Neutral Citation Number: [2006] EWCA Civ 1577

Case Nos A3/2005/2073
A3/2006/1497

IN THE SUPREME COURT OF JUDICATURE
COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE
CHANCERY DIVISION
(MR JUSTICE PARK)
HC05C00441

Royal Courts of Justice
Strand, London, WC2A 2LL

23rd November 2006

B e f o r e :

LORD JUSTICE CHADWICK
LORD JUSTICE TUCKEY
LORD JUSTICE MOORE-BICK

Between:

ANAL SHEIKH	**Claimant/ Respondent**
- and -	
THE LAW SOCIETY OF ENGLAND AND WALES	**Defendant/Appellant**

(Transcript of the Handed Down Judgment of
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Official Shorthand Writers to the Court)

Mr Timothy Dutton QC and Mr Andrew Peebles (instructed by Russell-Cooke Solicitors of 2 Putney Hill, London SW15 6AB) for the Appellant
Mr Gregory Treverton-Jones QC (instructed by Radcliffes Le Brasseur of 5 Great College Street, London SW1P 3SJ)) for the Respondent

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HTML VERSION OF JUDGMENT

Lord Justice Chadwick :

1. These two appeals are from orders made by Mr Justice Park in proceedings brought against by Miss Anal Sheikh, a solicitor, against the appellant, The Law Society of England and Wales ("the Law Society" or "the Society"), following the intervention in her practice under Part II of schedule 1 to the Solicitors Act 1974.

The underlying facts

2. From 1993 or thereabouts Miss Sheikh carried on practice as a sole practitioner under the name Ashley & Co. The judge described her practice, at paragraph [27] of his judgment, [2004] EWHC 1409 (Ch), in these terms:

> ". . . The office is in Willesden. Miss Sheikh describes herself as a general practitioner. The largest part of the practice is litigation, and she has done a lot of work where her clients have been legally aided or, since the Access to Justice Act 1999, supported by community funding from the Legal Services Commission. She has also undertaken probate and administration of estates work, sometimes herself being an executrix or administratrix of an estate where the legal work is done by Ashley & Co."

She had no qualified assistant; but she employed a part time bookkeeper, Mr Sampat, and two part time secretaries.

3. In February 2004 the Law Society decided to exercise its powers of investigation into Miss Sheikh's practice. The reason for that decision has not been disclosed. The judge was prepared to speculate that it may have been prompted by a number of complaints which the Society had received "most of which had been upheld". An inspection was carried out by, amongst others, Mr Shaw, an accountant and a senior investigator with Forensic Investigations, a department within the Society's Compliance Directorate concerned, in particular, with matters arising in connection with the Solicitors Accounts Rules. In the course of the investigation detailed questions were put to Miss Sheikh in six lengthy letters. The writer of those letters was Miss Kirsten Patrick, an officer in Multiple Complaints Investigation, another department within the Compliance Directorate. Miss Sheikh did not reply to any of those letters.

4. Following investigation Mr Shaw and Miss Patrick prepared a report, to which the judge referred as "the FI Report". Appendix II to the FI Report was a report to the Society from Mr Shelley, a Fellow of the Association of Law Costs Draftsmen, on the level of charges made by Ashley & Co in six probate matters. In accordance with what the judge was told was normal Law Society practice, the FI Report took the form of a letter from Mr Calvert, Head of Forensic Investigations, to Mr Middleton, Head of Investigation and Enforcement in the Compliance Directorate. The letter is dated 22 November 2004. No copy of the report was, at that stage, sent to Miss Sheikh.

5. On 10 December 2004 Miss Patrick wrote to Miss Sheikh. She set out – at length and in detail over 19 pages – allegations of professional failure which were made against Miss Sheikh; and she requested her comments by 4 January 2005. Miss Sheikh did not reply to that letter by the date specified or at all.

6. On 23 December 2004 the Society wrote again to Miss Sheikh. That letter enclosed a copy of the FI Report. It informed her that the Society was satisfied that she was in breach of certain of the Solicitors' Accounts Rules (specifying the rules of which she was said to be in breach) and that intervention powers under Part II of schedule 1 to the 1974 Act had become exercisable. Miss Sheikh was invited to comment on the report by 10 January 2005. She did not do so.

7. Miss Sheikh did not respond to the Society's letter of 23 December 2004, or comment on the FI Report, because she did not read them. The circumstances are described by the judge at paragraph [37] of his judgment:

> "Miss Sheikh's evidence was that on the evening of 23 December 2004 . . . she received at home a telephone call from a caseworker at the Law Society . . . . Sarah Bartlett informed Miss Sheikh that the next day there would be a large and important parcel waiting for her at the office; she should be sure to collect it and read it in order to reply by 10 January. Miss Sheikh was going away on holiday with her mother to India on 24 December, the next day . . . She . . . asked for an extension of time. She was told that no extension could be given. She went to India with her mother without collecting the parcel. . . . When she returned to this country the Law Society parcel was waiting for her, but she admitted that she could never bring herself round to opening it. '*The package was obviously there waiting for me. I am ashamed to say that I did not look at it. I had a lot of mail there. I did not deal with it for one reason: I knew I could not deal with it'.* She did not know what was in it, but expected that it would be full of detailed accounting materials as respects which she would need to engage someone else to deal with them because she could not deal with them herself. She was concerned about her ability to look after her current clients. 'I *knew, had I attended to this, other clients would be in very serious problems.'* She admitted that she had not even opened the parcel by the time of the intervention on 17 and 18 February. 'I *am ashamed to say that I was on the point of instructing a solicitor, but I had not. It was there. I knew I had to deal with it, but I had not. I had not …* I *believed that I knew what was in them, which was a lot of accounting stuff, but I am sorry to say I had not*'"

8. The question whether any, and if so what, steps should be taken by the Society under its statutory powers in the light of the FI Report was referred to an Adjudication Panel of the Compliance Directorate. The panel were to meet on 17 February 2005. In advance of that meeting the caseworker, Miss Sarah Bartlett, prepared notes for their assistance. Those included the following recommendation:

> "The office's recommendation, as at the date of preparation of this Report, is that it is not necessary to intervene, on the basis that the public will be adequately protected by the imposition of stringent immediate conditions on Miss Sheikh's practising certificate. However, the matter is finely balanced . . ."

9. The panel did not accept that recommendation. On 17 February 2005 they expressed themselves satisfied that grounds for intervention existed under Part I of schedule 1 to the Solicitors Act 1974 and resolved that intervention powers under Part II of that schedule should be exercised. The panel reached that conclusion for reasons which are set out, succinctly, in the following terms:

> "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."

A copy of the resolution to intervene was sent to Miss Sheikh, by fax, on the afternoon of 17 February 2005. The Society, through its agents, Russell-Cooke, took control of her practice on the following day. The effect of the intervention was to suspend Miss Sheikh's practising certificate.

