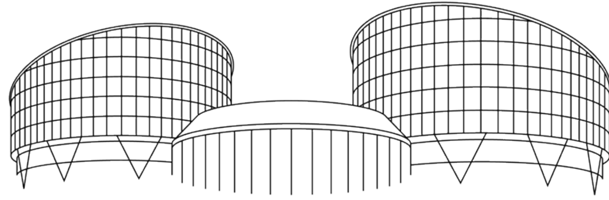

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 51144/07
by Anal SHEIKH
against the United Kingdom

The European Court of Human Rights (Fourth Section), sitting on 14 June 2011 as a Chamber composed of:

Lech Garlicki, *President,*
Nicolas Bratza,
Ljiljana Mijović,
Sverre Erik Jebens,
Zdravka Kalaydjieva,
Nebojša Vučinić,
Vincent A. De Gaetano, *judges,*
and Fatoş Aracı, *Deputy Section Registrar,*

Having regard to the above application lodged on 20 November 2007,
Having regard to the observations submitted by the respondent Government,
Having regard to the decision of 12 April 2011 of the Vice-President of the Section not to admit to the file the applicant's observations in reply for failure to comply with the Practice Direction on written pleadings,
Having regard to the decision of the Vice-President of the Section not to grant the applicant leave to represent herself,
Having deliberated, decides as follows:

THE FACTS

1. The applicant, Miss Anal Sheikh, is a British national who was born in 1960 and lives in Stanmore. She was not legally represented.

A. The circumstances of the case

1. The Law Society inspection

2. The applicant is a solicitor who joined the firm Ashley & Co. as an assistant solicitor in 1987. In 1993 she became the sole proprietor and practitioner in the practice. Between 1987 and 2005, she was the subject of sixteen successful complaints to the Law Society, of which five related to overcharging.

3. In February 2004, the Law Society commenced an inspection of and investigation into Ashley & Co. On 16 February 2004 the head of forensic investigations at the Law Society wrote to the applicant stating that the books of Ashley & Co. were to be investigated and that officers of the Law Society would be attending her office for that purpose. The letter said that it was not the policy of the Law Society's Compliance Board to authorise staff to disclose the reasons for inspections. The applicant was therefore not advised of the reasons for the inspection.

4. Two different departments of the Compliance Board were involved in the investigation: forensic investigations, which dealt with concerns about compliance with the Solicitors' Accounts Rules; and multiple complaints investigation, which dealt with all other complaints. The inspection commenced with a visit to the applicant's office on 23 February 2004, which lasted around two or three days. Five further visits took place, the last on 21 July 2004. The Law Society's inspectors from the multiple complaints investigation department also wrote six lengthy letters to the applicant asking for further information in connection with the investigation. Although the applicant co-operated with the investigators in attendance at her offices, she did not reply in writing to any of the letters.

5. Following the final visit, the investigative officers compiled a report on the applicant's practice, intended for internal consideration within the Law Society, in order to determine whether any of the powers contained in the Solicitors Act 1974 ("the 1974 Act") should be exercised in relation to Ashley & Co. The report ("the FI Report") was prepared in the form of a letter dated 22 November 2004 from the head of the forensic investigations department to the head of investigation and enforcement in the Law Society's Compliance Directorate. The FI Report was 33 pages long, with between 70 and 80 pages of appendices.

6. On 10 December 2004 a member of the multiple complaints investigation department wrote a 19-page letter to the applicant. She did not

enclose a copy of the FI Report at that time. The letter set out allegations of professional failures by the applicant and invited her to reply by 4 January 2005. The allegations related generally to alleged failures to comply with provisions of the Solicitors' Practice Rules (see paragraph 68 below).

7. The applicant, despite being reminded in the letter that she had a professional obligation to reply to the Law Society, did not reply.

8. On 23 December 2004 the Law Society wrote to the applicant again, this time enclosing the FI Report. She was asked to comment on the report by 10 January 2005. A covering letter contained several allegations of breaches of the Solicitors' Accounts Rules (see paragraphs 66-67 below) and invited comments on these allegations. In addition, the letter stated that the investigators were satisfied that the applicant had failed to comply with provisions of those rules, and that therefore the power to intervene (essentially, to take control of the applicant's practice – see paragraphs 55-61 below) was exercisable.

9. On the evening of 23 December 2004 the applicant received a telephone call from one of the investigators telling her that there would be a large and important parcel waiting for her at her office the next day and that she should collect it and read it in order to reply by 10 January 2005. The applicant told the investigator that she was going on holiday with her mother to India the following day and that she could not deal with a large communication from the Law Society by 10 January 2005. She accordingly asked for an extension of time. No extension was granted. The applicant went on holiday without collecting the parcel. Upon her return, the parcel was waiting for her. However, she did not open it. She subsequently explained that the reason she did not open it was "because she could not deal with it".

10. On an unknown date, the FI Report was forwarded to the Adjudication Panel of the Compliance Board ("the Panel"). It was accompanied by a recommendation that stringent and immediate conditions imposed on the applicant's practising certificate would be sufficient to protect the public and the conclusion that intervention was not necessary, although the matter was "finely balanced".

11. On 17 February 2005 the applicant received funds in the sum of GBP 254,000 in respect of a mortgage on her own home. As she intended to invest the funds in a client's business, she instructed her secretary to pay the funds into the firm's client account, intending to deal with the necessary paperwork later. However, her secretary instead credited the firm's office account. The applicant was not made aware of the error.

12. The Panel met on 17 February 2005. Following consideration of the FI Report, the Panel decided that there should be an intervention in the applicant's practice. It adopted several resolutions, the most significant of which being:

"1. The Panel were satisfied that grounds for intervention existed under paragraph 1(1)(a)(i) of Part I of Schedule 1 Solicitors Act 1974 (as amended), namely that the Panel were satisfied that they had reason to suspect dishonesty on the part of Ms Anal Sheikh practising as Ashley & Co ... in connection with her practice as a solicitor.

2. The Panel were also satisfied that grounds for intervention existed under paragraph 1(1)(c) of Part I of Schedule 1 Solicitors Act 1974 (as amended) namely that Ms Anal Sheikh failed to comply with the Solicitors' Accounts Rules.

3. The Panel balanced the need to exercise powers of intervention in order to protect the public and the serious consequences of intervention for a solicitor. The Panel were satisfied that it was necessary to exercise powers of intervention in this case in view of the nature of the matters identified in the Forensic Investigations Report dated 22 November 2004.

4. The Panel were further satisfied that it was necessary to exercise powers of intervention in order to protect the public.

5. The Panel RESOLVED to intervene into Anal Sheikh's practice at Ashley & Co ..."

13. No particulars were given in the resolution of why the Panel suspected dishonesty on the part or the applicant or why it concluded that she had breached the Solicitors' Accounts Rules.

14. The Council of the Law Society also passed resolutions providing that the applicant's practice monies vest in the Law Society and that the applicant be required to deliver practice documents to its nominated agent. In accordance with the applicable legislation, the applicant's practising certificate was automatically suspended (see paragraph 61 below).

15. That afternoon a representative of the Law Society called Ashley & Co. to speak to the applicant but she was out of the office. He faxed a copy of the intervention resolution to her at her office, informing her that the intervention team would arrive at 10.30 the next morning and that an intervention had been ordered as a result of breaches of the Solicitors' Accounts Rules, with reference to paragraphs 6 and 9 of Schedule 1 to the 1974 Act (see paragraphs 58-59 below).

