



## **Solicitors Assistance Scheme newsletter**

Spring 2004

### **Chairman's Report**

The two major matters which may affect the activities of Scheme members insofar as advice to the profession is concerned must surely be the coming into effect of the Proceeds of Crime Act 2002 — and the associated Money Laundering Regulations — and the evolution of the consultations being carried out by Sir David Clementi's Review Panel. The Committee is very aware that advising on the impact of POCA (and the Money Laundering Regulations) is fraught with danger and really the only safe course of action, if Scheme members receive requests for advice, is to refer them to Elizabeth Richards, Samantha Haines or David Rowe-Francis specialist members of the Professional Ethics Guidance Section – 0870 606 2577

The Committee felt that it was very important that the Review Panel headed by Sir David Clementi should be made aware of the possible impact on solicitors running into trouble, as they would, of course, feel the full brunt of any new proposals for regulation or disciplinary action. As a result of that, I attended a meeting with Gillian Benning, the editor of this newsletter, with Sheila Spicer at the Panel's offices in Victoria when we briefed the Panel on how the current regime impacts on members of the profession and those areas which we thought could be improved.

We were particularly concerned to ensure that solicitors continued to receive a fair hearing in respect of any disciplinary proceedings and that members of the profession should be able to practise on equal terms with any other practitioner in the same field and should not be unduly penalised by dint of the fact that he or she is a solicitor.

Members will know that the consultation paper has now gone out to the profession and it is our intention to make further comments on this. If panel members have any particular view or comment which they would like us to consider, could they please contact me as soon as possible so that we can take those views into consideration.

Indeed, the Panel are holding a series of consultations to which I have been invited and therefore would welcome any such comments before 5 May when I shall probably be attending.

The Law Society has also been advising members of the profession to take note of the alternative proposals and to respond. The Committee have also learned that the Law Society is itself making some radical changes to the regulatory regime, currently managed by the Office for the Supervision of Solicitors, whose current activities are likely to be split up.

The Committee also would like to hear from any members of the Scheme who encounter any specific problem which they think should be brought to the attention of the Committee. In the meantime, we will try to keep you informed of changes as they happen.

**David T. Morgan**

**Chairman**

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## **A letter from the Administrator**

Dear Scheme member

On 19 April, the complaints handling arm of the Law Society, which since 1996 has been called the Office for the Supervision of Solicitors, will be renamed the LAW SOCIETY CONSUMER COMPLAINTS SERVICE.

The LAW SOCIETY CONSUMER COMPLAINTS SERVICE will be the point of contact for the public for all concerns regarding solicitors' conduct and quality of service. It will deal with all complaints about service, but matters concerning solicitors' conduct will continue to be handled by the compliance arm of the Law Society's Regulation Directorate.

The address and phone numbers for use by the public will continue to be: Victoria Court, 8 Dormer Place, Leamington Spa CV32 5AE; phone 0845 608 6565.

In March two important consultations came out. The Law Society sent out its consultation on the new Rule Book for the profession. There will be a three month consultation period and it is hoped the new rules will be before the Law Society Council for approval in the Autumn.

The other consultation was the one issued by Sir David Clementi and his team into the provision of all legal services. This has a three month consultation period as well. Following the road shows, a draft response to the consultation is on the Law Society website.

Sir David's team has met David Morgan, the Chairman, and Gillian Benning, a member of the SAS Executive Committee to find out about the work done by the Scheme. The Panel will be holding a meeting to discuss a response specifically from the SAS.

The Committee has also fixed the date of the next SAS AGM and conference. The date for this is **Wednesday 10 November 2004**. Speakers are being approached already and it is hoped that Sir David Clementi will consent to come along.

The SAS website address is [www.solicitorsassistancescheme.org](http://www.solicitorsassistancescheme.org). It is hoped to start up a discussion page where members will be able to exchange views.

Please get in touch with me if you need any more information about any of these matters or any problems you encounter through your work as a Scheme member.

Susannah Lewis

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### **SAS members' statistics – a report by the administrator**

1999	2000	2001	2002	2003
139	130	377	349	390

The 2003 statistics were calculated on responses returned by 50 of the 70 members.