The Law Society's powers to intervene in a solicitor's practice

10. Section 35 of the Solicitors Act 1974 provides that the powers conferred by Part II of schedule 1 to that Act are exercisable in the circumstances specified in Part I of that schedule. Paragraph 1(1)(a) enables the powers to be exercised where "the Council have reason to suspect dishonesty on the part of – (i) a solicitor . . ." Paragraph 1(1)(c) enables the powers to be exercised where "the Council are satisfied that a solicitor has failed to comply with rules made by virtue of section 31, 32 or 37(2) [of the Act]". Those rules include the Solicitors Accounts Rules 1998, made under section 32 of the Act. In the latter case (but not in the former) the powers are not to be exercised unless the Society has given to the solicitor notice that it is satisfied that he has failed to comply with the Accounts Rules (specifying the rules in breach) and that the Part II powers have become exercisable. As I have said, that notice had been given on 23 December 2004. In taking its decision to intervene on 17 February 2005, the panel relied upon both paragraph 1(1)(a)(i) and paragraph 1(1)(c) of Part I, schedule 1.

11. Paragraph 6, in Part II of schedule 1 to the 1974 Act, is in these terms, so far as material:

> "(1) . . . if the Council pass a resolution to the effect that any sums of money to which this paragraph applies, and the right to recover or receive them, shall vest in the Society, all such sums shall vest accordingly . . . and shall be held by the Society on trust to exercise in relation to them the powers conferred by this Part of this Schedule and subject thereto upon trust for the persons beneficially entitled to them.
> (2) This paragraph applies -
> > (a) where the powers conferred by this paragraph are exercisable by virtue of paragraph 1, to all sums of money held by or on behalf of the solicitor or his firm in connection with his practice or with any trust of which he is or formerly was a trustee;
> > . . .
>
> (3) The Society shall serve on the solicitor or his firm and on any other person having possession of sums of money to which this paragraph applies a certified copy of the Council's resolution and a notice prohibiting the payment out of any such sums of money.
> (4) Within 8 days of the service of a notice under subparagraph (3), the person on whom it was served, on giving not less than 48 hours' notice in writing to the Society . . . , may apply to the High Court for an order directing the Society to withdraw the notice.
> (5) If the court makes such an order, it shall have power also to make such other order with respect to the matter as it may think fit.
> . . . "

12. Paragraph 9 provides for the production and delivery of documents:

> "(1) The Society may give notice to the solicitor or his firm requiring the production or delivery to any person appointed by the Society at a time and place to be fixed by the Society –

(a) where the powers conferred by this Part of this Schedule are exercisable by virtue of paragraph 1, of all documents in the possession of the solicitor or his firm in connection with his practice or any controlled trust;
. . .
. . .
(7) The Society, on taking possession of any document under this paragraph, shall serve upon the solicitor . . . a notice that possession has been taken on the date specified in the notice.
(8) Subject to subparagraph (9) a person upon whom a notice under subparagraph (7) is served, on giving not less than 48 hours' notice to the Society . . . may apply to the High Court for an order directing the Society to deliver the documents to such person as the applicant may require.
(9) A notice under subparagraph (8) shall be given within 8 days of the service of the Society's notice under subparagraph (7)."

13. In a case where the powers to intervene become exercisable by virtue of paragraph 1 of schedule 1 to the Act, the exercise of powers under paragraphs 6(1) and 9(1) of the schedule has the effect of divesting the solicitor of control over practice monies (whether held on client account or on office account) and of the documents which he or she would need in order to carry on practice. The severity of those consequences is underlined by section 15(1A) of the Act, introduced by an amendment made in the Courts and Legal Services Act 1990. The section is in these terms, so far as material:

> "Where the power conferred by paragraph 6(1) or 9(1) of Schedule 1 has been exercised in relation to a solicitor by virtue of paragraph 1(1)(a)(i) [reason to suspect dishonesty], [or] (c) (so far as it applies to rules made by virtue of section 32 [the Solicitors' Account Rules]) . . . of that Schedule, the exercise of that power shall operate immediately to suspend any practising certificate of that solicitor for the time being in force."

14. The consequences of intervention were described by Mr Justice Sedley, sitting in this Court in *Giles v Law Society* (1995) 8 Admin LR 105, 118C, as "undoubtedly drastic and potentially terminal" for a solicitor's practice. Lord Justice Ward (*ibid*, 116E) referred to intervention as a "Draconian remedy" capable of striking "a mortal blow to the particular practice". But there can be no doubt that Parliament was well aware of the consequences which the exercise of intervention powers would be likely to have for the individual solicitor, both when it enacted the 1974 Act and when it reinforced those consequences in 1990.

15. As I pointed out in *Sritharan v Law Society* [2005] EWCA Civ 476, [17] and [18]; [2005] 1 WLR 2708, 2714*A-D*, the origin of the power to intervene on reasonable suspicion is found in paragraph 4(1) of schedule I to the Solicitors Act 1941. It is clear that the power was thought to be a necessary adjunct to the requirement, imposed on the Law Society by section 2 of that Act, that a compensation fund be maintained and administered for the purpose of enabling the Society to compensate persons who had suffered loss by reason of the dishonesty of its members. I observed that it was important not to lose sight of that link:

> ". . . It is the power to intervene on suspicion of dishonesty which enables the society to exercise control over those solicitors whose conduct might give rise to claims against the compensation fund; claims which, ultimately, have to be met by the profession as a whole."

In *Buckley v The Law Society (No 2)* [1984] 1WLR 1101, 1105-6, Sir Robert Megarry, Vice-Chancellor, explained that there was, in addition, a wider public interest:

> ". . . Statute has put The Law Society in a special position in relation to solicitors generally. The society has many important powers which are exercisable in the public

> interest. In many ways the society is the guardian not only of the profession but also of the public in its relation with solicitors. The powers of intervention conferred by Schedule 1 are plainly powers that are intended to enable the society to nip in the bud, so far as possible, cases of dishonesty by solicitors. The power to act on suspicion is a strong power, and there must often be a real element of risk in its exercise. But the decision of Parliament that the society is to have power to act on suspicion necessarily involves a decision that the society is to take whatever risks are involved in so acting; and those include risks both to the society and to the solicitors concerned."

These proceedings

16. Miss Sheikh commenced these proceedings on 25 February 2005 – within the period limited by paragraphs 6(4) and 9(9) of schedule 1 to the 1974 Act – by the issue of a claim form under CPR Pt 8. She sought orders under paragraphs 6(4) and 9(8) of that schedule directing the Society to withdraw its intervention notices and such further or other orders as the court might think fit.

17. The application was supported by her witness statement dated 25 February 2005. Although Miss Sheikh refuted – in the strongest terms – any suggestion that there was, in fact, a basis for suspecting her of dishonesty, she did not contend that it was not open to the Society to take the view, on the material in the FI Report, that the condition in paragraph 1(1)(a)(i) of schedule 1 to the 1974 Act was met. She accepted – realistically, as it seems to me – that "Underpinning the atmosphere of suspicion is, to a very large extent, the fact (in hindsight, the awful fact) that I entirely failed to respond to the Law Society's requests for explanations in relation to the matters set out in the Forensic Investigations Report." Her position was that the explanations in relation to those matters which she went on to give in her statement would enable the court to conclude that whatever suspicion might have been raised by her earlier failure to respond had been dispelled. She accepted that there had been breaches of the Solicitors Accounts Rules; but asserted that those breaches were not indicative of dishonesty. At paragraph 46 she said this:

> "Even though the ground [under paragraph 1(1)(c) of schedule 1] is made out, the decision to intervene should only be made after carefully carrying out a balancing exercise between the need to protect the public and the inevitably very serious consequences to the solicitor if the intervention takes place. This balancing exercise is required even where it is established that there are grounds for suspecting dishonesty. The decision to intervene should, I suggest, be made with even more circumspection in cases, such as mine, where there is no reason to suspect dishonesty."