16. On the morning of 18 February 2005 the applicant did not go to her office as she had client meetings scheduled. However, her secretary called her to inform her of the fax and the Law Society's pending visit. According to the applicant, she was not made aware that an intervention had been ordered. She asked her secretary to reschedule the visit as she did not intend to be in the office that day. Her secretary telephoned the Law Society to relay the message. She was advised that it was imperative that the applicant attend the meeting that morning and that her practising certificate had in any case been suspended. She then called the applicant back and explained the position. The applicant made arrangements to go immediately to her office.

17. At some point during the second phone call, or possibly during a third phone call with her secretary prior to arriving at the office, the applicant instructed her secretary to transfer the GBP 254,000 from the

client account to her personal bank account and to sign the transfer form on the applicant's behalf. The secretary effected the applicant's instructions, with the result that the client account was debited in the sum of GBP 254,000, leaving it heavily overdrawn.

18. In due course the intervention team arrived at the applicant's office to commence the intervention. The applicant was there to meet them and asked for, and was given, time to take legal advice before the intervention proceeded. She instructed a well-known firm of solicitors. It appears that they did not recommend that she take immediate action to halt the intervention but advised her to exercise her statutory right of challenge under the 1974 Act (see paragraph 62-63 below). She permitted the intervention team to have access to the premises. She had still not opened the parcel sent to her by the Law Society on 23 December 2004 (see paragraphs 8-9 above).

19. On 25 February 2005 the applicant issued an application to the High Court to request the withdrawal of the intervention under paragraphs 6(4) and 9(8) of Schedule 1 to the 1974 Act (see paragraphs 62-63 below). Realising that it could be some time before the matter was heard by the High Court, the applicant's solicitor wrote two letters to the Law Society proposing measures to allow the applicant to continue to have conduct of a limited number of specific matters on conditions intended to protect clients against the risk perceived by the Law Society to exist. One of the conditions was that she would not issue any bills to clients. The Law Society refused to accommodate the requests; no reasons were provided for the refusal. However, in accordance with usual practice where a challenge to an intervention is lodged with the High Court, the Law Society put in place arrangements to mitigate the damage to the goodwill in the practice pending the outcome of proceedings. An experienced firm of solicitors took possession of the practice and files and passed to other solicitors only those files requiring immediate action which the applicant herself was not able to take, which amounted to just over ten per cent of her files and the client and office accounts were frozen.

20. On or about 7 March 2005 the applicant sought case management directions. In particular, she sought directions for a speedy trial. The Law Society did not oppose the request. The applicant also sought, by way of interim relief, an order for the restoration of her practising certificate. However, the application was incompetent as it ought to have been made, in the first instance, to the Law Society itself (see paragraph 64 below).

21. On 9 March 2005 the application for case management directions came before the court, which made an order for an expedited trial. It also considered the arrangements put in place by the Law Society to mitigate the effect of the intervention pending the resolution of the applicant's challenge (see paragraph 19 above). The applicant did not challenge these arrangements.

22. The applicant subsequently applied to the Law Society under section 16(3) of the 1974 Act to have her practising certificate restored (see paragraph 64 below). The outcome of the application was that the Law Society granted the applicant a new practising certificate for 2004/2005 with conditions to protect her clients, namely that she did not act as sole principal, as a partner or as a salaried partner. She was therefore unable to resume the Ashley & Co. practice.

2. The proceedings before the High Court

23. The application for withdrawal of the intervention came before the High Court on 4 May 2005 and the trial lasted eight days. On 9 June 2005, Park J directed that the intervention be withdrawn, reserving his full judgment until 1 July 2005. Following Park J's notification of his decision on 9 June 2005, the intervention was ordered to be withdrawn by order of the same date. By order of 16 June 2005, all the conditions, apart from one preventing the applicant from seeking the payment of fees for probate work without the prior approval of the Law Society, were lifted from the applicant's practising certificate as of 16 June 2005.

24. In his subsequent written judgment, Park J explained that he had chosen to announce his decision before handing down judgment because every day which passed was potentially damaging to the applicant even if her application succeeded in the end. In short, Park J's reasons for ordering the withdrawal of the intervention were that he did not think that there was reason to suspect the applicant of dishonesty and that while he accepted that there had been some breaches of the Solicitors' Accounts Rules and other aspects of the firm's practice about which the Law Society could legitimately feel concern, he did not think that they were serious enough to merit intervention.

25. Park J noted that where a decision to intervene resulted in the vesting of practice monies in the Law Society, the delivery up of practice documents and the suspension of the solicitor's practising certificate, the consequences were very severe for the solicitor and, in the case of a sole practitioner like the applicant, it effectively meant the total destruction of the practice. However, he accepted that the powers accorded to the Law Society under the 1974 Act were both valuable and desirable to ensure public confidence in the honesty of solicitors and to ensure a quick and effective response in cases where there were grounds to suspect dishonesty on the part of a solicitor. He noted that it was possible, in the applicant's case, that the intervention action which the Law Society had already taken might already have done substantial damage to the practice of her firm, but considered that such a consequence might be a risk which had to be accepted in the wider interests of preserving public confidence in the solicitors' profession as a whole. However, he criticised the unexplained rejection by the Law Society of the applicant's solicitor request that she be

allowed to continue some limited practice under conditions (see paragraph 19 above).

26. Concerning the scope of the court's review under paragraphs 6(4) and 9(8) of Schedule 1 to the 1974 Act (see paragraphs 62-63 below), Park J considered that the jurisdiction of the court was not to be exercised on grounds analogous to judicial review. Accordingly, he was not required to limit his consideration of the application to the question whether the notice was one which no reasonable body in the position of the Law Society could have decided to serve but was able to decide himself whether the notice of intervention should be allowed to stand. In this respect, the Law Society's own view that the circumstances merited intervention was a relevant factor for consideration. Park J also emphasised that the relevant legislation referred to a "suspicion" of dishonesty and it was therefore not necessary for a positive finding of dishonesty to be made. Finally, the court was not limited to reviewing the evidence before the Law Society at the time when the decision was made to intervene but could consider the whole of the evidence, including incidents or discoveries post-intervention, in deciding whether to withdraw the intervention. In this regard, he noted:

> "...[the applicant] acknowledges that she had been deficient in providing explanations to the Law Society's officers in the course of the inquiries which preceded the decision to intervene. She can, however, put before me evidence which she failed to present to the Law Society at the earlier stage, and submit (as Mr Treverton-Jones has done on her behalf) that, even if the Law Society's Panel which decided to intervene could understandably have thought that there was reason to suspect dishonesty given the absence then of answers from her to questions about matters which had caused the Society's officers concern, the position now is different: I should, taking account of her evidence, conclude that there is no reason to suspect dishonesty in any respect which could rationally justify the drastic (and effectively terminal) step of intervention."

27. He then went on to consider the events which preceded the intervention. Regarding the letter of 10 December 2004, he noted that the letter requested comments on eight different alleged failures. In general they were categorised as failures to comply with particular provisions of the Solicitors' Practice Rules and with associated principles in the Guide to the Professional Conduct of Solicitors. He continued:

> "As far as I can see there is no reference to the Solicitors' Accounts Rules in it, nor do I find anything which could be regarded as an allegation of actual dishonesty on [the applicant's] part."

28. Similarly, Park J observed that he could not find any specific allegation of dishonesty in the letter of 23 December 2004 enclosing the FI Report.

