



Inside this issue

Chairman's message	1
Farewell to Susannah	2
Compliance directorate questions & answers	4
DTI	6
Case summaries	6

The SAS offers solicitors and their staff a lifeline by putting them in contact with a fellow practitioner who will listen and, where appropriate, provide advice and assistance.

To contact the Solicitors' Assistance Scheme you can:

Telephone
020 7320 5795

Email
help@solicitorsassistancescheme.org.uk

Visit our web site
www.solicitorsassistancescheme.org.uk

CHAIRMAN'S STATEMENT

As you will see from the contents of this Newsletter, the past few months have been eventful ones for the Scheme. Probably the most outstanding landmark was the retirement of Susannah Lewis after many years as our impeccable Administrator. Although we had little notice of her departure, we were fortunate in being able to give her a good send-off at our meeting on 29th June, two days before her final day. We are fortunate, at least, in having Duncan Finlyson stepping into her shoes as he was familiar with our activities from his involvement in setting up our website, and has already proved to be very helpful.

At the moment, the committee is preoccupied with the impact of the Law Society's plans to separate its regulatory role from its representational activities in the wake of Sir David Clementi's Report. I think that it is fair to say that the profession is fairly divided as to

how we should react to the proposals which emerged from that Report. I must confess that I personally have serious concerns about the Council's plans to pre-empt the Government's implementation of those proposals by splitting its structure before the necessary legislation has even been drafted. It is clear that there is still extensive disagreement as to how the spoils will be divided. While I believe that we enjoy the support of a majority of Council members, I have seen no evidence that this support is reflected in the ranks of the Society's senior officers.

In discussions I have had with a previous President, Peter Williamson, I was told that the Council's hope was to ensure that should the Society lose the right to regulate the profession, the supervision of professional standards and ethics would remain "profession-led". My own view is that we are being "led" by the nose and I declared my opposition to the proposals at the Law Society AGM in July.

I would welcome the views of panel members on this thorny problem but at the very least I hope that you give the matter some thought and exercise your postal vote on the members'

resolution one way or the other. Whatever the outcome, I can assure members that the committee is doing its utmost to preserve the Scheme's integrity and our service to the profession at large.

Your opportunity to air your views on this and other issues will, of course, arise at our AGM which will take place in London on Wednesday 2nd November. You will also have the opportunity of being updated on the Law Society plans, the new Code of Conduct now in its final stages, age discrimination, money-

laundering post *Bowman v Fells* and the new procedures in place at Leamington Spa. I hope you will come.

DAVID T MORGAN
Chairman

Susannah Lewis

It is with great sadness that we have bade farewell to Susannah Lewis, the Administrator of the Solicitors' Assistance Scheme for the past 13 years, who retired with effect from 1 July 2005. She will be greatly missed.

Throughout her period in office she handled a vast and diverse range of calls from concerned solicitors, with sensitivity, efficiency and an unerring ability to make a fair and appropriate referral. On behalf of all members of the Scheme, the Executive Committee would like to express sincere thanks to Susannah for her commitment and service to the Scheme and to wish her every happiness in her retirement.

Duncan Finlyson, who is a policy executive within Professional Ethics, will be acting as Administrator of the Scheme pro tem.

A note from the Administrator

As you will have seen earlier in this newsletter, Susannah Lewis, the long time administrator of the SAS, retired from the Law Society.

She will be greatly missed by colleagues and scheme members alike and I am sure that you will all want to join with me in wishing her the very best for her retirement.

Administration of the scheme has, for the time being, been taken over by me, Duncan Finlyson. I am a policy executive within the Professional Ethics team with primary responsibility for diversity and anti-discrimination.

I will be the first point of contact both for those solicitors who are looking for guidance and assistance under the scheme, and for scheme members, and I will try and live up to the high standards which were set by Susannah over the past few years.