If, in that final sentence, Miss Sheikh intended to assert that, at the time the decision to intervene was taken by the Society on 17 February 2005, there was no reason to suspect dishonesty *on the material then available to the Society* and in the light of her failure to respond to requests for explanations of the matters set out in the FI Report, her assertion cannot be reconciled with the concession to which I have referred. If she intended to assert no more than that, in the light of the explanations given in the witness statement, there was no longer any reason to suspect dishonesty and that the need for continuing intervention should be addressed on that basis, then (if the premise were established) the point is well made – as, I think, the Society accepts.

18. On or about 7 March 2005 Miss Sheikh sought case management directions in relation to the proceedings which she had commenced. In particular, she sought directions for a speedy trial. She sought, also, by way of interim relief, an order for the restoration of her practising certificate. The Law Society's response to that application was set out in a witness statement

made on 8 March 2005 by Mr Robin Penson, manager of the Intervention and Disciplinary Unit within the Compliance Directorate:

> "6. The Society has no objection to directions being given for an expedited hearing of the substantive claim and for consequential directions in relation to the filing of evidence to facilitate that. The Law Society recognises that if the relief sought by the Claimant is to be effective, the hearing must come on as quickly as possible.
> 7. The Society does however object to the Claimants Application for the return of her Practising Certificate, by the mechanism proposed.
> 8. The Claimants application for the restoration of her Practising Certificate does not state on what basis or under what authority that application is being made. The Solicitors Act sets out an entire regime for the granting, renewal and suspension of Practising Certificates. Broadly, the mechanism to be adopted is that the Claimant applies first to the Law Society under section 16 and if she is not granted a practising certificate or is unhappy with the terms of any approval then an appeal lies to the Master of the Rolls. The Claimant has not applied to the Society for the return of her Practising Certificate."

The provisions of the 1974 Act which Mr Penson would have had in mind when he referred to "an entire regime for the granting, renewal and suspension of Practising Certificates" are those in section 16(3) and (4) of that Act. As I pointed out in *Sritharan* (*supra*, [15]):

> "Where a solicitor's practising certificate is suspended by virtue of section 15(1A) the solicitor may at any time before the certificate expires, apply to the society to terminate the suspension: section 16(3) of the 1974 Act. If the society refuses an application under section 16(3), the solicitor may appeal against the society's decisions to the Master of the Rolls: section 16(4) of the Act."

19. Mr Penson's witness statement of 8 March 2005 went on to describe, in some detail, the circumstances in which the decision to intervene had been taken by the Adjudication Panel on 17 February 2005, the circumstances in which intervention was carried out by Russell-Cooke on 18 February 2005 and certain post-intervention events which had occurred since 18 February 2005. He explained, at paragraph 32 of that statement, the measures which the Society had put in place to "hold the ring" pending the substantive hearing of Miss Sheikh's application of 25 February 2005. He emphasised, at paragraph 14, that the panel's decision to intervene had been based on the FI Report of 22 November 2004 and Miss Patrick's Multiple Complaints Investigation Report (which was reflected in her letter of 10 December 2004). At paragraph 26 of his witness statement Mr Penson summarised what he described as "some of the more significant aspects of the reports". It is, I think, convenient to set out that summary:

> "26.1 There is a minimum cash shortage of £41,125 in relation to costs transferred from client account to office account on the estate of Thirkettle.
> 26.2 There have been round sum transfers from client account to office account totalling in excess of £475,000 in breach of Solicitors Accounts Rule 19.
> 26.3 There had been round sum transfers from client account to office account for a sum totalling £58,000 in relation to monies received from the Legal Services Commission but they had not been recorded in the office side of the ledger in breach of Rule 32(4) of the Solicitors Accounts Rules.
> 26.4 There has been a failure to account to clients for interest earned on client funds in breach of Rule 24(2) of the Solicitors Accounts Rules.
> 26.5 There is evidence of systematic overcharging in relation to a number of estate and other client matters, as confirmed by an independent costs draftsman and by adjudication on the provision of Remuneration Certificates, including evidence of the application of a double mark up for care and consideration (resulting in care and consideration charges of 100% of the bill).

> 26.6 In the matter of the estate of Thirkettle, where the only significant beneficiary was a sporting club and the Claimant was the Executor, there is evidence that the items of jewellery have not been accounted for and that the claimant told the Society's investigating officer that she was not required to raise a bill in the usual way because she was the client.
> 26.7 A failure by the Claimant to comply with statutory notices given pursuant to Section 44B of the Act requiring the production of files in breach of Rule 1(a) and (d) of the Solicitors Practice Rules and or (*sic*) apparent early destruction of client matter files (which had been requested by the Law Society and which should still have been in existence) in breach of Rule 1(c) and (e) of the Solicitors Practice Rules.
> 26.8 As a consequence of the volume and severity of the complaints dealt with, it was decided to consider the Claimants conduct on the next renewal of her practising certificate. This was overtaken by the Forensic Investigation."

20. Miss Sheikh's application for directions – and her application for restoration of her practising certificate - came before Mr Justice David Richards on 9 March 2005. He made an order for an expedited trial. He directed that Miss Sheikh serve further evidence " in support of her application and/or in reply to the witness statement of Robin Penson" by 18 March 2005; and that the Law Society serve evidence in reply by 1 April 2005.

21. Mr Justice David Richards made no order on the application for restoration of the practising certificate. It appears that Miss Sheikh withdrew that application, choosing, instead, to adopt the course suggested by Mr Penson in his witness statement and applying to the Society under section 16(3) of the 1974 Act. The position is set out in a witness statement made by Mr David Middleton, Head of Investigation and Enforcement, in a witness statement dated 14 June 2005. Put shortly, the Society granted her a new practising certificate for 2004/2005; but imposed conditions which made it impossible for her to resume the Ashley & Co practice. The conditions required that she did not act as sole principal, as a partner or as a salaried partner. She could practise only as a solicitor in employment approved by the Society.

22. There was some slippage in complying with Mr Justice David Richards' order of 9 March 2005. Miss Sheikh's further evidence in support of her application of 25 February 2005 is contained in two witness statements (her third witness statement and a short witness statement of Mr Sampat) dated 29 March 2005; and in a further witness statement (her fourth) dated 29 April 2005. The Law Society had filed further evidence in April 2005; but not, I think, in reply to the evidence of Miss Sheikh. There was no evidence from any member of the Adjudication Panel to explain why they had reached the decision to intervene and little, if anything, in the two witness statements filed by the Society to explain why the Society thought it necessary that the intervention should continue. The only indication, in the evidence, which addressed that latter question is the observation, at paragraph 25 of Mr Penson's witness statement, that: "For the purposes of this Application the Society repeats and relies upon the Forensic Investigation Report prepared by Mr Mike Calvert and the Multiple Complaints Investigation Report prepared by Kirsten Patrick".

