

Sheikh v The Law Society – an insight into the arcane world of regulating Solicitors

Intervention – the nuclear bomb of Solicitors’ regulation

Few Solicitors have any involvement or real awareness of the Law Society as regulator. Indeed the statistics bear this out - of the 100,000 or so Solicitors on the Roll only 204 of them came before the Solicitors’ Disciplinary Tribunal (SDT) in the year to 30 April 2005. The bulk of this number received fines, reprimands or costs orders. The most serious sentence (striking off) was inflicted on 54 Solicitors. The decisions of the SDT are regularly reported in the Law Society’s Gazette. However, alongside these reports there often appear details of Practices which are intervened in by the Law Society exercising its powers under Part II of Schedule 1 to the Solicitors Act, 1974 (“the Schedule”). This is a power at least as drastic as striking off if not more so.

The power to intervene arises where the Council of the Society have reason to suspect dishonesty on the part of ... a Solicitor...” (para (a) of paragraph 1(1) to the Schedule) or sub-paragraph (c) when the “Council are satisfied that a Solicitor has failed to comply with rules made by virtue of section 31, 32 or 37(2)(c) of the Solicitors Act, 1974. In other words, the Solicitors’ Practice Rules, the Solicitors’ Accounts Rules and the rules relating to professional indemnity respectively.

The decision to intervene is taken by the Adjudication Panel of the Law Society and is composed, for these purposes, of three members. They usually act on the recommendation of the Society but (as we shall see in Ms Sheikh’s case) they are not bound to so act. Nor do they need to give any reasons for their decision to direct an intervention. It was this failure to give reasons that had profound repercussions for the Law Society. For whilst intervention usually spells the end of a practice (especially one, like Ms Sheikh’s – a sole practitioner) it is open to the intervened Solicitor to apply to the High Court for an order directing the Society to withdraw the notice. This is what Ms Sheikh did.

She did so because, as she put it:

“I cannot understand how they can have intervened in my firm, but they having intervened I knew what was in store for me. All Solicitors do, it means bankruptcy. It means I am going to lose my house. It is going to mean I am going to lose all the assets I have worked hard for for the last 15, 17 years I have nothing left now.”

The factual background

In 1993 Ms Sheikh became (and remains) the sole principal of Ashley & Co in what was described as a general practice undertaking mainly litigation (much of it funded by the Community Legal Service) with some probate and administration of estates.

On 17 February 2005 the Law Society's Adjudication Panel resolved to intervene in her practice on the grounds of suspected dishonesty and breaches of the Solicitors' Accounts Rules.

On 1 July 2005 judgment was handed down setting out Park, J.'s reasons for setting aside that intervention over almost 60 pages and 146 paragraphs. This is the first time an intervention has been set aside.

Almost a year to the day before the decision to intervene was taken the Law Society wrote to Ms Sheikh to explain that her books were to be investigated by the Society. No reasons were given for this which is the standard policy of the Society's Compliance Directorate. Between 23 February and 21 July there were six visits, some lasting more than one day. There were also six lengthy letters seeking further detailed information. Then nothing came for months. This is a typical feature of these cases.

On 10 December a 19 page letter was sent to Ms Sheikh detailing professional failures. This did not contain any allegation of dishonesty and called for a reply by 4 January 2005.

Another letter (dated 23 December) was sent to Ms Sheikh and dealt with further concerns on the part of the Society. This letter enclosed a report running to 33 pages and required a reply by 10 January.

Although Ms Sheikh and her part-time book-keeper were co-operative on every visit made by the Law Society she regrettably failed to reply to any letter from the Society about these matters. This failure was particularly unfortunate in relation to the last letter which warned the Society had concluded that intervention powers were exercisable. During a telephone conversation with a representative of the Society Ms Sheikh sought an extension which was refused.

On 24 December Ms Sheikh went on holiday. When she returned she still did not open the package from the Society. On 17 February, both deadlines having passed, the Adjudication Panel resolved to intervene and news of the resolution was faxed to Ms Sheikh that afternoon.

It is important to note that the Society's recommendation to the Panel was against intervention on the basis that other measures were available whereby the Society's concerns about this firm could be addressed. The Panel nevertheless resolved to intervene and crucially, but in line with standard practice, did not give reasons.

Ms Sheikh's practising certificate was suspended as such certificates always in these circumstances. The intervention continued until 9 June when Park, J announced his decision in favour of Ms Sheikh and had lasted 113 days – could your practice survive that?