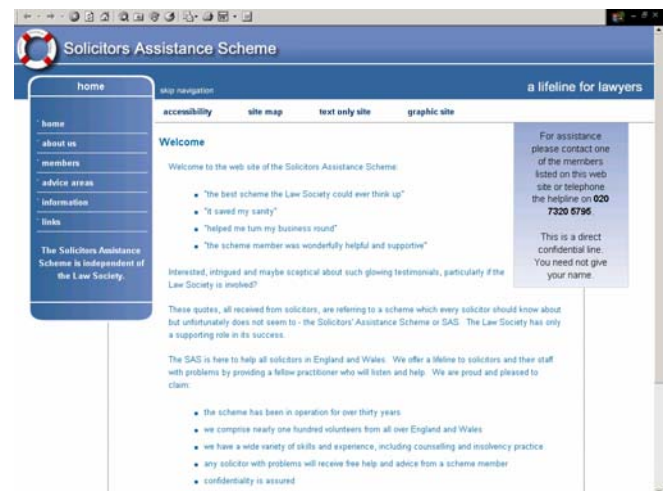
As David has mentioned in his Chairman's message, the review of the way in which the Law Society operates which was carried out by sir David Clementi has now taken place and there have been certain recommendations in terms of the way in which services will be provided by the Law Society in future years.

One of the areas which is being looked at is the provision of all forms of pastoral care by the Society. Although it is not at this time clear how and from where the SAS scheme will be administered, the coming months should lend greater certainty to this. Please rest assured that until such time as a decision is made the

scheme will continue to receive the whole-hearted support of the Professional Ethics team.

New SAS Web Site

We are delighted to be able to report that there is a new SAS web site. The web address www.solicitorsassistancescheme.org.uk has changed slightly and the whole site has been completely revamped and redesigned.



Users will be able to access descriptions of the work and activities of the SAS, download documents relating to the scheme, look up the details of scheme members and find out more about some of the areas of assistance that are available.

The new web site has been designed from the outset to be extremely user friendly and it incorporates a range of techniques to ensure that it is accessible by as many people as possible. Consequently it has a high visibility option, it is screen reader compliant (for those with severe visual impairment) and utilises access keys and other accessibility functions for those who find using a mouse to be difficult.

Meeting with Compliance Directorate

On 29 June members of the Scheme met with Ceri Griffiths, an Adjudicator, and Andrew Miller from the Intervention and Disciplinary Unit. Written questions were submitted in advance and the questions and answers are reproduced below.

1. It would be helpful to know the Directorate's procedure for investigating breaches of the Rules and in particular how the Investigation Casework Team works with the Forensic Investigation Unit.
 - The procedure for investigating breaches is an initial assessment of the facts and an explanation with warning letter is sent. Following a response, a case note is written and sent out for representations. When representations are received the matter is sent for adjudication. A large proportion of ICT's work is to progress reports of Forensic Investigations arising from their inspections of firms, which investigation follows the procedure referred to above.
2. There appears to be a trend towards a minimum of three allegations (or three groups of allegations) two of which are serious the third of which is of a formal or technical nature usually involving a breach of SAR 32(7) or similar. This appears to approach matters in the same manner as the DTI Disqualification Unit when dealing with applications to disqualify directors. Is this the

Directorate's policy or just coincidence in the cases we have handled?

- The Directorate has no specific policy with regard to the making of allegations in case notes prepared. It is important that the allegations are specified with sufficient clarity to enable the solicitor to know what issues of concern are being raised against him/her. The number of breaches alleged (and their contents) depends on the facts of each particular case.

Certain "*technical*" breaches such as breaches of the Solicitors' Accounts Rules 1998 may be alleged against all of the partners because of the provisions (under Rule 6 and 7) that all principals have responsibility for compliance with the SAR and a duty to remedy promptly any breaches. Of course if any issues of concern referred to in a report of Forensic Investigations are adequately explained by the solicitors, then that may well not lead to a formal breach being alleged in any consequential report.

3. When dealing with allegations about ignorance of the Green and Blue cards what arguments has the Directorate found deployed in relation to such allegations and how are such "*defences*" addressed by the Directorate.
 - Most partners appear to accept they are aware of the warning cards; the warning cards have been sent to all principals in private practice over a number of years.

They are also set out in full in the Guide to the Professional Conduct of Solicitors. It is consequently difficult for partners to argue that they were not aware of their contents because of this.