23. The Law Society's case in opposition to the application to withdraw the intervention notices is to be found in a lengthy skeleton argument prepared by counsel and dated 27 April 2005. In substance the Society's contention was that there remained grounds to suspect dishonesty on the part of Miss Sheikh and that the public interest required that the intervention continue. That position was maintained in written closing submissions (extending over 88 pages) dated 13 May 2005. The closing submissions were summarised in the concluding paragraph in these terms:

> "In all the circumstances and in the light of all the evidence now before the Court, it is manifest that there are reasons to suspect dishonesty by the Claimant and that there have been serious breaches of the Solicitors Accounts Rules. Accordingly the intervention should not be set aside"

24. The trial took place before Mr Justice Park over eight days commencing on 4 May 2005. On 9 June 2005 – some three to four weeks after the oral hearing - the judge notified the parties that he had reached the conclusion that the intervention notices should be withdrawn. He did so, before delivering judgment, in the circumstances which he explained in paragraph 3 of the judgment which he was later to deliver, on 1 July 2005:

> "[3] . . . Because Miss Sheikh had been excluded from her practice from 18 February, because the trial did not begin until May, because the matter was one in which I felt that I would need to reflect and to reread much of the documentation and of the evidence before I could finally make my mind up, and because every day which passed was potentially damaging to Miss Sheikh even if her application succeeded in the end (because clients would progressively melt away and take their business to other firms), there was discussion in the hearing of the possibility of my announcing my decision first, as soon as I was confident of what it was, but preparing my judgment and delivering it or handing it down later. I decided to take that course, and on 9 June 2005 I announced my decision."

The first of the orders under appeal is the order made by the judge on 9 June 2005. It was by that order that he directed that the intervention notices served on 18 February 2005 be withdrawn. But he went on, in that order, to direct that there be a further hearing for the purpose of considering what further orders might be required in the light of, and to give effect to, his decision; and he directed that the Society should not be required to give effect to that decision until that further hearing had taken place.

25. That further hearing took place on 16 June 2005. The judge gave further directions, consequent upon his earlier direction that the intervention notices be withdrawn. In the present context it is necessary only to note that the conditions under which Miss Sheikh's practising certificate had been restored by the Law Society in March 2005 were removed; and that, with effect from 16 June 2005, the practising certificate was subject only to the single condition that she should not issue any bill of costs, or otherwise seek payment, in respect of probate work save with the prior approval of the Society.

26. The judge handed down his judgment on 1 July 2005. He made a further order on 25 July 2005. That order of 25 July 2005 is the second of the orders now under appeal. The judge accepted an undertaking by the Law Society that it would not refer the issue as to what (if any) further conditions should be attached to Miss Sheikh's 2004/2005 practising certificate to an adjudicator until after 15 September 2005; and directed that the condition imposed by the order of 16 June 2005 should continue until further order or until other conditions were imposed by the Society. It will be necessary to return, later in this judgment, to the basis upon which the adjudicator should be invited to approach the issue of further conditions. But it is convenient, first, to consider the reasons which led the judge to reach the conclusion that the intervention notices should be withdrawn.

The judge's reasons for directing the Law Society to withdraw the intervention notices

27. In giving permission to appeal to this Court, Lady Justice Hallett, sitting with Lord Justice Dyson, observed ([2006] EWCA Civ 705, [16]) that there was a real prospect of persuading the Court that Mr Justice Park had been invited or encouraged to embark upon an unnecessary and complicated exercise – one which (she suspected) Parliament had never intended. It is fair to say that the judge, himself, recognised that - see paragraphs [47] to [50] of his judgment. Nevertheless, he directed himself (*ibid*, [55]) that the critical question which he had to decide was "whether I consider that there is reason to suspect dishonesty on [Miss Sheikh's] part in connection with her practice"; and he took the view (*ibid*, [51]) that the manner in which the Law Society's case had been put forward made it inevitable that, to decide that question, he had to engage in a detailed examination of the facts.

28. It is apparent from the lengthy judgment (extending over 70 pages) following an eight day trial, that the judge devoted a great deal of time and care to the task which he had set himself. I am conscious of the difficulty presented by the need to summarise his reasons; and of the danger that, in seeking to do so, I shall fail to reflect all the factors which led the judge to the conclusion which he reached. It is appropriate, therefore, to preface this section of my judgment by setting out the judge's own introduction, at paragraph [4] of his judgment:

> "[4] The issues are too numerous and complicated in their details for me to be able to encapsulate them in short form in an overview which introduces my judgment. I will only say now the following. First, on the basis of the evidence and arguments before me (which it is right for me to take fully into account, not limiting myself to what the Panel had before it), I do not think that there is reason to suspect Miss Sheikh of dishonesty in relation to the practice of Ashley & Co. Second, I accept that there have been some breaches of the Solicitors Accounts Rules, but I do not think that they were serious enough to merit the drastic and (in practice) terminal step of intervention. Third I do not say that everything about Ashley & Co was entirely satisfactory. On the contrary there were (as well as breaches of the Solicitors Accounts Rules) some other aspects of the firm's practice about which the Law Society could legitimately feel concern, but in my view they were not remotely as bad or unacceptable as has been contended before me on behalf of the Society."

29. The judge was impressed by the manner in which Miss Sheikh gave her evidence. He said this, at paragraphs [55] and [56] of his judgment:

> "[55] . . . I observed Miss Sheikh being searchingly cross-examined for a little more than two days. On the critical question of whether I consider that there is reason to suspect dishonesty on her part in connection with her practice I believe that I can and should ask myself: what impression did she make upon me? The answer is that she made a very good impression. She did not remotely strike me as the dishonest, grasping incompetent implied by the Law Society's multiple attacks upon her. She answered all questions put to her directly. She was in no way evasive. Listening to her she never struck me as someone who was dissembling or seeking to mislead the court. When I say that she answered all questions put to her I do not mean that she was always able to give a detailed answer to every question which was put. There were occasions when [counsel] took her into the arcane recesses of the accounting records, and when he was able to suggest that some entry or other did not seem appropriately to tie in with what appeared somewhere else. In those cases, if she did not have an answer there and then, she frankly said so. She made realistic and sensible admissions. In several respects she readily acknowledged that there was room for improvement. I do not myself see that sort of thing as giving rise to a suspicion of dishonesty. If anything the contrary is the case. She is a sole practitioner with a busy practice, and it would be surprising indeed if she got everything right all of the time. It is a sign of basic honesty on her part that she admitted that some matters put to her in cross-examination were not ones which she could satisfactorily deal with, and certainly not there and then.
> [56] There were some overriding matters, however, on which she was constantly firm, and as respects which her evidence had to me the ring of total conviction and sincerity. One was that she was never dishonest in the conduct of her profession. On more than one occasion she said something to the effect that interventions were what should happen to solicitors who steal other people's money, and she is not such a solicitor. She said it with a conviction which I felt to be deep and impressive. Something else on which she was consistently firm was that, if there was something apparently wrong with a ledger which she or Mr Sampat produced to the court, it was not a matter of misleading the court: it was a mistake. . . ."