Referrals to the SAS by Professional Ethics and the Scheme administrator

1999	2000	2001	2002	2003 (11 months)
570	797	472	267	698

There are now 74 solicitors on the Scheme.

In 2003 The Law Society referred 60 solicitors a month to the Solicitors' Assistance Scheme. This has doubled from last year. These were solicitors who desperately needed help that The Law Society was unable to provide.

You may notice that the number of referrals made from The Law Society is strikingly different to the number of referrals apparently dealt with by members. This may be accounted for by the fact that almost one third of Scheme members did not return statistics in 2003. **It is important for the future of the Scheme that we accurately record the number and type of problems dealt with. A statistics sheet is included with this newsletter. It is however perfectly acceptable for you to just email me your figures. Even very basic ones are helpful. My email is [susannah.lewis@lawsociety.org.uk](mailto:susannah.lewis@lawsociety.org.uk).**

The majority of solicitors approaching the Scheme are seeking help with either employment or disciplinary problems. Stressful problems which strike at their livelihood. These problems look set to increase as the profession goes through a time of change.

The figures suggest that the SAS solicitors help with 25 employment and 20 disciplinary problems every month. The remaining requests for help will be for financial problems, negligence, indemnity and stress or indeed any problem that a solicitor wants to talk through.

The majority of requests for help come from the London region followed by the Midlands and then the North-West.

The callers appear to be 2/3<sup>rd</sup>s male to 1/3<sup>rd</sup> female.

All Scheme members deserve recognition for serving a Scheme that provides such help to the profession. I would particularly single out those who deal with employment problems in the London area. There has been an alarming jump in demand for help over the last few years from assistant solicitors experiencing problems with their firms.

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## **Solicitors Assistance Scheme Annual Conference report 28 November 2003**

On Friday 28 November the Annual Conference of the Scheme was held in the Old Council Chamber of the Law Society Hall. The meeting was attended by 40 Scheme members and invited guests.

The conference commenced with a brief address by David Morgan as Chairman of the Scheme followed by an address from the Schemes Honorary President Lord Justice Philips of Worth Matravers. Lord Philips expressed his appreciation of the service available to members of the profession via the Scheme. Lord Philips was pleased that the Scheme enabled solicitors with problems to obtain help and assistance before the problems become unmanageable.

The conference was then addressed by Andrew Hopper QC who gave an entertaining and informative talk to the Scheme concerning representation before the Solicitors Disciplinary Tribunal. Andrew's talk was clearly based on a detailed technical knowledge of the law and procedures in relation to such work as well as being derived from a wealth of experience

Shortly before the lunch time adjournment Dame Elizabeth Butler Shloss found time to take a short break from an extremely busy schedule and address the conference. Dame Elizabeth congratulated the Scheme members on the valuable work they are clearly doing to help the profession. In the relatively informal environment of the conference Dame Elizabeth commented on her recent judgement in the case of P v P.

The conference adjourned for lunch and Lord Philips and Dame Elizabeth joined members of the Scheme for a buffet lunch. The informal lunch gave members an opportunity to renew old acquaintances and to share experiences as well as providing an opportunity to talk to the invited guests.

After lunch the conference resumed and heard an address from Dick Ivory. As head of the Inland Revenue Voluntary Arrangement Service Dick is responsible for a department of 77 people who deal with all Individual Voluntary Arrangement proposals where either the Inland Revenue or H M Customs & Excise are involved as creditors. Dick provided the conference with a very useful insight into how the Inland Revenue and H M Customs & Excise act in relation to individuals and partnerships when they are in financial difficulties.

The conference concluded with a vote of thanks to the guest speakers from the chairman David Morgan.