29. Park J noted the absence of any details as to why the Panel had reached its conclusions and ordered the intervention, saying:

> "... In this particular case I consider that the absence of particulars causes considerable difficulty, especially as regards 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. In normal cases (which in my opinion this case is not) the absence of particulars in a Panel's finding of grounds to suspect dishonesty may not particularly matter, because the nature of the dishonesty and of the grounds of suspicion is perfectly obvious to anyone ... In all the earlier cases of interventions which I was shown the alleged dishonesty was clear for all to see. Similarly, in so far as the intervention may also have been founded on breaches of the Solicitors' Accounts Rules, the breaches were equally obvious, and almost always consisted of solicitors either not having client accounts at all ... or taking money off client account and using it for private purposes or for their own professional purposes (like reducing the office overdraft or paying the office rent) in circumstances where the taking of the money was prohibited ... Furthermore as far as I can ascertain, although the members of the Panel in Miss Sheikh's case presumably did know what sort of dishonesty they suspected and what their grounds for suspecting it were, nobody else in the Law Society knew. The Law Society officers [involved in the investigation and preparation of the FI Report] who gave evidence before me ... did not know ...

This has caused substantial difficulties in the case, and in my view has had an unfortunate effect on the nature of the proceedings. Miss Sheikh did not know any detail of what sort of dishonesty was being alleged against her, and in her first witness statement could do little more on this aspect of the case than to say that she utterly refuted any suggestion that there was reason to suspect dishonesty on her part. She has always accepted that she failed to reply to correspondence and that there have been some technical infringements of the Solicitors' Accounts Rules, but she denies any kind of dishonesty. Since she does not know what specific kind of dishonesty the Panel suspected, she has great difficulty in doing more than making a general denial. Her legal team in this case ... 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."

30. He noted that even the Law Society's legal team were unaware of the reasons for the Panel's suspicion of dishonesty and concluded:

"In the circumstances it seems to me that [counsel for the Law Society] have had to do the best they can to find in the extensive documentation in the case any features which, as it seems to them, might have given rise to a suspicion of dishonesty, to present them to me as giving rise to such a suspicion, and to cross-examine Miss Sheikh and Mr Sampat [an Ashley & Co. staff member] in a way which entails alleging dishonesty in numerous different respects."

31. He noted that the applicant's case had not come before the court quickly, and that it had not proceeded speedily. He continued:

"... I may be wrong, but I think that it was primarily the Law Society which had problems with an earlier commencement [of the trial]."

32. As to the breaches of the Solicitors' Accounts Rules, Park J noted that, unlike in virtually all other cases of interventions of which he was aware, there was no evidence that any client money had gone missing. Further, regarding the allegations of dishonesty, he observed that the applicant had been searchingly cross-examined for a little more than two

days and that she had not remotely struck him as the "dishonest, grasping, incompetent" implied by the Law Society's multiple attacks upon her.

33. Park J expressed doubt at the proposition by counsel for the Law Society that, once intervention had been commenced by the Law Society, the subsequent review by the High Court of whether to withdraw the intervention could take into consideration all matters relating to the solicitor's conduct, even those which, under the 1974 Act, did not justify intervention. He concluded:

> "... I accept that I should look at the evidence as it exists when the case is presented to me, and that I am not limited to considering only the materials which were before the Panel when, some months previously, it resolved to intervene ... Thus, if there is new evidence of the existence of reasons to suspect dishonesty or of breaches of the Solicitors' Accounts Rules, I can certainly take account of it. It is far from clear, however, that I should take account of new evidence (or for that matter old evidence) of alleged shortcomings on the part of Miss Sheikh which do not bear on any suspicion of dishonesty or on breaches of the Solicitors' Accounts Rules ... [A] Panel cannot resolve that a practice be intervened upon on the basis of a general opinion that the practice is unsatisfactory, and that it will be in the public interest for the Law Society to intervene. That being so, I am unconvinced that a general opinion of that nature should carry any substantial weight when it comes to deciding whether the court should order an intervention to be withdrawn. Suppose that it had appeared to the Panel that there was no reason to suspect dishonesty and that, although there had been breaches of the Solicitors' Accounts Rules, they were not themselves of the sort which could justify the drastic step of intervention. Could the Panel nevertheless have decided that the Law Society should intervene in Ashley & Co because there were other aspects of the firm's practice which the Panel considered to be unacceptable? I think not. Is it, therefore, any different at the stage when the court is considering whether an intervention should be withdrawn? Again, I think not ..."

34. Park J considered in some detail the matters raised in the FI Report. He concluded in relation to each that they were insufficiently serious to merit intervention. He further considered the matters raised by the Law Society as regards the applicant's alleged dishonesty and concluded that the evidence before him supported no such suspicion. He noted that some of the matters to which the Law Society referred might be relevant to any disciplinary proceedings which could be taken against the applicant, but were not relevant to the question of intervention. As to the failure of the applicant to respond to the Law Society's letters, Park J noted that the letters were very demanding and that the applicant was a busy sole practitioner with clients to look after and without much in the way of high grade supporting staff in her office. He considered that she would have been unable to deal with the letters in the detail which the Law Society required without neglecting her current clients and risking failing in her duty to them.

35. In relation to the pre-intervention material put before him, Park J concluded:

> "On the basis of matters as they stood before the intervention (and taking account of evidence which I had of such matters, whether the Panel had it or not), I believe that the intervention should be set aside."

36. He reviewed the events of 17 and 18 February and accepted the applicant's account that she had been unaware that an intervention would take place. He continued:

> "... To an extent her lack of awareness of what might happen was her own fault. I have described ... how she never even opened the parcel which had arrived at the office on 24 December 2004 and which contained, among other things, the Law Society's letter of 23 December. If she had opened the parcel and read that letter it would have put her clearly on notice that an intervention was a possibility."

37. In respect of post-intervention issues, the only matter considered to be of significance by Park J was the transfer, on the morning of the imposition of the intervention, of GBP 254,000 from the client account to the applicant's personal bank account (see paragraph 17 above). Park J found that the applicant was not aware, at the time when she instructed the transfer, that there had been an intervention. However, he accepted that she gave the instructions to her secretary because of a general feeling that she did not want the money to be in the client account when the Law Society arrived. He continued:

> "The more general point is that I cannot find it in me to condemn Miss Sheikh for wanting to get the money out of an Ashley & Co bank account before the Law Society arrived. She did not (in my view) know that the Law Society was coming to effect an intervention into her practice, but after the second telephone call from [her secretary] she apprehended that something of a serious nature was quite likely to happen, and she must have felt deep concern about what might happen to this large sum of money which she had borrowed personally only the day before. It must have been a desperate anxiety to her that, because the money had gone into an Ashley & Co bank account, it might become entangled with the problems which it seemed that she was going to have with the Law Society. Feelings of that nature would surely have been enhanced by the reflection that the money might be regarded as still really being hers and not as belonging to a client yet. She was of course under the erroneous impression that the money was being held in the firm's client account ... She did not realise that the money was in fact in the firm's office account, but I comment that it was not appropriately held there. The £254,000, if (as I suspect was correct) it did not yet belong to Red River but still belonged to Miss Sheikh , did not belong to her in her capacity as the sole proprietor of the practice. On 18 February the £254,000 did not really have anything to do with the practice. She had just borrowed it on a mortgage of her private house, and it was intended to be invested in a commercial project in which she ... would be participating as an investor and not in her solicitor capacity.
>
> In retrospect Miss Sheikh might have been better advised just to leave the money alone and wait fatalistically to find out what was going to happen to it, but I can well understand that it did not seem that way to her at the time. I repeat that I cannot find it in me to say that wanting to remove the money from (as she thought) the Ashley & Co client account was so objectionable a thing that I should leave in place an intervention upon her practice which otherwise I would direct to be withdrawn."