The judge took a similar view of Mr Sampat: he said that he was "convinced that he was a sincere and honest witness". A theme which runs through the criticism which the Society

makes of the judge's findings of fact is that he was too ready to overlook matters which did, objectively, give rise to real cause for concern because he had taken the subjective view (from observing her give evidence) that Miss Sheikh was essentially honest.

30. The judge addressed the facts which, on the Law Society's case, gave rise to concern under the following heads: (i) the 'cash shortage' in the Thirkettle estate (paragraphs [62] to [72] of his judgment), (ii) the Thirkettle jewellery (paragraphs [73] to [76]), (iii) round sum transfers (paragraphs [77] to [93]), (iv) the treatment of Legal Services Commission monies in Ashley & Co's accounts (paragraphs [95] to [101]), (v) credit balances on the client side of the ledger in dormant matters (paragraphs [102] to [105]), (vi) overcharging (paragraphs [106] to [116]), (vii) the failure to account to clients for interest (paragraphs [116] to [120]), (viii) missing or destroyed files (paragraphs [121] to [123]), (ix) the failure to reply to the Society's letters (paragraphs [124] to 127]), (x) the delivery of files (post-intervention) to the Society's agents, Russell-Cooke (paragraphs [129] to [131]), (xi) acting as a solicitor after intervention (paragraphs [132] to [134]) and (xii) a post-intervention transfer of £254,000 (paragraphs [135] to [145]). At paragraph [146] he said this:

> "[146] I believe that I have now covered everything which I wish to deal with in this judgment, even if I have not dealt with all of the multiplicity of points which were raised by the Law Society in the protracted course of the trial. I have of necessity dealt one by one with specific matters raised by the Law Society. I do not consider that any of them is sufficient to justify this intervention remaining in place. That is also the view which I take if I consider the various matters collectively rather than individually. I end by saying that the reasons which I have explained at length in this judgment are the reasons which led me on 9 June 2005 to announce that my decision was that the Law Society should be directed to withdraw the notices of intervention."

It will be necessary, in the course of this judgment, to analyse the judge's reasoning in relation to some of the specific matters which he considered.

These appeals

31. The Law Society has made it clear that, whatever the outcome of these appeals, it does not seek to re-intervene in Miss Sheikh'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 Miss Sheikh'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 Miss Sheikh'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 Miss Sheikh 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. In that latter context, I note that, when giving permission to appeal, Lady Justice Hallett expressed the view ([2006] EWCA Civ 705, [17]) that "it would indeed be helpful to all concerned to obtain guidance from the Court of Appeal, if it is prepared to give it, as to the legitimate scope of hearings of this kind and consequential orders".

32. The appellant's notice filed by the Society on 16 September 2005 (under Court of Appeal reference 2005/2073) seeks to appeal only from the order of 25 July 2005. But, other than costs, that order does no more than continue the condition imposed on Miss Sheikh's practising certificate by the earlier order of 16 June 2005 until "further order of the Court or

until other conditions are put in place by the Law Society". When pressed, at the commencement of the hearing before this Court, to indicate what order the Society was asking this Court to make on that appeal, counsel accepted that, in substance, the Society was seeking to challenge the judge's decision that the intervention notices of February 2005 be withdrawn; and that, because that decision was the subject of the judge's order of 9 June 2005, it was necessary, formally, to appeal from that order. We gave permission for an appellant's notice to be filed out of time for that purpose. That notice was filed on 5 July 2006 under reference 2006/1497.

33. The grounds of appeal in the second notice are the same as those in the first. They are advanced under four heads: (i) the judge erred in his approach to the question whether the statutory ground for intervention under paragraph 1(1)(a)(i) of schedule 1 to the 1974 Act (reason to suspect dishonesty) had been made out: (ii) the judge misdirected himself in his approach to the question which breaches of the Solicitors Accounts Rules were relevant for the purposes of the statutory ground for intervention under paragraph 1(1)(c) of the schedule; (iii) the judge erred in his approach to the decision which he had to take under what has been described as the second limb of the test to be applied on an application to withdraw (see *Holder v Law Society* [2003] EWCA Civ 39, [15], [2003] 1 WLR 1059, 1065, approving observations of Mr Justice Neuberger in *Dooley v Law Society* (unreported, 15 September 2000)); and (iv) the judge failed to give a fully and properly reasoned judgment adequately and fairly dealing with the evidence presented to him on the issues to be determined.

34. Permission to appeal was given by this Court on 5 April 2006, limited to the first three of those grounds: counsel for the Law Society accepting that the fourth ground "took the matter very little further, if at all" ([2006] EWCA Civ 705, [12]). In giving permission to appeal the Court directed that the detailed materials advanced in support of these grounds should be confined to those relating to: (a) "the Thirkettle, Sills and Burrows matters"; (b) the alleged failure to account for interest; (c) the judge's treatment of the FI Report and the evidence of Mr Shelley; (d) the judge's treatment of the post-intervention transfer of £254,000; and (e) Miss Sheikh's regulatory and disciplinary history.

35. It will be apparent, therefore, that it is unnecessary for the Court to consider, on these appeals, facts under each of the twelve heads which were addressed by the judge. We can confine detailed consideration of the facts to the materials advanced under the five heads limited by the order of 5 April 2006. The three grounds of appeal advanced by the Society must be made out (if at all) by reference to those materials.

The Thirkettle, Sills and Burrows matters

36. As I have said, the Law Society's case against Miss Sheikh was summarised in written submissions ("the closing submissions") provided to the judge on 13 May 2005 (at the end of the oral hearing). The Thirkettle, Sills and Burrows matters are addressed under the generic description "Round Sum Transfers: £475,125" (paragraphs 17 to 36). It is, I think, necessary to set out the way in which the case was put under that head in some detail.

37. In paragraph 17 of the closing submissions the Society pointed out that between 2 May 2001 and 29 January 2004 there had been 27 round sum transfers from the client account of Ashley & Co to the firm's office account. The Society's view was that, in principle, round sum transfers may give rise to grounds for suspicion, for the reasons explained in paragraphs 18 and 19:

> "18. Office money may only be withdrawn from a client account when it is, inter alia, properly required for payment of the solicitor's costs under Rule 19(2) and (3) [of the Solicitors' Account Rules]: SAR Rule 22(3). Under SAR rules 19(2) and (3) and Note (x) round sum transfers are not permitted. Before a payment can be made in respect

of fees, the solicitor must give or send a bill of costs. It is clearly in general improper for a solicitor to make a round sum transfer as is apparently accepted by [Miss Sheikh] in her [first] witness statement. The only exceptions are where a proper bill has been rendered which happens to be in a round sum or where a round sum transfer was taken against a whole bill and the remaining balance within 14 days of the bill having been delivered. The latter would merely be poor practice.
19 . The reason why the balance has to be transferred within 14 days is that where rule 19(2) has been complied with by sending a bill of costs, the monies become office monies under rule 19(3) and can only remain in client account for 14 days. Until rule 19(2) has been complied with in general money remains client money and cannot be taken."