**PLEASE NOTE THIS YEAR'S CONFERENCE WILL BE ON WEDNESDAY  
10 NOVEMBER 2004 – A DATE FOR YOUR DIARY**

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## **Solicitors' Benevolent Association – how can we help?**

*John Griffin, Director of the Solicitors' Benevolent Association has asked that members be reminded of the work of the SBA. He asks that members always consider whether a scheme client or his/her family also might benefit from a referral to the SBA. Mr Griffin has contributed the following article.*

Stephen was a solicitor practising in partnership in a suburban firm. The firm became embroiled in a mortgage fraud and was investigated by the police and the Office for the Supervision of Solicitors. Stephen's partner was considered principally to blame, and he was prosecuted and sent to prison. Stephen escaped prosecution, but was reprimanded by the Solicitors' Disciplinary Tribunal. He tried to carry on the practice, but the debts overwhelmed him and he was made bankrupt. His marriage broke up, and he moved to another area.

With one child at university and two at school Stephen's wife Susan was in a disastrous situation. She had signed a second charge on the family home to support the practice borrowing, and the bank was threatening repossession.

A social worker suggested to Susan that she should approach the Law Society for help, but she was reluctant to do so because she believed that Stephen had disgraced his profession, and no help would be available from that source. It was not until a friend of Susan's spoke to her own solicitor about the matter that the SBA was brought into the picture.

Susan's case is fiction but it is not untypical. In such a case, SBA might help with an interest free loan to keep the bank at bay, a grant for the child at university and an ongoing allowance to keep the family above the social security level.

SBA exists to provide financial help to solicitors and their dependants in adversity. As a matter of policy, SBA does not help a solicitor who has brought the profession into disrepute, but it may help innocent dependants.

SBA relies on a network of area representatives, mostly practising solicitors, to make contact with potential beneficiaries. Some deserving cases do slip through the net. A person like Susan might never have heard of the SBA. Solicitors, too, can be reluctant to disclose person troubles, not realising perhaps that help from SBA is given in strictest confidence.

Contacts with potential beneficiaries through advice-giving agencies or other third parties are particularly welcome. Further information, including an 8-minute video, can be had from:

The Secretary  
SBA  
1 Jaggard Way  
Wandsworth Common  
London  
SW1 28

E-mail: [bensec@sba.org.uk](mailto:bensec@sba.org.uk)

Website: [www.sba.org.uk](http://www.sba.org.uk)

John Griffin  
Director SBA

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## Money Laundering- Guidance for Solicitors

In January 2004, the Law Society released its latest guidance on money laundering: 'Money Laundering - Guidance for Solicitors (Pilot – January 2004)'. This Guide replaces the 'Money Laundering Legislation: Guidance for Solicitors' issued in 2000.

Money laundering has been a hot topic of conversation since the events of 11 September 2001. Money laundering can be summarised as the conduct of a person who hides the ownership or provenance of proceeds of crime in order to provide legitimacy to the funds.

The guidance aims to provide solicitors with a practical aid in complying with the new money laundering regulations and in fulfilling their role in the fight against money laundering.

There have been significant changes to the law relating to money laundering, and solicitors need to familiarise themselves with these changes, which are coming into force shortly. These changes can be briefly summarised:

1. On **24 February 2004** Part 7 of the Proceeds of Crime Act 2002 ("POCA") came into force consolidating and amending the criminal law relating to money laundering;
2. On **1 March 2004** the Money Laundering Regulations 2003 ("ML Regulations 2003") came into force replacing the 1993 and 2001 Regulations and applying to a much wider range of solicitor activities.

Solicitors should note that they are expected to follow the "Golden Rules" which are to know the legislation, know the professional guidelines, know their client, know their business, train their staff and monitor compliance.

No solicitor can afford to ignore this latest legislation which can trap the unwary. Recently, a solicitor was arrested for not reporting that bail monies offered by the accused wife might be the proceeds of crime and a raft of family lawyers have grown increasingly concerned about the obligations now being placed on them to report suspicious transactions. One question recently raised with the Chairman was whether the victim of a crime was entitled to take civil action to recover monies stolen from him by an employee without going through the reporting procedures, and if he settled such a claim, whether he would be guilty of being involved in a transaction involving stolen money (even though the money truly belonged to him). These matters merely highlight the excessive demands of this legislation as well as some of its more stupid effects.

