some cases amounted to over £5,000. He would charge a percentage of the winnings.

After his leaving Arscotts the firm folded following the conviction of a member of staff for stealing from clients. And then in 2018 the owner of the firm, Paul Arscott was convicted in Chelmsford Crown Court of stealing £100,000 from pensioner clients. [28]

Nicholas Wilson Reclaims, the company set up by Mr Ethical to help consumers recover money from HSBC failed because Mr Ethical was unable to obtain *public domain* information from the Ministry of Justice, as set out in Chapter 7.

In November 2010 (seven years after Mr Ethical had told them it was illegal) the Office of Fair Trading made an order against HFC, telling them to stop adding the charges to debts (hidden away as a pdf at the foot of a press release about something else).

Collection charge

1. When referring a customer's account or debt to an external third party for collection of the outstanding debt HFC Bank will not levy, or claim that it is entitled to levy, a fee or charge ("the Collection Charge") on such customer in order (amongst other things) to recover the costs and expenses incurred by such external third party in relation to recovering, or attempting to recover, a sum which HFC Bank claims is owed to it by such customer (save in respect of court fees and legal costs and disbursements incurred as part of legal proceedings to recover a customer's outstanding debt) until such time as HFC Bank has after the date of these requirements introduced a new term or terms in its agreements with customers or varied a term or terms contained in its agreements with customers (the new term or terms or the term or terms as varied are together referred to below as "the New Collection Charge Term(s)") pursuant to which it may levy the Collection Charge.

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Given the failure of his business, Mr Ethical's Plan B was to work on a group action with firm of solicitors. The first firm he contacted, the pioneers of group action, was Leigh Day solicitors. They were interested but understandably took advice on the validity of the claim. Initially they instructed counsel to advise on the legalities of their working with Mr

Ethical, given that he had breached client confidentiality. The advice was positive and Leigh Day proceeded to instruct counsel to advise on the merits of the claim. In conference with Mr Ethical, Senior Partner Martyn Day and Managing Partner Frances Swain, Kieron Beal [now QC] advised that there were 6 potential causes of action against HSBC, particularly and primarily, as Mr Ethical had already established, the illegal charges constituted an "unfair relationship" between the bank and customer. Although it was a new, largely untested area of law, the omens were good.

Having satisfied themselves of a valid claim, Leigh Day employed Mr Ethical as a consultant. He commuted daily from Hastings to London (5 hours a day) and began working on the claims, writing to potential claimants, building a database and instructing counsel. However, after 4 months, a conflict of interest arose with another department in the firm, the claim could not be progressed and Mr Ethical had to leave, before his initial 6 month contract had expired. Due to confidentiality the conflict cannot be further explained.

Following the Leigh Day departure Mr Ethical approached all the major London law firms who had experience in group litigation but came up against two major hurdles – either the firms were conflicted in that they acted for or banked with HSBC, or they were not prepared to work with Mr Ethical as he had breached client confidentiality.

All avenues of employment or income now having been exhausted Mr Ethical began to publicly expose the fraud by blogging, intervening in parliamentary hearings, attending HSBC AGMs and trying to elicit press interest, mostly unsuccessfully as this book explains.

In January 2017 HSBC agreed to repay four million pounds to customers. In 2019 this became £30m and by 2021 in excess of £200m.

[1] https://en.wikipedia.org/wiki/John_Lewis_Partnership
[2] https://www.seattlepi.com/news/article/Mortgage-lender-Household-Finance-agrees-to-1098277.php
[3] SRA Handbook, Solicitors Regulation Authority
[4] ibid.
[5] email Gary Hay to Nicholas Wilson 21 July 2005
[6] email Nicholas Wilson to Gary Hay 21 July 2005
[7] email Nicholas Wilson to Patrick Gaul, Andrew Cox, Gary Hay, Mark Whittaker 19 August 2005
[8] email Nicholas Wilson to Sue Kay 6 March 2006
[9] email Sue Kay to Nicholas Wilson 6 March 2006
[10] email Nicholas Wilson to Sue Kay 2 May 2006
[11] email Nicholas Wilson to Dr Gill 3 May 2006
[12] email Dr Gill to Nicholas Wilson 3 May 2006
[13] Psychiatric Report of Dr Gill, 7 February 2006
[14] Letter Weightmans to Bindmans 24 October 2005
[15] Letter Nicholas Wilson to Sue Kay 3 May 2006
[16] Letter Law Society to Nicholas Wilson 1 June 2006
[17] ibid
[18] Schedule of Loss, Nicholas Wilson, Alain Cohen, Ashby Cohen
[19] Weightmans mediation statement, 7 August 2006
[20] ibid
[21] Compromise Agreement, Weightmans Nicholas Wilson 7 August 2006

[22] ibid
[23] Gartside v Outram [1857] 26 LJ Ch (NS) 113 quoted in Ethics Guidelines of the Solicitors Regulation Authority https://www.sra.org.uk/solicitors/code-of-conduct/guidance/guidance/Disclosure-of-client-confidential-information.page
[24] Solicitors Regulation Authority Adjudication 21 March 2007
[25] The Economist 21 November 2002 https://www.economist.com/node/1455082
[26] From Consumer Action Group web forum, entry dated 7 August 2008
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[28] The Argus 14 November 2018
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