Many partners allege that they did not think that the warning cards applied to the circumstances under investigation and it is a matter for the Adjudication Panel to decide whether this is correct on the evidence before them. We commonly find that employees (for example assistant solicitors) argue that they were not aware of the contents of the warning cards; if so, this may raise issues of supervision/ training by their principals.

4. The treatment of complaints when solicitors are involved in money laundering reporting.
 - We are not sure what is meant by this — we cannot think of any examples of a client complaining, for example, that the solicitors have reported suspicions of money laundering to NCIS (if this is what is meant by the question). Obviously the Directorate is aware of its obligations under POCA 2002 and would be cautious about committing any offences of tipping off in respect of individual complaints.
5. The question of the status of conditions prior to a hearing at the SDT
 - It is assumed that this is intended to refer to the imposition of immediate conditions on a solicitor's Practising Certificate prior

to a hearing of the SDT. If it is considered necessary for the protection of the public and/or to protect the reputation of the profession, conditions may be imposed prior to the hearing of matters before the SDT. There is judicial support for this. If conditions are recommended, the solicitor concerned has the opportunity to comment upon those draft conditions before the matter is referred to an Adjudicator and/or the Adjudication Panel for a formal decision. The solicitor also has an internal right of appeal and can also refer the matter to the Master of the Rolls if dissatisfied.

6. Whether the Directorate made any distinction between salaried and equity partners in respect of liability.
 - In respect of liability, certain parts of the rules apply irrespective of the status of the partners. How culpability is determined is a matter for the Panel and the SDT, again taking into account all of the circumstances of the case and also bearing in mind the explanation advanced by the solicitors concerned.
7. What are the criteria used to decide whether a matter will go to a single adjudicator or an Adjudication Panel?
 - The types of matters that go to the Panel are those that are particularly complex and/or sensitive or which raise issues of public interest (e.g. TAG/miners compensation matters/complaints involving a council member/possibility of

an intervention). The decision is made by caseworkers in conjunction with Team Leaders and Senior Advisers

9. Do the Adjudicators ever hear live evidence?

- We are not aware of any case in which an Adjudicator has heard live evidence but they might do so. In practice an adjudicator might refer a case which felt appropriate for live evidence to a Panel

10. Are the adjudicators aware of the SAS and the assistance they provide?

- Caseworkers should make solicitors aware of the SAS — it is a standard part of EWW (Enquiry With Warning) letters to give details of the scheme

Department of Trade & Industry

Following pressure from local MP's, a number of firms of Solicitors have found themselves the subject of investigation, both in respect of inadequate professional service by failing to advise clients about the agreements they have signed with claims management companies or the Unions, and also in respect of issues relating to referral fees.

As some of these issues seem to have a significant political element, particularly with regard to the treatment of Partners who were not directly involved in this type of work, it is felt that there may be some merit in those members involved liaising with each other and in monitoring the Law Society's approach.

Clearly, the client's approval to their representative's involvement in such a group will be required.

Gillian Benning at RadcliffesLeBrasseur, Andrew Blatt at Murdochs Solicitors and Richard Nelson at Richard Nelson Business Defence Solicitors have all had involvement in such cases. Please contact any of them to register your interest and details of the cases in which you have been involved.

Case Law Summary

This year has seen a number of interesting judgements relating to solicitors and Law Society, one of the more interesting of which involved a successful challenge of an intervention, in the case of *Anal Sheikh v The Law Society*.

Anal Sheikh – v – The Law Society

On 1 July 2005, Mr Justice Park formally handed down his Judgment in the case of *Anal Sheikh v The Law Society*. The lengthy Judgment sets out the Judge's detailed reasons for the decision, which he announced on the 9 June, that the Law Society's intervention into Miss Sheikh's practice should be set aside. This is believed to be the first time that the Court has ever acceded to an application of this nature.

On 16 June, Mr Justice Park removed the existing conditions on Miss Sheikh's practising certificate, imposed by the Law Society following its intervention into her practice, so as to give effect to the decision to set aside the intervention which he had announced the previous week.

This is the first time the Court has acted in relation to practising certificate conditions in these circumstances.