Therefore, if solicitors are unsure about their role in tackling money laundering they should read the guide and if they have any further questions contact the Law Society.

**SAS members should also read the attached minutes of the last Executive Committee meeting on Committee members' views on the role of Scheme members when advising on money laundering problems.**

[www.lawsociety.org.uk](http://www.lawsociety.org.uk)

[www.ncis.co.uk](http://www.ncis.co.uk)

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## **2004 - The Year of Clementi**

If the name Sir David Clementi means nothing to you then rest assured it soon will. The (Chair) man from the Prudential has been appointed by the Government to carry out an independent assessment concerning the way the legal profession is regulated. The current system is “outdated”, “inflexible” and “lacking transparency”, and that is just the Government’s view.

The report, already dubbed by some media commentators as “Tesco Law”, is due by the end of 2004. The name ‘Tesco Law’ derives from the fact that there is a strong possibility that one of the recommendations will be that legal services are taken out of the exclusive grasp of private law firms and thrust into the consumer market place. Effectively, what this means is that high street brands such as Tesco and Marks and Spencer will be permitted to provide legal services. But does this actually mean that if you slip on a tub of spilt yogurt in Tesco, you could then go next door to Marks and Spencers and instruct a lawyer to help you with your PI claim?

The man from the Pru’s actual instructions from the Secretary of State, Lord Falconer, are that he should look at ways of regulating legal services which best promote competition and consumer interest. As to the exact nature of these reforms, Clementi says that he is keeping an open mind and nothing is being ruled out

Clementi has also hinted that he is particularly interested in the emergence of new business structures, such as multi-disciplinary practices. These have become known as SDPs (Similar Disciplinary Partnerships/Practices).SDP, which would bring together professionals such as solicitors, barristers, accountants, immigration advisers and other experts. This is seen as the way forward particularly for solicitors on the high

street who have traditionally been hard pressed to make a decent living. The practical commercial message to them is get bigger in some way so that overheads are less and there is more investment coming in. The SDP would be seen as ideal as it would bring in investment from other areas of the professional world.

Another highly controversial area under review by Clementi is the creation of an external regulator. Needless to say, the Law Society and Bar Council are against such a regulator and have already both indicated that they will fight tooth and nail to preserve their status quo. Nevertheless, Clementi's proposals continue to gather momentum, especially from critics outside the legal profession who argue that the current system is long overdue for a re-think.

So there we have it. Potentially, 2004 looks set to be a significant date in legal history as the year that heralded the biggest ever shake up of the legal profession.

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### **The Law Society v Mark Hidveghy**

Petition 9 of 2003- Hearing date 5 November 2003 (Unreported)

[In the appeal before Lord Phillips, MR, the appellant having succeeded in his appeal against the Law Society was awarded costs against the Society.]

The applicant was a solicitor who practised as a partner in a two partner firm.

From 1 September 2000 cover for professional indemnity had to be placed in the open market. The applicant had left it to the other partner to deal with the firm's insurance and that partner failed to do so. The firm became entitled to cover under the Assigned Risks Pool ('ARP') for a period of two years. This was until 1 September 2002.

The applicant's partner was in dispute with the Solicitor's Indemnity Fund as to the amount payable to the firm in respect of negligence actions against the firm. The respondent (the society) became aware of this dispute and when the applicant applied for a practising certificate for the year 1999/2000, the respondent neither agreed nor refused to issue a certificate. They allowed the applicant to hold over his 1998/1999 certificate. The applicant was then allowed to hold over the certificate for the years 2000/2001 and 2001/2002.

On 19 November 2002 the respondent notified the applicant that it had resolved to intervene in his practice. On 17 January 2003 the respondent decided to refuse to issue the practising certificate for the year 2001/2002. The Review Panel dismissed an appeal. The applicant appealed to the Master of the Rolls.

The application was allowed. The requirement that the applicant is compliant with the indemnity rules focuses on the time when the Law Society decides whether or not to issue a certificate. The applicant's past conduct will be considered by the Solicitor's Disciplinary Tribunal. Costs awarded against the Law Society.