38. At paragraph 20 of the closing submissions the Society observed that it was Miss Sheikh's case that, in each case where there was a round sum transfer, she had first raised a proper bill, posted the bill to the client ledger and satisfied herself that the sum was outstanding. Then, and only then, did she make a transfer from client account to office account. In making the transfer she was working from ledgers on a computer screen.

39. At paragraphs 21 to 23 of the closing submissions the Society set out the reasons why it suspected dishonesty in relation to the round sum transfers from Ashley & Co's client account:

"21. There is reason to suspect dishonesty in respect of the round sum transfers in that:

(1) To conduct round sum transfers knowing that round sum transfers are not permitted is in itself conduct which invites suspicion.
(2) It is said that this is dispelled because nothing sinister has been found to demonstrate that clients have been wrongly charged or had their monies taken. This is not accepted.
(3) There are 3 cases of those examined in which it can be seen that client monies were put at risk by taking money in excess of any bill then rendered and remaining unpaid. There is one case, Thirkettle, where there was a bill, but not one which justified the amount transferred against it.
(4) In any event, in spite of assertions, no proof has been provided in relation to these transfers that bills had been rendered to clients on such transfers. If they are indeed proper it is very surprising that there had been no systematic attempt to justify them. . . .
(5) [Miss Sheikh] herself acknowledged that she had made such transfers before making a bill, although the terms of that conversation are disputed.
(6) That accordingly there remains a suspicion of dishonesty as to the presence of so many round sum transfers not limited to those matters which have been examined and come up short. The suspicion is that in at least some cases the bill on which [Miss Sheikh] relied upon in order to make up the round sum transfer itself was dishonest in that the fees were grossly inflated and not properly due and in some cases it is likely that there was no delivered bill at the time of the transfer sufficient to justify the transfer. It is not suggested that the suspicion extends to all payments made to [Miss Sheikh] by clients which were comprised in such transfers. Many are likely to have been done properly.

22. The reason why [Miss Sheikh] was making these round sum transfers was to pay off the overdraft on her office account. It is a feature of the round sum transfers that the office account was substantially in overdraft at the time the round sum transfers were made. This fits in with the explanation that she gave to the Law Society on 28th April 2004 where she admitted that she would draw down from the Internet her bank statement and if it was a bit short she would do an estimate of the total sum and transfer it over and at the end of the day she would allocate and prepare the bills.

23. Furthermore there was a considerable delay in allocating the transfers which indicates that the actual allocation at least in some cases was not done at the time of the transfer. This was in any event a breach of the SAR Rules 32(2)(b), 32(4) and 32(5). One vice of this is that cash shortages were created on client account. . . ."

40. Cases in which the features described in paragraphs 21 to 23 were said to be exemplified include Thirkettle, Sills and Burrows, to which I now turn.

(i) Thirkettle

41. Miss Sheikh was sole executrix of the late Mr Albert Thirkettle's estate. She also acted as solicitor in the administration of the estate. The only beneficiary was a charity, the Alzheimer's Society, whose solicitors were Charles Russell. The matters on which the Society relied before the judge are set out at paragraph 32 of the closing submissions. The complaint is specific, comprehensively particularised and closely reasoned. Given the Law Society's over-arching complaint that the judge did not deal adequately with the matters which caused legitimate concern it is, I think, necessary to set out that paragraph in full:

"32. . . .
(1) On 9th July 2002 the office account at the bank was overdrawn.
(2) At that date on the client ledger there was £97,348.29 in respect of Thirkettle. On that date [Miss Sheikh] paid off her overdraft on the office account by debiting the client account with £41,125. On the file there is a bill dated 9th July 2002 in the sum of £35,000 + £6,125 Vat which is described as an interim account.
(3) [Miss Sheikh] claims in her most recent witness statement that this bill was sent to the solicitors for the beneficiaries on 18th October 2002. This is quite clearly and demonstrably false as has been confirmed by Charles Russell.
(4) The detailed breakdown of costs referred to on the bill is the breakdown for a sum of £31,530. This is based on 144 hours work at £200 per hour.
(5) When questioned about this bill on 21 July [Miss Sheikh] asserted to Mr Shaw that the printout for £3,172.50 was additional work carried out by Mr Sampat. This was an implicit acknowledgment that there was no other factor (ie uplift) which could justify the difference between £31,530 and £35,000.
(6) When questioned on 28 April she accepted that she had included an element of uplift in arriving at the hourly rate of £200 (although it is accepted that she resiled from this position subsequently).
(7) Both the costs breakdown of £31,530 and the subsequent printout for £3,172.50 were subsequently amended from the form produced to Mr Shaw when exhibited to the 1st witness statement of [Miss Sheikh]. In both cases the annotations were designed to emphasise that further work had been done by Mr Sampat on dividends which had not been included in the total of £31,530.
(9) In cross-examination Mr Sampat explained that new breakdown. The total of 144 hours, he explained, was calculated by reference to the work done on dividends and there was no additional work by him to be billed for in addition to the amount set out in the original breakdown for £31,530.
(10) His explanation as to the reliance on the printout of £3172.50 to Mr Shaw was a mistake. That is not very probable. It was a formal interview. In any event it does not satisfactorily explain [Miss Sheikh's] own continued reliance on it to show that the breakdown could have been increased.
(11) [Miss Sheikh] produced to the Law Society to be sent to Mr Shelley and in the exhibit to her 1st witness statement the same single composite of Attendance Notes which proved the number of hours worked. The number of hours in those notes was 128-129, not 144 which she relies upon.
(12) Those Attendance Notes in all particulars [contain] the same entries as both the sets of Attendance Notes produced at trial save that there were 2 additional entries for 10 May 2001 and 20/21 May 2001. No explanation was given as to how those came to be omitted in the composite version twice formally produced by [Miss

Sheikh]. The explanation for the duplication in form of entries for the same date by Mr Sampat was incredible, not least because there would have been no purpose in [Miss Sheikh] working on the accounts on the day Mr Sampat did. She delegated that task to him. It is notable that she also delegated the task of giving evidence on this topic to him.

(13) The further addition of 6 hours on consecutive days for looking through a box (£1200 billing) is also extraordinary so long after the event. This work was probably done by a secretary . . . and is still charged at £200 per hour. Combined with the fact that the hours spent on dividends came to 3, the number required to arrive at a total of almost exactly 144 hours, makes it plain that this breakdown to prove 144 hours was a confabulation for the purpose of rebutting the assertion that less than 130 hours were worked. It is again noted that the number of hours suggested as worked on dividends on the printout for £3,172.50 was much higher.

(14) It transpires that not only was at least some work done by a secretary/assistant but that the majority of hours in the matter were attributable to Mr Sampat (about 98 of 130) yet the billing rate remained £200 (ie £9,800 too much if you were to apply a generous rate of eg £100 per hour for an unqualified book-keeper). Not only was this wholly unjustifiable, and must have been appreciated to be so, but it also renders the current assertion that £200 was a base rate before uplift absurd.