Miss Sheikh practised as a sole practitioner under the name Ashley & Co, a firm based in Willesden. She was held in high regard by many of her clients and in the local community. Mr Justice Park was impressed by the large number of letters of support which had been provided by clients, other Solicitors, Barristers, and local District Judges. Miss Sheikh had practised on her own account as Ashley & Co for 12 years.

On 18 February 2005 the Law Society intervened into Ashley & Co. The decision to intervene into Miss Sheikh's practice was stated to be based on there being reason to suspect dishonesty on the part of Miss Sheikh in connection with her practice and on there having been breaches of the Solicitors Accounts Rules.

Mr Justice Park recognised that intervention is a drastic process. He commented "The practical effect of intervention, particularly on a sole practitioner, is to bring the practice to an end and to put the solicitor out of business".

Miss Sheikh exercised her right to apply to the Court for orders directing the Law Society to withdraw the intervention. The application was heard over 8 days between the 4 and 13 May 2005.

Miss Sheikh had been unable to carry on her business for a period of four months before she was able to resume her practice following the decision announced on 9 June and the order

made on 16 June. Mr Justice Park believed that Parliament had visualised that applications for orders that an intervention be withdrawn could and would be brought quickly to Court, and would be capable of being dealt with quite speedily, since by that time the solicitor would know what was alleged against him or her. The Judge was concerned that had not happened in Miss Sheikh's case.

He stated "All delay before Miss Sheikh can have her applications decided is potentially damaging" and "It is possible that the intervention action which the Law Society has already taken, and which has been in place for several months before my decision, may already have done substantial damage to the practice of Miss Sheikh's firm". Explaining the cause of this, the Judge commented "This case is bedevilled by the Law Society having put everything which it felt to be wrong about Ashley & Co into the ... Report, with no effort to sift the numerous criticisms into those which realistically could support an intervention and those which could not, and then having put the whole matter before the Panel. The problem is made worse in this particular case ... by the Panel, following normal practice, simply finding that there was reason to suspect dishonesty and that there had been breaches of the Solicitors Accounts Rules without giving any particulars at all".

He further stated "In this particular case I consider that the absence of particulars causes considerable difficulty, especially as regards to the finding of suspected dishonesty. What precisely was the dishonesty, and what precisely were the grounds which raised a suspicion of it?

The Panel does not say. This is, I understand, in line with standard practice for Law Society Panels. ... I comment that section 10 of the Tribunals and Enquiries Act 1992 requires tribunals and, in a few cases, Ministers, to give reasons for decisions.... the Society might wish to consider reviewing its normal practice”.

No evidence was called by the Law Society from any member of the Adjudication Panel. Mr Justice Park commented that since Miss Sheikh did not know what specific kind of dishonesty the panel suspected “her legal team in this case, Mr Treverton-Jones QC and his instructing solicitors, RadcliffesLeBrasseur, could only speculate as to the case which they had to meet. In a criminal case an indictment which merely charged that there was reason to suspect dishonesty would never survive. The same would apply to a pleading in a civil claim”.

Mr Justice-Park in his Judgment, found that there was no reason to suspect Miss Sheikh of dishonesty in relation to the practice of Ashley & Co. While he accepted that there had been some breaches of the Solicitors Accounts Rules, he did not think that they were serious enough to merit the drastic and (in practice) terminal step of intervention. On the question of dishonesty, the Judge stated that he had “observed Miss Sheikh under vigorous cross-examination for over 2 days. I am firmly of the opinion that she is not a dishonest person”.

In relation to the breaches of the Solicitors Accounts Rules, the Judge’s view was that “it would be disproportionate to impose the drastic sanction of intervention (amounting to confiscation of the practice) on a solicitor who

commits honest breaches of the Solicitors Accounts Rules. If, there are breaches of the Solicitors Accounts Rules, but not dishonest breaches, an intervention ought, I suggest, to be unusual. I would expect the Law Society to look to other regulatory or disciplinary powers (of which it has several) for other methods of improving the solicitors compliance with the Rules”.

The Judge criticised the Law Society in relation to the materials which it provided to the Adjudication Panel which he thought, in a number of respects made “unfair” allegations against Miss Sheikh and created a misleading impression of the facts.