38. The applicant's remaining files and all monies from the client and the office accounts, plus interest, were subsequently returned to her. She resumed practice at Ashley & Co.

3. The proceedings before the Court of Appeal

39. On 5 April 2006 the Law Society was given permission to appeal to the Court of Appeal on three grounds: first, that Park J had inappropriately assessed whether the applicant had in fact been dishonest, rather than addressing whether the statutory test of suspicion of dishonesty had been met; second, that Park J had applied too high a threshold as regards whether the breaches of the Solicitors' Accounts Rules could justify an intervention; and third, that, in exercising his discretion as to whether to withdraw the intervention, Park J had wrongly failed to take into account other matters relating to the applicant's conduct which were not directly related to her alleged dishonesty and breaches of the Solicitors' Accounts Rules. The judgment granting leave noted that the Law Society was not minded to re-intervene in the applicant's practice at that time but was considering disciplinary proceedings against her. The appeal was heard between 3 and 5 July 2006.

40. On 23 November 2006, the Court of Appeal handed down its judgment. As regards the scope of the appeal proceedings, Chadwick LJ, giving judgment for the court, noted:

> "The Law Society has made it clear that, whatever the outcome of these appeals, it does not seek to re-intervene in [the applicant's] practice on the basis of the intervention notices served in February 2005. Its concern is that the findings of fact made by the judge – almost all of which it regards as wrong – present serious difficulties in relation to the exercise of its powers to impose conditions on [the applicant's] practising certificate. Put shortly, the Society fears that those findings of fact, if not reversed, make it impossible for it to impose the conditions on [the applicant's] practising certificate which it considers necessary for the protection of the public. It is concerned, also, that it may not be able to go behind those findings of fact in disciplinary proceedings against [the applicant] in which it may wish to allege actual dishonesty. And, further, the Society is concerned that the judge's approach to the issues which were before him in this case gives rise to uncertainty as to the proper scope of the summary procedure which Parliament must have intended should follow from an application to withdraw under paragraphs 6(4) and 9(8) of schedule 1 to the 1974 Act: uncertainty which, unless resolved, will lead to problems in future cases ..."

41. Chadwick LJ considered the various matters relied upon by the Law Society before the High Court as evidence that continued intervention was justified. As regards the allegations of breaches of the Solicitors' Accounts Rules, he reached different conclusions from Park J as to the honesty of the applicant in her dealings with the client account. In particular, he commented on the failure of Park J to deal with certain anomalies as regards the applicant's charging practice:

> "For my part, I find it surprising that the judge was able to attribute [certain aspects] of the Society's complaint ... to 'mistakes' and 'an error of judgment' without a more rigorous analysis of the material which had led the Society to take the view that those matters gave rise to suspicion of dishonesty. It is, I think, difficult to avoid the conclusion that he did so because he had already persuaded himself, from his observation of Miss Sheikh and [her employee] as witnesses, that they were not

> dishonest; so that matters which, objectively, were capable of giving rise to suspicion of dishonesty had to be explained in a way which avoided a finding of dishonesty ...”

42. He further highlighted the failure of Park J to explain why, in relation to one particular matter, he had rejected the Law Society’s submission that client funds had indeed gone missing contrary to his general finding that the applicant’s case did not involve missing client funds. Chadwick LJ pointed to various other aspects of the Law Society’s complaints concerning the applicant’s conduct in respect of client funds and charging which, in his view, had not been fully addressed by Park J. He referred to Park J’s observation that a client benefitted from clear protections, notably the possibility of requiring the solicitor to obtain a remuneration certificate from the Law Society where he considered that he was being overcharged by his solicitor, and that intervention was therefore not required in such circumstance. He concluded:

> “The Law Society submits that that is too narrow a view of the circumstances in which it may be appropriate to use its intervention powers. It points out that an honest solicitor should be endeavouring to charge no more than he (or she) believes is due ... I agree: *a fortiori* where the solicitor, as sole executor, is himself (or herself) the client [as in a number of the examples in the applicant’s case], it seems to me that evidence of persistent and deliberate overcharging in probate matters of that nature might well justify intervention on the basis of suspected dishonesty.”

43. As to the transfer of the GBP 254,000 (see paragraph 17 above), Chadwick LJ agreed with Park J that at the time she ordered the transfer, the applicant did not know of the intervention. However, like Park J, he found that she had, nonetheless, realised that the impending visit of Law Society officials was more serious that just another inspection. He concluded that in the circumstances, the applicant must have known that intervention was a real possibility, and that she had for that reason transferred the money. He further considered that there was no evidence to allow Park J to conclude whether beneficial ownership of the money remained with the applicant. In light of the instructions that she had given to her secretary, Chadwick LJ considered that she could not claim that she thought it was still her money. That the applicant had requested her secretary to sign the bank transfer form on her behalf was a clear attempt to deceive the bank. In the circumstances it was not difficult to understand why the Law Society took the view that the incident gave rise to particular concern as to the applicant’s fitness to carry on her practice. He noted:

> “... What took place is a significant demonstration of the way in which this solicitor was prepared to act in the face of what she must have seen as an impending (if not actual) crisis in her practice. She was prepared to act in a way which – as she must have appreciated and intended – involved a deception.”

44. Chadwick LJ disagreed with Park J’s approach to the question whether the intervention notices should be withdrawn. In his view, the correct approach was to look at the matter as a whole and in this regard, the

conduct of the solicitor at the time of, and immediately following, intervention could well affect the way in which pre-intervention conduct should be viewed. In the applicant's case, her conduct in relation to the GBP 254,000 demonstrated that she was willing to deceive and Park J ought to have asked himself whether his impression of her as a witness required re-evaluation in the light of her willingness to deceive in relation to that transfer.

45. Chadwick LJ referred to the distinction between an application to the court to withdraw the intervention (as in the present case) and a challenge to the use by the Law Society of its intervention powers:

> "Plainly, if there is a challenge to the exercise of the intervention powers, the court will need to ask itself whether the grounds under Part I of schedule 1 to the 1974 Act upon which the Society relied at the time of the resolution to intervene were made out on the basis of the information available (or, perhaps, reasonably available) to the Society at that time. If that question is answered in the negative, then (as it seems to me) the resolution under paragraph 6(1) is of no effect and notices served under paragraph 6(3) or 9(1) are 'fundamentally flawed' ... That is because the powers under Part II of schedule 1 are exercisable only in circumstances within Part I. So, if the Society is to exercise intervention powers in reliance on paragraph 1(1)(a), the Council must have reason to suspect dishonesty at the time when it passes the resolution under paragraph 6(1) or serves the notice under paragraph 9(1).
>
> Cases in which there is a challenge to the validity of the resolution under paragraph 6(1) or to the service of intervention notices are rare. Where the Society relies on paragraph 1(1)(a) of schedule 1, the solicitor may well find it impossible to contend that, on the material available to the Society at the time when the resolution was passed and the intervention notices served, the Society did not have reason to suspect dishonesty. That was the position in the present case. And it is pertinent to keep in mind that, in many cases (as in the present case), the Society will rely, in addition, on paragraph 1(1)(c) (breaches of the accounts rules) and will have given a notice under paragraph 1(2) – thereby providing an opportunity for challenge in advance of intervention. In such cases a challenge to the validity of the resolution under paragraph 1(1) or to the service of intervention notices on the grounds that the condition in sub-paragraph (a) was not met will serve little purpose: the Society will be able to rely (in relation to validity) on sub-paragraph (c). In such cases the solicitor will usually focus his (or her) submissions on seeking to persuade the court that, whether or not the Society had reason to suspect dishonesty on the material available to it at the time, the court should hold, on the basis of additional material deployed at the hearing of the application under paragraph 6(4), that suspicion of dishonesty has been dispelled. That, again, was the position in the present case.
>
> What is not open to doubt is that, absent a challenge to the validity of the resolution under paragraph 6(1) of schedule 1 or to the service of intervention notices, the single issue for the court on an application under paragraphs 6(4) or 9(8) is whether the notices should be withdrawn ..."