(15) There are surprising hours recorded in the printout all recorded at [Miss Sheikh's] hourly rate of £200. Just looking at the 21st March 2003 alone she had billed 15 hours for Mr Sampat's work - £3,000. There are entries of purely administrative matters such as going to get some stamps valued at £40.00 which are charged out at [Miss Sheikh's] rate. That visit to the stamp shop was charged approximately £380 (plus a possible uplift) being 1 hour 50 minutes billed even though it was carried out by an assistant.

(16) Although there was no reference to him in her terms of business or attendance notes, [Miss Sheikh] charged out an unqualified bookkeeper, Mr [Sampat] at her own high partner rate. In the case of Thirkettle, for example, this meant £3,000 a day (plus any uplift) for those 15 hour days noted in the attendance notes [Miss Sheikh] worked from to calculate her bills. [Miss Sheikh] did not tell the beneficiaries that this was what she was doing in her billing. Indeed the terms of business for various probate files refer to [Miss Sheikh's] own partner rate and indicate that assistants or other staff will be charged out at significantly lower rates. [Miss Sheikh] argues that as she was unable to do the work herself carried out by Mr [Sampat] (eg dividends and other financials), she was in effect avoiding the expense of engaging an outside accountant. This is no answer as she in fact used her own bookkeeper at little cost to her, but instead of passing on only her cost, she charged his work out at her own high rate.

(17) The rate for letters in and out on the original breakdown of costs was calculated on the assumption of a base rate before uplift of £150 per hour which was otherwise the rate she charged in 1999 when this matter started.

(18) Against this backdrop, in the interview she initially stated that she had rounded down the bill of costs in accordance with her ordinary [practice].

(19) She seeks to say that because such a bill could in theory be increased at the final bill stage that there was no problem. This is wrong. Although such a bill may in fact be reduced by for example negotiation at the end of the matter, it is both improper and dishonest to take more than what is properly owed for work done. The point of an interim bill is that it need not be the final quantification but is merely the minimum amount of the solicitor's charges to date.

(20) This bill is dealt with in some detail in Mr Shelley's report. The £200 per hour rate was a high rate, para 3.1.1.4. It appears to have been a composite rate. However, the letters she charged both for the full number of letters plus time charges which was an inappropriate duplication of costs; para 3.1.2.1. Indeed as set out above, the breakdowns purport to claim for the letters

> twice over. He was satisfied that it was not a figure which could have been properly arrived at.
> (21) Mr Shelley's evidence was not rebutted. Mr Adams was instructed by [Miss Sheikh]. [Her] representatives called for the Thirkettle file to examine in the course of this litigation. The bill could not be objectively justified.
> (22) Taking the 3 areas of main complaint together if the work was 130 hours, and there was an excessive charge of say £10,000 for work known to have been done by others, a rate of £200 is otherwise applied without further uplift, and an additional £5,000 is allowed for others, telephone calls, and disbursement letters, then the total charge would have been £21,000.
> (23) The end result is that at the very least [Miss Sheikh] has had the use of money which ought not (*sic*) to have been client money for a protracted period. Worse, however, is that the beneficiary has now been sent accounts reflecting a bill of £35,000 for this work. The figures produced by Mr Sampat strongly suggested that there was to be no significant revision. No amounts of revision were suggested or have been notified to the beneficiary. This is exactly what worries the Law Society about round sum transfers. In addition the misleading explanations offered both imply conscious dishonesty and little hope of contrition"

42. There are at least five strands to that complaint: (i) the round sum transfer of £41,125 was made from client account to office account (to pay off an overdraft on the latter) at a time (9 July 2002) when no bill to support that transfer had in fact been raised; (ii) when a bill was raised, dated 9 July 2002 and described as "Interim Account (estimated only)"), it referred to "costs as per attached breakdown", but the breakdown of costs (dated 12 January 2001) referred to in that bill showed costs of only £31,530, comprising four items (144 hours at £200 per hour – £28,800, 75 letters written - £1,125, 205 letters received - £1,537, and 9 telephone calls made - £67.50; (iii) when questioned about the apparent shortfall (on 21 July 2004) Miss Sheikh produced a further printout of costs amounting to £3,172.50, said to be attributable to work done by Mr Sampat (the two sums amount together to £34,702.50), and asserted (then and in her first witness statement) that the hours recorded in that further printout were additional to the hours shown in the first "breakdown of costs" – that was contradicted by Mr Sampat in his evidence; (iv) the schedule (composite) of attendance notes to support the hours claimed first produced by Miss Sheikh did not support 144 hours, but only 128-129 hours - she sought to correct that in the course of the trial by an explanation that was incredible; (v) in any event, the breakdown of costs and the subsequent printout disclosed substantial overcharging, in that both Mr Sampat's time and the time of secretaries had been charged out at Miss Sheikh's own charging rate (£200 per hour) and there were grounds for thinking that excessive time had been billed. It must also be kept in mind that this was a matter in which Miss Sheikh (as executor of the Thirkettle estate) was, in effect, her own client: the solicitors for the charity (as beneficiary) were not kept informed as to the basis upon which she was billing the estate.

43. The judge addressed the Thirkettle matter at paragraphs [63] to [72] of his judgment. He began by making what he described as "a point of general nature":

> "[63] . . . A common situation (probably the most common situation) which has given rise to many justified interventions is the one to which I have referred on several occasions in this judgment already: the solicitor is short of money; either for private purposes or for purposes of the practice which he is not allowed to pay for out of clients' funds; he or she takes money from the client bank account, knowing perfectly well that he or she is committing a deliberate breach of the Solicitors Accounts Rules. It is apparent from the authorities that such cases are frequently referred to as 'shortages on client account' or something similar. . . . The Law Society's materials in this case start the reader off with the impression that he is going to find that this is just another case where a solicitor improperly and dishonestly helped herself to clients' money. In time I came to realise that that impression was quite wrong. As I

> will describe, there are issues about the £41,125.00 in connection with the Thirkettle estate, but they are essentially of a technical nature, and on no basis can what happened with the £41,125.00 be equated with the 'cash shortages' referred to in the earlier cases, . . ."

44. The judge referred, at paragraph [65] of his judgment, to rules 19(2) and (3) of the Solicitors Accounts Rules; and went on to say this:

> "[65] . . . On 9 July 2002 Miss Sheikh prepared a bill headed *'Thirkettle deceased; Interim Account (estimated only).'* The description was: *'TO PROFESSIONAL CHARGES for the provision of legal services following the death of the late Albert Thirkettle. Dealing with administration of estate and trust thereafter. Detailed account to follow.'* The amount was £35,000.00 plus VAT of £6,125.00, making the total of £41,125.00. On the same day Miss Sheikh caused £41,125.00 to be transferred from the client account to office account."