Why intervene?

The Law Society's legal team spent 8 days before the SDT trying to justify the Adjudicators' decision to intervene. A decision which was made all the more difficult for the absence of reasons and the Society's own recommendations against intervention given there were other measures it believed could be put in place to address the issues. In a judgment that was as remarkable for its length as for the light it shone on this little understood area the Judge remarked that he was unable to go into all of the fine points of the Law Society's arguments but chose to concentrate on the most important. These included:

- Breaches of the Solicitors' Accounts Rules – for example
 - * A cash shortage on clients account of £41,125 gave the impression that money had been stolen by Ms Sheikh. However this turned out, on investigation, to be a technical point related to the delivery of a bill for £41,125 that was not treated as a valid bill by the Investigation Officer yet should have been regarded as a proper bill
 - * Round sum block transfers – Ms Sheikh adopted the practice of transferring round sums representing a group of transfers from client to office for fees. The sums would be less than the actual sum due pending the detail being worked out later. This led to suspicions that Ms Sheikh was wrongly transferring money from client to office. The Judge found that whilst this represented corner cutting on Ms Sheikh's part and possibly some technical breaches of the Rules this issue cannot possibly have given rise to suspicion of dishonesty.
 - * Failing to account to clients for interest – unfortunately Ms Sheikh failed to account to clients for interest due on their monies held in her firm's clients account – the Judge again held these slips had to be rectified but did not justify intervention.
- Missing assets – three gold rings and a gold locket belonged to the estate of the late Mr Thirkettle and had passed into the possession of Ms Sheikh's firm as the Solicitors to the Estate. Unfortunately they went missing and could not be found. The Judge considered this to be an example of a slip up which cannot have any impact on the outcome of the intervention.
- Missing or destroyed files – some files had been destroyed or were missing which was said to be evidence of dishonesty in that Ms Sheikh was attempting to hide evidence. This was not accepted by the Judge.

Why was the intervention set aside?

- No money had gone missing.
- Ms Sheikh impressed the Judge as being a sole practitioner with a busy practice who made mistakes from time to time like most people.

- Despite Counsel for the Law Society's best efforts over many days it was not possible to find any dishonesty on the part of Ms Sheikh. Counsel was hampered by the lack of any reasons given by the Panel for its decision to intervene and was left to pick over the accounts of Ashley & Co in the greatest of detail for day after day of the 8 day hearing in an attempt to find support for the intervention
- The breaches of the SAR were found not to merit the terminal step of intervention. Other measures available to the Society could, and should, have been used. Ms Sheikh accepted that there were breaches but maintained that they were not serious breaches. The Judge acknowledged his (anecdotal) understanding gained over the years that *"there are very few Solicitors' firms that do not slip up in one respect or another over the Solicitors' Accounts Rules from time to time."*
- The Judge urged the Society to review its practice in connection with Panel decisions and bring their policy in line with s 10 of Tribunals and Inquiries Act, 1992 which requires tribunals to give reasons for their decisions.

What lessons does this case hold for Solicitors?

- * Solicitors' firms are the subject of random visits by the Practice Standards Unit (PSU) and the Forensic Investigation Unit (FIU – not to be confused with the Fraud Investigation Unit). Indeed a visit by the former often leads to a visit from the latter. Be aware of this environment and always answer correspondence from the Law Society promptly. Read any letters about professional concerns several times before replying or, better still, call the Solicitors' Assistance Scheme (SAS) to discuss the issues confidentially with a Solicitor experienced in this area.
- * Ensure you have adequate resources in terms of accounts and case management software with appropriate accounting support available.
- * Avoid making round figure block transfers from clients' account to office account.
- * Review ledgers regularly (at least monthly) to ensure you pay out interest due to clients and avoid credits on office account (this latter problem was not an issues that arose in Ms Sheikh's case)
- * Invest in a reputable software accounts program from a supplier who is a member of the Law Society's Legal Software Suppliers Association (LSSA)
- * Seek accreditation under LEXCEL which will put in place risk management systems to minimise the risk of intervention and help avoid some of the problems caused by Ms Sheikh's ad hoc approach to accounting processes.

All of these measures cost time and money to implement but this investment is unavoidable if you wish to continue practising in to-day's profession.

This technical paper has been written as a general guide only. It should not be relied upon as a substitute for specific legal advice. No responsibility can be accepted by the author or the firm for any loss occasioned as a consequence of acting or refraining from action on the basis of this paper.

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