46. The sole issue for the court, therefore, in the present case being whether the intervention notices should be withdrawn, Chadwick LJ noted:

> "In addressing that question ... the court must, indeed, weigh the risks of re-instating the solicitor in his (or her) practice against the potentially catastrophic consequences to the solicitor (and the inconvenience, and perhaps real harm, to his or her existing

clients) if the intervention continues. In weighing the risks of re-instatement the court must have regard to the views of the Law Society as the professional body charged by statute with the regulation of solicitors ... and as the body whose members are obliged, through the compensation fund, to underwrite those ... In a case where the Society has taken, and continues to take, the view that there are reasons to suspect dishonesty on the part of the solicitor, the court may well need to address those reasons in the context of weighing the risks of re-instatement; although ... that will not always be the case. It is important to keep in mind that (in cases where there is no challenge to the validity of the resolution or to the service of the notices) there is no free-standing requirement for the court to decide whether there are grounds for suspecting dishonesty; *a fortiori*, no requirement for the court to decide whether the solicitor is or has been dishonest. The issue arises (if at all) in the context of deciding whether the intervention needs to continue."

47. Accordingly, all matters could be taken into account in reaching the decision whether to withdraw the intervention, including conduct falling outside the statutory grounds for its original imposition, such as the applicant's poor regulatory history and her failure to respond to proper requests for information from the Law Society. Chadwick LJ considered that Park J had erred in seeking to determine whether or not the applicant was dishonest as the question to be decided was simply whether the suspicion of dishonesty had been dispelled, and Chadwick LJ was satisfied that it had not, bearing in mind the serious inconsistencies between the applicant's oral evidence at the trial on the one hand and the answers which she had given at interview, the explanations in her witness statements and the documentary material on the other hand.

48. Finally, as regards the Law Society's criticism of Park J's approach to whether intervention should continue, Chadwick LJ found:

"... First, as it seems to me, past regulatory history is plainly relevant to a consideration whether it is realistic to think that future compliance can be enforced by regulatory powers short of intervention. The Society was entitled to take the view that the history of successful complaints in relation to Miss Sheikh's conduct of probate matters demonstrated that there could be no basis for confidence that (absent intervention) her practice in relation to such matters could be altered by tighter regulation.

Second, on an application under paragraph 6(4) of schedule 1, the court is required to have regard to all matters before it: it is not confined to the grounds which led to the exercise of the intervention powers ... As I have sought to explain, the court's task on an application under paragraph 6(4) of schedule 1 is not constrained by the statutory grounds on which the Society can exercise intervention powers.

Third, on an application under paragraph 6(4) which does not include a challenge to the validity of the resolution under paragraph 6(1) of schedule 1 to the 1974 Act or to the service of intervention notices, past 'misconduct' is relevant if, and only in so far as, it informs an assessment of future risk ... The question, in each particular case, is whether the experience of past conduct should lead to the conclusion that the risks of reinstatement are, or are not, acceptable."

49. The court made the limited orders sought by the Law Society regarding the lifting of limitations on its ability to impose conditions on the applicant's practising certificate.

50. Chadwick LJ also commented on the intervention procedure and the possibility to challenge an intervention. He noted that it was not in doubt that intervention in a solicitor's practice, without advance notice, was likely to have the most serious consequences for the solicitor. However, Parliament had provided the solicitor with a summary process by which the matter could be brought before the court and had imposed short time limits within which that process had to be commenced. He observed that in *Holder v. Law Society* (see paragraphs 69-74 below) the Court of Appeal had rejected an argument that the intervention procedure was incompatible with the solicitor's Convention rights, on the basis that the court's power to consider whether a fair balance had been struck between the demands of the general interest of the community and the protection of the individual's fundamental rights met the requirements of Article 1 of Protocol No. 1. However, he continued:

> "... it is clear that, unless the matter can be determined by the court within a short time of the intervention, the solicitor is likely to be denied an effective remedy. That is because the consequences of intervention – if the intervention continues for more than a short time – are likely to be irreversible. The solicitor's clients will have to take their affairs elsewhere; the staff will have found other employment; and the practice will be destroyed in any event."

51. He referred to Park J's criticism of the resolution of 17 February 2005 on the basis that it failed to disclose the reasons which had led the Panel to decide that intervention notices should be served, and noted:

> "... The true vice, in my view, is that the reasons which were disclosed – 'it was necessary to exercise powers of intervention in this case in view of the nature of the matters identified in the Forensic Investigations Report dated 22 November 2004' – were stated in so general and unspecific terms. Disclosure of reasons in those terms is calculated to make it difficult for the solicitor to know and address the real concerns which had led to the exercise of intervention powers. The Society should, I think, give thought to the need for Panel resolutions to identify, with much more specificity than in this case, the reasons which (in the Panel's view) make intervention necessary. If those reasons are not identified at an early stage, there is a danger that the solicitor will be denied the effective protection which Parliament plainly intended a summary process to provide.
>
> There will, of course, be many cases in which the solicitor who has suffered intervention will be in no doubt as to the Society's concerns. And, as I have said, there will be cases where the solicitor wishes to challenge the validity of the resolution on public law grounds. But, in cases where, although the solicitor knows what material was before the Panel, there is genuine doubt as to the matters which the Society regards as sufficiently serious to justify intervention, it seems to me that the court should be ready to assist – on an early application for directions following the issue of an application under the schedule 1 procedure – by requiring the Society to state the grounds upon which (on the material then known to it) the application will be resisted. Such a statement would enable the solicitor to address the Society's concerns in a

> focussed response. And, in the light of that response, the Society can explain to the court why it takes the view (if it does) that the concerns have not been met.
>
> I appreciate that the process suggested in the previous paragraph may require the court to adopt a more pro-active role on applications under schedule 1 to the 1974 Act than hitherto; and that the need for an early determination of such applications will place demands on the court's resources which it may be difficult to meet. But, as it seems to me, the court will be ready to meet those demands in order to ensure that the solicitor does obtain the effective protection which the Convention requires and which the 1974 Act was plainly intended to provide."

52. The applicant applied for leave to appeal to the House of Lords. In her petition for leave to appeal, she identified as a matter of general public importance requiring examination by the House of Lords the question whether the intervention provisions in the 1974 Act were compatible with the Convention. The House of Lords refused the applicant's request for leave to appeal on 22 May 2007.

53. On 14 March 2008 a second intervention was effected into the applicant's practice. Her High Court challenge in respect of that intervention was dismissed.

54. Disciplinary proceedings against the applicant before the Solicitors Disciplinary Tribunal followed. The case was heard on 5 May 2009 and on 29 June 2009 the findings of the tribunal resulted in the applicant being struck off as a solicitor.

B. Relevant domestic law and practice

1. The power of intervention

55. The Law Society is the governing body of the solicitors' profession. It has a regulatory function and regulatory powers under the Solicitors Act 1974. Under section 35 of the 1974 Act, the Law Society is given the power to intervene in a solicitor's practice in circumstances specified in Part I of Schedule 1 to the Act by exercising any or all of the powers set out in Part II of Schedule 1 to the Act.