Against the background of his view that the overarching reason lying behind the extensive regulatory and disciplinary powers which Parliament has conferred on the Law Society is “that solicitors are regularly in possession of other persons’ money, and that strong powers need to be held by the governing body of the profession in order to protect clients of unscrupulous or unconscientious solicitors from the risk of the solicitor in some way making away with their money”, Mr Justice Park thought that the Law Society might have been expected to volunteer the fact (which only emerged during the course of the trial) that the accountant within the firm acting as intervention agents had established that the client account balances in the books of Ashley & Co “balanced”. The Judge thought that this fact was close to a specific confirmation that no client’s money had gone missing.

There was no direct allegation along those lines put forward in the materials provided to the

Adjudication Panel but the Judge stated “it was not disavowed either, and I would not be in the least surprised if the Panel had in mind that there just might have been some misappropriation of clients’ money somewhere in this case”. The Judge also thought it “remarkable” that the Law Society had not had the courtesy to provide a reasoned reply to a “carefully formulated and explained” proposal made on Miss Sheikh’s behalf by Paul Saffron of RadcliffesLeBrasseur designed to protect the goodwill in Miss Sheikh’s practice by allowing her pending the trial to continue to have conduct of a limited number of specific matters on conditions which were intended to protect clients against all risks of the sort which appeared to be causing the Law Society concern.

It is understood that Miss Sheikh is currently seeking advice as to the possibility of a claim in damages against The Law Society.

*For further information or for a copy of the judgment contact Paul Saffron,
RadcliffesLeBrasseur, 5 Great College Street
Westminster London SW1P 3SJ Telephone nos:
020 7227 7409 (Direct Line) 020 7222 7040
(Switchboard) Fax no: 020 7222 6208 email:
psaffron@rlb-law.com*

Another major case which occurred this year, although one which we do not intend to cover here, was that of **Bowman v Fels**. Further details, together with an explanation of its impact upon money laundering reporting requirements can be found on the Law Society’s web site at: www.lawsociety.org.uk/documents/downloads/BowmanFelsMoneyLaunderingFinalGuidance.pdf.

Rose v Dodd

In the case of *Rose v Dodd [2005] EWCA Civ 957*, the claimant was a secretary in the defendant’s firm where the defendant was the sole practitioner. The Law Society intervened in the practice with the result that the defendant’s practising certificate was immediately suspended. The defendant applied to set aside the intervention and a few weeks later was able to transfer the practice as a going concern. The new owner of the firm notified the defendant’s employees that they had been made redundant on the day upon which the intervention took place and that claims should be made against the defendant.

The claimant claimed dismissal by the defendant and entitlement to a redundancy payment. However, the employment tribunal found that the claimant had not been dismissed. Her employment had, instead, been transferred to the successor practice under the Transfer of Undertakings (Protection of Employment) Regulations 1981.

It was held that in the circumstances the only person who could terminate the claimant’s contract of employment were the parties to it, that is the defendant and the claimant. As the claimant had been allowed to continue working, then the defendant did not terminate it, and neither did the claimant by treating the intervention as a repudiation of the contract by the defendant. Moreover, the suspension of the defendant’s practising certificate did not automatically terminate the contract of employment either - the defendant could continue to employ staff to do other work so long

as it did not involve the conduct of the practice of a solicitor.

Had the intervention led to a dissolution of a partnership then this might have produced a different outcome and it would be necessary to look at the facts of that situation in determining whether the contracts of employment of the partnership had terminated.

Redfearn v Serco Ltd t/a West Yorkshire Transport

The case of *Redfearn v Serco Ltd t/a West Yorkshire Transport UKEAT/0153/05/LA*, whilst not relating specifically to the practice of a solicitor could, nevertheless, have an impact upon the way in which solicitors act towards staff and clients alike.

The decision is one of the Employment Appeal Tribunal which decided that the phrase “on racial grounds” in the Race Relations Act 1976 must be interpreted in its widest sense. It included a dismissal where the decision to dismiss was significantly influenced by questions of race - whether it be the complainant’s or somebody else’s - and the motive for dismissal, however benign, could not be a defence for an employer.