## **Shuman –v- Law Society**

Master of the Rolls – hearing 3 December 2003

Lord Phillips MR allowed an appeal by a registered foreign lawyer against a decision of an Adjudication Panel of OSS to impose an immediate condition on his registration as a foreign lawyer purportedly under paragraph 2(3) of Schedule 14 to the Courts and Legal Services Act 1990. It was held that as a matter of statutory construction the provision relied upon did not enable the Society to impose such an immediate condition, other than in one of the specific circumstances set out in paragraphs 11 to 13 of the Schedule. The Law Society was ordered to pay the appellant's costs.

Andrew Hopper QC instructed by Quastel Avery Midgen appeared for the appellant. Nigel Giffin QC instructed by Wright Son & Pepper appeared for the Law Society.

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## **Aaron-v-The Law Society [2003] EWHC2271(Admin)**

The Appellant was a solicitor who faced a number of allegations of conduct unbecoming a Solicitor. During the course of the hearing before the Solicitor's Disciplinary Tribunal, the appellant applied to the High Court for an interim injunction to stay the proceedings concerning one particular allegation pending an application for judicial review.

A reference was made to the Office for the Supervision of Solicitors concerning the manner in which the stay had been obtained. Two further allegations of professional misconduct were consequently made and came before the original Tribunal at a resumed hearing.

The Tribunal found that the Appellant failed to make a full and frank disclosure on his Injunction Application. However, the Tribunal acquitted him of deliberate deception in wrongly asserting, without checking but honestly believing, that all of Counsel's fees had been paid when cross-examining a witness in an earlier Tribunal hearing. Nevertheless, the Chairman of the Tribunal confirmed that that still amounted to professional misconduct. The Tribunal found 7 out of 14 counts proved, and suspended the Appellant from practice for two years.

On Appeal, the Appellant contended that:

- i. the fact that a complaint made to the Office for the Supervision of Solicitors was in 1996, and a formal allegation had not been preferred until April 2001, and consequently determined until February 2002, indicated that his right to a trial within a reasonable time under Article 6 of the European Commission on Human Rights had been infringed;
- ii. it was not appropriate to find the Appellant guilty of professional misconduct on the basis of an inconsistent decision that a non deliberate deception, unless grossly negligent, could not amount to conduct unbecoming a solicitor;

- iii. the Tribunal had erred in finding that he had failed to make a full and frank disclosure on his application for a stay;

**Accordingly, the Appeal was allowed.**

1. Concerning Article 6 of the ECHR, institution of the proceedings should be taken as the date of the formal allegation made by the OSS. There had been no Article 6 delays. Also, under common law, the Appellant failed to demonstrate that any prejudice had been caused by the delay.
2. A deception could amount to conduct unbecoming a solicitor, even when not deliberate, and a Tribunal was entitled to consider negligent, as opposed to deliberate, deception as a disciplinary offence. However, even though negligent conduct might amount to conduct unbecoming a solicitor, the Appellant's negligent slip in wrongly asserting, without checking but honestly believing, that all of Counsel's fees had been paid fell below the threshold of professional misconduct. Further, the evidence presented at Tribunal did not lead to the conclusion that the Appellant had failed to make full and frank disclosure to the Judge. Hence, the three findings of conduct unbecoming a solicitor were quashed.
3. Although the overall culpability of the appellant was significantly less than that considered by the Tribunal, the remaining matters still required a period of suspension from practice of one year.

As solicitors, we must adhere to the highest standards of honesty and integrity. Therefore, it is worth double-checking any information which is to be presented before the court to ensure that a deception, whether contrived or not, does not occur.

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***SOLICITORS ASSISTANCE SCHEME COMMITTEE***

For further details, or advice, please contact either of the following:

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The minutes of the last meeting are annexed to this newsletter. This is to inform members of the scope of topics discussed at meeting and on the Committee's thinking on money laundering and the Clementi consultation.

Members would be pleased to receive any comments on the minutes, items for discussion at future meetings or any general comments on the running of the Scheme or problems encountered providing advice.