56. Paragraph 1(1) of Part I to Schedule 1 of the Act provides that the Law Society may exercise its right of intervention *inter alia* where the Council of the Law Society have reason to suspect dishonesty on the part of a solicitor in connection with that solicitor's practice or in connection with any trust of which that solicitor is or formerly was a trustee; or where the Council are satisfied that a solicitor has failed to comply with the Solicitors' Practice Rules, the Solicitors' Accounts Rules or rules requiring solicitors to hold professional indemnity insurance.

57. Paragraph 1(2) provides that the intervention powers shall only be exercisable in cases concerning a suspected breach of the solicitors' rules if the Society has given the solicitor notice in writing that the Council are

satisfied that he has failed to comply with rules specified in the notice and that the intervention powers are accordingly exercisable in his case.

58. Part II of Schedule 1 sets out the powers available to the Law Society upon intervention. Under paragraph 6, the Law Society has the power to take control of the practice's accounts pursuant to a resolution passed by the Council.

59. Under paragraph 9, the Law Society has the power to take possession and control of the firm's documents.

60. Paragraph 10 allows the Law Society to intercept the firm's mail.

61. Finally, section 15 of the 1974 Act provides for the suspension of the solicitor's practice certificate in the event of an intervention.

2. The right to apply to the High Court

62. The 1974 Act allows an intervened-upon solicitor to apply to the High Court to request the withdrawal of an intervention. Under paragraph 6(4) of Schedule 1, a decision to take possession of the practice monies can be challenged within eight days of the service of the notice by application to the High Court for an order directing the Law Society to withdraw the notice, with not less than 48 hours' notice to the Law Society. Paragraph 6(5) provides that upon an application under paragraph 6(4), the Court may make such order as it thinks fit.

63. Under paragraph 9(8) and (9), a solicitor can, within eight days of receiving the notice that the Law Society has taken possession of the firm's documents and on not less than 48 hours' notice to the Law Society, apply to the High Court for an order directing that the documents be delivered to such person as the applicant may require. Paragraph 9(11) provides that upon an application, the Court may make such order as it thinks fit.

3. The right to apply for the reinstatement of the practising certificate

64. Under section 16(3), a solicitor may, at any time before the expiry of her practising certificate, apply to the Law Society to have the suspension of the certificate terminated. Under section 16(4), upon receipt of an application:

> "... the Society may in its discretion—
>
> (a) by order terminate the suspension either unconditionally or subject to such conditions as the Society may think fit; or
>
> (b) refuse the application."

65. If the Law Society refuses the application or terminates the suspension subject to conditions, the solicitor may appeal against the decision of the Society. At the relevant time, an appeal was to be made to the Master of the Rolls, who could, under section 16(5):

> "(a) affirm the decision; or

(b) terminate the suspension either unconditionally or subject to such conditions as he may think fit."

4. The Solicitors' Rules

66. The Solicitors' Accounts Rules govern the treatment of client and practice monies by solicitors. They set out a number of general principles, including that a solicitor must keep client money separate from money belonging to the solicitor or the practice; keep client money safe in a bank or building society account identifiable as a client account; establish and maintain proper accounting systems, and proper internal controls over those systems, to ensure compliance with the rules; keep proper accounting records to show accurately the position with regard to the money held for each client and each controlled trust; and account for interest on other people's money in accordance with the rules.

67. Detailed rules exist concerning bank accounts and require in particular that solicitors to keep at least one client account for the holding of money belonging to clients. They define the circumstances in which transfers can be made from the client account to cover payment of the solicitors' fees. The rules also provide that the client account must not be overdrawn and that interest must be allocated to monies held in client accounts. Finally, the rules impose strict accounting obligations on solicitors.

68. The Solicitors' Practice Rules are the principal set of rules governing the practice of solicitors in England and Wales.

5. Intervention and human rights

69. In the case of *Holder v. Law Society* ([2003] EWCA Civ 39) the Court of Appeal considered an appeal by the Law Society against the grant of permission by the High Court for an application for withdrawal of an intervention to go to trial on the basis that the intervention violated the claimant's rights under Article 1 of Protocol No. 1.

70. The Court of Appeal discussed the possibility of obtaining an injunction, noting:

> "16. Where necessary the procedure can operate very quickly. By way of illustration, we were referred to one case (*Wilson Smith v. Law Society*, 29th March 1999) where the Judge gave a temporary injunction by telephone on the day before the proposed intervention to enable the matter to be considered in Court the following morning. In another recent case to which I shall return (*Wright v. Law Society*, 4th September 2002), an interim injunction was granted to preserve the position pending the full hearing a few days later. The Judge recorded the speed with which all the parties had worked, including the submission of skeleton arguments by e-mail over the weekend."

71. In overturning the decision of the High Court and restoring the order of the Master to dismiss the claim, Carnwath LJ explained:

> "17. Before the judge it was submitted by Mr Engelman (appearing then as now for Mr Holder) that the intervention power, either generally or as applied in this case, infringed Mr Holder's right to 'peaceful enjoyment of his possessions' under article 1 of the First Protocol to the European Convention for the Protection of Human Rights and Fundamental Freedoms, as applied by the Human Rights Act 1998 ...
>
> ...
>
> "29. Mr Engelman referred to the principles laid down by the Strasbourg court for the application of the public interest test: 'the court must determine whether a fair balance was struck between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights' (*Sporrong and Lönnroth v Sweden* (1982) 5 EHRR 35 , 52, para 69); 'There must be a reasonable relationship of proportionality between the means employed and the aim sought to be realised by any measure depriving a person of his possessions': *Holy Monasteries v Greece* (1994) 20 EHRR 1 , 48, para 70. He submitted that if, as the judge found, the more draconian features of the intervention procedure were not 'necessary', the requirement of 'proportionality' was not satisfied."

72. He continued:

> "30. With respect to the submission, and to the judge, this approach ignores the 'all important' factor, when considering issues of proportionality, of the 'margin of appreciation or discretion' or 'area of judgment' allowed to the legislator and the decision-maker ... This aspect was not mentioned by the judge, although it was referred to in Mr Engelman's written submissions to him. [The judge] appears to have approached the matter on the basis that it was for the court to determine what was 'necessary' in the public interest, and in doing so to compare other possible procedures devised by the court. In my view, this was fundamentally wrong."

73. He concluded that the legislation itself and the approach taken by the Law Society and the courts in carrying out a balancing exercise was no different from the requirement in Article 1 of Protocol No. 1 that a fair balance be struck, noting:

> "31. In the present case, the 'margin' arises at two stages: first, the discretion allowed to the legislature in establishing the statutory regime, and, secondly, the discretion of the Law Society as the body entrusted with the decision in an individual case. (In the former case, the only remedy for exceeding the 'margin' may be a 'declaration of incompatibility' under the 1998 Act.) The intervention procedure, now contained in the Solicitors Act 1974, is long-established (dating back to 1941, in its earliest form), and has been reviewed by the court on many occasions. As appears from the cases to which I have referred, it has been recognised as 'draconian' in some respects, but necessary for the protection of the public interest; and the courts have repeatedly emphasised the 'balancing exercise' which it involves. I see no material difference between this and the 'fair balance' which article 1 requires ... I see no arguable grounds for thinking that the margin allowed to the legislature has been crossed, particularly having regard to the deference which is properly paid to an Act of Parliament, as compared to an administrative decision ...
>
> 32. Having reached that point, the Law Society's actions must be judged by reference to the procedure laid down by Parliament, not to some hypothetical alternative procedure ...
>
> 33. The Law Society also has a 'margin of discretion', but the court has a separate duty to consider the merits of the case, in accordance with the principles I have

> discussed, while paying due regard... to the views of the Law Society, as the relevant professional body. As I have said, this meets any 'fair balance' requirement ..."