The claimant, who was a driver and as an escort in respect of the transportation of children and adults with physical/mental disabilities in the Bradford area, became an elected BNP councillor and was summarily dismissed by the defendant Serco for what were described as Health and Safety Reasons, namely - that Asian patients and co-employees would be upset and/or hostile.

The Employment Tribunal found that there has been no discrimination on racial grounds. The EAT disagreed and stated that, applying the Showboat line of cases (*Showboat Entertainment Centre v Owens* [1984] IRLR 7) even though the dismissal was not on the grounds of the claimant’s race, his membership of the BNP certainly made the unfavourable treatment which he had received “on racial grounds’. The motive for the claimant’s treatment unfavourably on racial grounds was not relevant.

The practical effect of this case, if it does not go unchallenged, is to bring within the scope of the Race Relations Act certain activities which could otherwise have been regarded as political. Firms will, therefore, have to be circumspect in the future as to the circumstances in which they take actions, such as dismissing an employee or declining to act for a client, which are based upon that person’s membership of a political party - no matter how offensive the firm regards that person’s political views to be.

Yousef v Solicitors Disciplinary Tribunal

In *Yousef v Solicitors Disciplinary Tribunal* [2005] All ER (D) 270 (Mar) the Law Society intervened in a firm at which the appellant practised when a partner of the firm fled the country with up to £22m of client funds. Subsequent to the intervention conditions were imposed on the appellant’s practising certificate for her to obtain OSS approval of her employment and for her to inform future employers of this condition. The appellant subsequently worked at a firm of solicitors but did not inform the OSS who later became aware of her employment. She failed to

give an adequate explanation as to why she had been working in contravention of the conditions.

Disciplinary hearings were commenced when the appellant was unable to give an adequate explanation of this breach of conditions and, whilst the SDT expressed sympathy for the appellant's circumstances, nevertheless they could not overlook her failure to obtain approval for that employment from the OSS. The tribunal ordered that she be struck off the Roll of Solicitors. The appellant appealed against that decision and it came to be considered whether the tribunal should have struck off the appellant or merely imposed a much less severe penalty.

The Administrative Court determined that the appeal should be dismissed. It held that the tribunal had been entitled to conclude that the public interest would only properly be protected by striking the appellant off the Roll of Solicitors.

Hilton v Barker Booth & Eastwood

In February, the case of *Hilton v Barker Booth and Eastwood* (a firm) [2005]UKHL 8 reached the House of Lords whose judgment affects the civil liabilities of those solicitors who act where there is a conflict of interest. The facts of the case were that Mr Hilton wished to sell some properties to a Mr Bromage. Barker Booth and Eastwood acted for Mr Hilton and had previously acted for Mr Bromage whom they knew to have been bankrupt and convicted for fraud. They did not tell Mr Hilton, who would not have entered into the transaction with Mr Bromage had he known of this. As a result of the transaction going wrong, Mr Hilton suffered substantial losses.

Overturing the decision of the Court of Appeal, the House of Lords unanimously decided that Barker Booth and Eastwood had a duty of disclosure to Mr Hilton which could not be avoided by relying upon their duty to Mr Bromage. Once Barker Booth and Eastwood had decided to continue to act for him, Mr Hilton should have been given the information, even though to have done so would have been a breach of the duty to Mr. Bromage.

Solicitors' Assistance Scheme

Chairman:
David Morgan

Hon Sec:
Greg Mullarkey

Committee Members:
Fay Landau
Gillian Benning
Andrew Blatt
Richard Nelson
Peter Johnson

Administrator:
Duncan Finlyson

Telephone:
020 7320 5795

Areas where the SAS can help include:

Alcoholism
Conduct
Conveyancing
Corporate recovery
Costs
Crime
Disciplinary
Discrimination
Emotional problems
Employment
Financial
Fraud
Inadequate professional service
Insolvency
Insurance
Interventions
Litigation
Matrimonial
Mental health
Money laundering
Negligence
Partnership
Practising certificate conditions
Practice management
Solicitors' Disciplinary Tribunal
Stress
Tax
Voluntary arrangements
Welfare benefits

For further information or confidential help:

Telephone: **020 7320 5795**

email: **help@solicitorsassistancescheme.org.uk** , or

visit our website: **www.solicitorsassistancescheme.org.uk**