74. Sir Christopher Staughton agreed that the appeal should be allowed, adding:

> "38. In the exercise of its powers of intervention the Law Society must of course comply with the Human Rights Convention. I can imagine circumstances where the Law Society might be found not to have complied with the Convention, or with the Human Rights Act 1998. After all, a solicitor whose practice is the object of an intervention loses his practising certificate, and in all probability his livelihood as well. The provisions for bringing an intervention to an end are very unlikely to restore the solicitor's goodwill and his prosperity. If it comes about that the intervention was mistaken or unjustified, there is a risk that the solicitor will suffer a substantial loss without recourse to any remedy. In practice this may never happen; but it is a cause for concern. However, not in this case."

COMPLAINTS

The applicant complained under Article 6 § 1 of the Convention that she did not receive a fair hearing in that: (i) she was not given the opportunity to respond to the allegations against her before a decision to intervene was taken; and (ii) she was not advised of the Law Society's reasons for intervention. She further contended that the proceedings were subject to unreasonable delay between 25 February 2005, the date on which she lodged her High Court application, and 9 June 2005, when judgment was handed down in her favour.

She also complained under Article 1 of Protocol No. 1 of the Convention that there had been an unjustifiable interference with her right to the peaceful enjoyment of her possessions.

Finally, she complained of a violation of Article 13 of the Convention on the ground that, as a result of the delay, she was deprived of an effective remedy in respect of the intervention by the Law Society into her practice.

THE LAW

75. The Government argued that the applicant's complaints should be declared inadmissible for failure to exhaust domestic remedies, emphasising the subsidiary nature of the Court's role and the importance of encouraging applicants to seek redress through options available to them at national level. They set out the remedies available to solicitors who were the subject of an intervention, which fell under four heads.

76. First, they explained that notice of the resolutions to intervene in a practice were generally served on a solicitor the day before the intervention

was scheduled to commence; the applicant's case was no exception (see paragraph 15 above). A solicitor therefore had the opportunity to apply to the court on an urgent basis for an interim injunction to prevent the intervention being effected, or to prevent steps being taken to continue with the intervention (see paragraph 70 above). The Government emphasised that the possibility of applying for an injunction meant that a solicitor was in a position to have a hearing and a review of the exercise of the intervention powers by a judge before the intervention was ever effected or before any real damage had been done to a law practice. Even where an intervention had started, it could be halted pending consideration of the challenge to the exercise of intervention powers. However, the applicant had failed to apply for an interim injunction to prevent the intervention from proceeding (see paragraph 36 above).

77. Second, the 1974 Act set out statutory remedies for a solicitor subject to an intervention. The exercise of the Law Society's power to take control of practice monies and to take possession of the firm's documents could be challenged by way of an application to the High Court within eight days of the service of the relevant notice for an order directing that the notice be withdrawn (see paragraphs 62-63 above). Such challenges were governed by the expedited procedure in the Civil Procedure Rules intended to ensure that they were resolved speedily. One of the issues for the High Court in deciding any challenge was whether a balancing of the relevant interests meant that the intervention notice should be withdrawn. Significantly, the High Court had full jurisdiction to rule on the merits of both the exercise of the intervention powers and the continuation of the intervention, and approached the matter afresh, not bound by the original decision or reasons. If it found that the grounds for intervention had not been established or considered that the balance of interests had not been correctly struck, the High Court had the power to order the withdrawal of the intervention notices or to make such other orders as it thought fit.

78. Although the applicant had duly challenged the intervention notices in her case, the Government pointed out that she had failed to rely expressly on her Convention rights in the context of the domestic proceedings. While she made Convention-based submissions to the House of Lords in her petition for leave to appeal (see paragraph 52 above), the Government considered this to be far too late a stage to raise such complaints. They emphasised that the House of Lords would not have been entitled to entertain new grounds of appeal not aired in the courts below. Specifically as regards the length of the proceedings for challenging the intervention notices in the applicant's case, the Government emphasised that she had made no attempt to rely on the reasonable time requirement in Article 6 § 1 in order to expedite the domestic proceedings, or as grounds for terminating the intervention, or to mount a separate claim against the Law Society. The Government further noted that while Park J appeared to believe the delay in

trial to be due to the Law Society (see paragraph 31 above), this was wrong and no delay was in fact caused by the Law Society or by the court. As regards her complaint about the intervention procedure, the Government argued that the applicant ought to have made a specific complaint based on Article 6 and Article 1 of Protocol No. 1 before the High Court in order to allow evidence to be heard on the various issues it raised. Alternatively, she could have commenced separate proceedings alleging a breach of Article 6 and Article 1 of Protocol No. 1 and seeking damages for any losses incurred.

79. Third, the Government pointed out that once a High Court challenge had been commenced, it was open to the solicitor concerned to apply for interim relief pending the outcome of the challenge, including by way of an application for directions regarding the conduct of proceedings. In the present case, although the applicant applied for interim relief by way of restoration of her practising certificate and for an expedited trial (see paragraph 20 above), she did not apply for any other form of interim relief. However, as the Court of Appeal noted, it was possible for a solicitor to apply for a direction that the Law Society state the grounds upon which a challenge to an intervention would be resisted (see paragraph 51 above). Further, the Government pointed out that temporary arrangements were put in place to protect the applicant's goodwill and there was no evidence to suggest that her practice was irretrievably or even seriously damaged by the intervention (see paragraphs 19 and 38 above). The applicant did not challenge the arrangements made (see paragraph 21 above).

80. Fourth, pursuant to section 16(3) of the 1974 Act a solicitor had the right to apply for the reinstatement of her practising certificate (see paragraph 64 above). The process was intended to be speedy and in most cases the right to practise was restored subject to conditions to protect clients. The applicant invoked this procedure and her practising certificate was restored subject to conditions (see paragraph 22 above). The whole process was completed in less than four weeks. Although the 1974 Act allowed a decision of the Law Society regarding restoration of the practising certificate to be appealed to the Master (see paragraph 65 above), the applicant did not exercise her right to appeal to challenge the conditions attached to her practising certificate. Nor did she seek to practise with another law firm to enable her to continue working in compliance with the conditions attached to her practising certificate.

81. The Government accordingly invited the Court to declare the application inadmissible pursuant to Article 35 §§ 1 and 4 for failure to exhaust domestic remedies.

82. Article 35 § 1 of the Convention stipulates:

> "The Court may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law, and within a period of six months from the date on which the final decision was taken."

83. The Court reiterates that it is incumbent on the respondent Government claiming non-exhaustion to satisfy the Court that the remedies proposed were effective and available in theory and in practice at the relevant time, that is to say that they were accessible, were capable of providing redress in respect of the applicant's complaints and offered reasonable prospects of success (see *Akdivar and Others v. Turkey*, 16 September 1996, § 68, *Reports of Judgments and Decisions* 1996-IV; *Mooren v. Germany* [GC], no. 11364/03, § 118, ECHR 2009-...; and *Greens and M.T. v. the United Kingdom*, nos. 60041/08 and 60054/08, § 66, ECHR 2010-... (extracts)).

84. In assessing whether an applicant has complied with Article 35 § 1, it is also important to recall that the requirements contained in that Article concerning the exhaustion of domestic remedies and the six-month period are closely interrelated (see *Galstyan v. Armenia*, no. 26986/03, § 39, 15 November 2007; and *Williams v. the United Kingdom* (dec.) no. 32567/06, 17 February 2009). Thus where no effective remedy is available to an applicant, the time-limit expires six months after the date of the acts or measures about which he complains, or after the date of knowledge of that act or its effect or prejudice on the applicant (see *Younger v. the United Kingdom* (dec.), no. 57420/00, ECHR 2003-I; and *Varnava and Others v. Turkey* [GC], nos. 16064/90, 16065/90, 16066/90, 16068/90, 16069/90, 16070/90, 16071/90, 16072/90 and 16073/90, § 157, ECHR 2009-...; and *Tucka v. the United Kingdom (No. 1)* (dec), no. 34586/10, 18 January 2010). In this regard, the Court points out that it is not open to it to set aside the application of the six-month rule solely because a respondent Government have not made an objection based on that rule (see *Walker v. the United Kingdom* (dec.), no. 34979/97, ECHR 2000-I; *Blečić v. Croatia* [GC], no. 59532/00, § 68, ECHR 2006-III; and *Toner v. the United Kingdom* (dec.), no. 8195/08, § 27, 15 February 2011).

85. The Court observes that the applicant's complaints to this Court concerning the length of the proceedings before the High Court were directed at that court's delay in reviewing the intervention effected into her practice. She argued that by the time the case had been heard, and the order for the lifting of the intervention made on 9 June 2005 (see paragraph 23 above), significant damage had already been done. The Court emphasises that the applicant did not make any complaint about the delay in the subsequent appeal proceedings to the Court of Appeal, as by that stage the intervention had been withdrawn.

86. In the Court's view, any damage caused by the alleged delay in the proceedings before Park J in the High Court ceased with the conclusion of those proceedings and his order that the intervention be lifted. Accordingly, on 9 June 2005, the six-month period began to run for the purposes of Article 35 § 1 in respect of complaints regarding the alleged unreasonable delay in the proceedings, unless there were effective domestic remedies

which the applicant could have pursued. In the present case, several possible remedies were proposed by the Government, including the possibility of lodging a separate claim alleging a breach of Article 6 § 1 of the Convention (see paragraph 78 above). However, the applicant pursued no remedies in respect of her length complaint. She lodged her application with this Court on 20 November 2007, over two years and five months after Park J's order lifting the intervention.

87. In the circumstances the Court considers it unnecessary to examine whether the applicant exhausted any effective domestic remedies in respect of her delay complaints as, even if the Court were to dismiss the Government's objection of non-exhaustion, her complaint would in any case be declared inadmissible as having been lodged out of time. Accordingly, the applicant's complaints under Article 6 § 1 and Article 13 concerning the length of the proceedings before the High Court and the availability of remedies are rejected pursuant to Article 35 §§ 1 and 4 of the Convention.

88. As regards the applicant's complaints under Article 6 § 1 that she did not have the opportunity to respond to the allegations against her and that she was not informed in sufficient detail of the reasons for the intervention, the Court makes the following observations. First, the Law Society initially contacted the applicant in February 2004 in respect of concerns regarding her law practice (see paragraph 3 above). In the subsequent five months, they made several visits to Ashley & Co.'s premises and sought additional information from the applicant (see paragraph 4 above). It is noteworthy that although she cooperated with the representatives attending her premises, she failed to respond to any of the letters (see paragraph 4 above). Second, after a lengthy investigation period, the Law Society advised the applicant by letter dated 10 December 2004 of allegations of professional failures, and she was asked to respond by 4 January 2005 (see paragraph 6 above). Although she was reminded that she had a professional obligation to reply, she failed to do so (see paragraph 7 above). Third, by letter dated 23 December 2004, a copy of the detailed FI report and relevant supporting documentation were sent to the applicant and she was advised by telephone call the same day of their pending arrival (see paragraphs 8-9 above). She was invited to comment by 10 January 2005. Not only did she fail to make any reply by the deadline but she failed even to open the parcel of papers which arrived at her office (see paragraph 9 above). Indeed, by the time the intervention commenced on 18 February 2005, she had yet to open the parcel (see paragraph 18 above).

89. In these circumstances, the Court is satisfied that the applicant was given ample opportunity to respond to the allegations against her and is not persuaded that her ignorance of the reasons for the intervention can be attributed to a failure of the Law Society to provide her with information in this regard. Her consistent failure to reply to requests from the Law Society

for further information or for her response to allegations made denied her an opportunity to present her side of the case to the Law Society and to dispel concerns regarding her professional conduct. It further denied her the opportunity to request in her turn further information from the Law Society as to the nature of the allegations against her, had such information proved necessary. Like Park J, the Court is of the view that, in light of her failure even to open the papers sent to her on 23 December 2004 and to review the supporting documentation in order to apprise herself of the case against her, her lack of awareness of the allegations and of the seriousness of the situation was her own fault (see paragraph 36 above). The Court observes in this regard that, had she opened the Law Society's letter, she would have realised that intervention was a possibility and could have sought timely legal advice as to her available remedies (see paragraph 8 above).

90. The Court further observes that, following the commencement of the intervention and the lodging of her challenge in the High Court, the applicant could have applied for an interim order requiring the Law Society to state the grounds on which the application to withdraw the intervention was resisted if she considered that the reasons given were inadequately explained (see paragraphs 51 and 79 above). However, she failed to do so. She could also have sought an interim injunction arguing, *inter alia*, that the violations of her Article 6 § 1 rights in the procedure which preceded the ordering of the intervention rendered the intervention unlawful (see paragraphs 70 and 76 above). Again, she took no such action.

91. The Court accordingly concludes that the applicant failed to exhaust domestic remedies in respect of her Article 6 § 1 complaints regarding the intervention procedure. The complaints must therefore be rejected pursuant to Article 35 §§ 1 and 4 of the Convention.

92. Finally, the applicant complained under Article 1 of Protocol No. 1 about the interference in her legal practice caused by the intervention. The Court reiterates that the interference itself ceased on 9 June 2005 with the withdrawal of the intervention. Further, the Law Society confirmed in the subsequent proceedings before the Court of Appeal that it did not intend to reinstate the intervention in the event of a successful appeal (see paragraph 39 above).

93. In so far as the applicant complains under Article 1 of Protocol No. 1 about the intervention procedure, the Court reiterates its findings in respect of her complaints under Article 6 § 1 above (see paragraphs 88-90 above). It emphasises the applicant's responsibility for her failure to engage with the Law Society as requested in the period leading to the intervention and her failure to take steps to obtain an interim injunction or other interim relief.

94. As regards the applicant's substantive complaint of an unjustified interference with her practice, the Court observes at the outset that the applicant did not raise her Convention arguments in the context of the domestic proceedings. Although she appears to have sought to rely on her

Convention rights in her petition for leave to appeal to the House of Lords, as the Government have pointed out, the House of Lords was unable to consider new arguments not aired in the courts below (see paragraph 78 above). The applicant further failed to commence any separate proceedings to seek damages for the alleged breach of Article 1 of Protocol No. 1 (see paragraph 78 above). The Court is satisfied that the remedies proposed by the Government were effective and available in theory and in practice, and offered reasonable prospects of success. In this regard, the Court observes that in the prior case of *Holder v. the Law Society*, an argument based on Article 1 of Protocol No. 1 was raised and was examined by the domestic courts (see paragraphs 69-74 above).

95. In the circumstances, the applicant has also failed to exhaust domestic remedies in respect of her complaints under Article 1 of Protocol No. 1. They are therefore rejected pursuant to Article 35 §§ 1 and 4 of the Convention.

For these reasons, the Court unanimously

Declares the application inadmissible.

Fatoş Aracı Deputy Registrar	Lech Garlicki President