It is clear, therefore, that the judge accepted that the interim account for £41,125 was raised on the date it bears, 9 July 2002. He affirmed that in his observation, at paragraph [68], that: "In this case Miss Sheikh created the bill on 9 July 2002". But nowhere does the judge address the points on which the Law Society relied for doubting the authenticity of that interim account: (i) that the breakdown of costs first produced by Miss Sheikh showed costs of only £31,530 (ex VAT), not the £35,000 on which the interim account was based; (ii) that, even with the further printout produced on 21 July 2004, the figure for costs does not amount to £35,000 (ex VAT); and (iii) that Mr Sampat contradicted Miss Sheikh's contention that the hours shown on the further printout were in addition to the hours shown on the first breakdown. To my mind, these were powerful points. I find it difficult to see how the judge could have reached the conclusion which he did as to the authenticity of the interim account dated 9 July 2002 without addressing them.

45. At paragraph [66] of his judgment the judge seems to accept that there may have been questions as to the circumstances in which the interim account dated 9 July 2002 was raised. He said this:

> "[66] Now, there may or may not have been things technically wrong with how the transfer of the £41,125.00 was arranged, but one thing which is clear is that the situation cannot fairly be compared or equated with the sort of unjustified raids on the client account which have featured in other cases. . . . In the case of the Thirkettle estate, the deceased had died in June 1999, appointing Miss Sheikh his executrix. The estate had been in administration for some three years by the time of the transfer. A considerable amount of work had been done, and in principle Miss Sheikh was entitled to make a charge to the estate in respect of it. Further, she was entitled to make an interim charge for the work which she had done so far."

But that approach, as it seems to me, overlooks the fact that, if the interim account dated 9 July 2002 was not raised on the date it bears, the transfer of the £41,125 on that day was made in obvious breach of the Solicitors Account Rules; and overlooks what, to my mind, would be of much greater importance in the context of the proceedings before the judge – that is to say, the fact that, if the interim account dated 9 July 2002 was not raised on the date it bears, Miss Sheikh was party to the falsification of a document in order to disguise the breach of the rules which had occurred. It is, in my view, no answer to say – as the judge did at paragraph [67] of his judgment – that:

> "[67] . . . . Miss Sheikh is in my view fully entitled to point out, as she did to Mr Shaw and Miss Patrick on one of their visits, that she herself, in her separate capacity as the executrix of Mr Thirkettle' estate, was the client. In the circumstances it seems

> excessive to expect her, on what was only an interim bill, to inform herself of details which she already knew well as solicitor (or at least could readily ascertain)."

The fact that Miss Sheikh (as executrix) was her own client – coupled with the fact that she did not tell the solicitor for the charity what she was doing – made it the more important, as it seems to me, that she should be scrupulous in her dealings with the Thirkettle estate.

46. The judge did not address, in terms, the Society's concern that the schedule of attendance notes first produced by Miss Sheikh did not support a time charge in respect of 144 hours, but only 128-129 hours, and that the explanation which she offered in the course of the trial was (as the Society contended) incredible – the fourth strand to the complaint. But, at paragraph [71] of his judgment, he said this;

> "[71] A great deal of time was occupied in the trial with [counsel] on behalf of the Law Society trying to show that the way or ways in which Miss Sheikh and Mr Sampat believe that they arrived at the round sum of £35,000 before VAT cannot have been right. I decline to go into these matters in depth: the judgment would become interminable and unacceptably tedious if I did. I will, however, make a few comments.
> i) . . .
> ii) The cross-examinations of Miss Sheikh and Mr Sampat did raise doubts about how precisely they had estimated the number of hours of work which Miss Sheikh thought it appropriate to charge for on an interim basis. Detailed time records were produced, but there were some aspects of them which at least raised a possibility that the calculations might have gone wrong somewhere. There seem to have been two different print-outs flowing from the use of two different computers over some at least of the time that work was being done on the Thirkettle estate, and there must have been a possibility of confusion and of occasional double counting. One print out showed Mr Sampat as having done 15 hours of work on one day in relation to the estate. It would be very surprising indeed if that was correct. I do not think that Miss Sheikh and Mr Sampat (or at least Mr Sampat) are quite ready to accept that, in judging how much time ought to have been assumed for the purposes of the interim bill, some errors may have been made, but I am ready to accept it as a possibility. If it has happened, however, I am convinced that it has resulted from mistakes. It does not cause me to suspect Miss Sheikh and Mr Sampat of dishonesty."

And he went on to address the question of the rate at which Mr Sampat's time had been charged (£200 per hour) – the fifth strand - in the next sub-paragraph:

> "[71] . . .
> iii) In one respect I certainly agree with the Law Society that an element in Miss Sheikh's evaluation of what the interim bill should be was inappropriate. This concerns the rate at which she charged for Mr Sampat's time. Apparently there was quite a lot of accounting and bookkeeping work to be done on the Thirkettle estate (such matters as reconciling and checking on receipts of dividends from a reasonably large investment portfolio), and Mr Sampat had the experience to be able to do it, whereas Miss Sheikh did not. For the most part she had in mind to charge for his time at the same rate as she charged for her own time, and that intention was reflected in the estimated round number of £35,000 before VAT. I do not depreciate the value of Mr Sampat's work on those kinds of things, but I agree with the Law Society (and with Mr Shelley) that to charge for his time at the same rate as Miss Sheikh charged for hers was not justifiable. In 2002 she was a fully-qualified solicitor with 15 years post admission experience; she was a Grade A fee-earner. He was an experienced but unqualified bookkeeper. However, in my opinion this was an error of judgment on Miss Sheikh's part. I do not think that she has ever made any secret of how she intended to charge for Mr Sampat's time, and it does not cause me to suspect her of being dishonest."

The judge did not deal with the fact that secretaries' time had also been charged at £200 per hour.

47. For my part, I find it surprising that the judge was able to attribute the fourth and fifth strands of the Society's complaint in respect of the Thirkettle matter 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 Mr Sampat 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. Confirmation that that was, indeed, the judge's approach is found in paragraph [70] of his judgment:

> [70] I said a few paragraphs above that in my view Miss Sheikh delivered the bill for £41,125.00 (£35,000 plus VAT) in good faith. My main reason for saying that is that it reflects my assessment of her, having listened to her giving evidence under quite hostile cross-examination for over two days. I simply do not believe that she would deliberately inflate the interim bill in order to maximise the amount which she could transfer from client to office account. On any view quite a lot of work had been done on the estate, some of it by herself and some of it by Mr Sampat, and on any view she was entitled to make a fair charge for that work. It is just not credible that they should have got up to a dishonest conspiracy to falsify the facts and secure a larger interim payment. . . ."

The Law Society criticises the judge's approach – described in that paragraph – as a "logic short-circuit": it is said to be "an incorrect reliance on demeanour or impression" leading the judge to omit from his assessment "the very matters which give rise to the suspicion". There is force in that criticism.

(ii) Sills

48. Miss Sheikh was sole executrix of the will of Mrs Teresa Sills, a widow who had died without immediate family. She acted as solicitor in the administration of the estate. Two final bills were raised: one, dated 18 February 2002, in the sum of £18,000 and the other, dated 19 March 2002, in the sum of £17,000. Miss Sheikh's case was that the first was "an administrative error": it was the second bill that was correct. The firm's ledger showed a transfer from client account to office account of £19,975 (£17,000 + £2,975 VAT) on 1 September 2001, some six months before the second bill was raised.

49. The Law Society's concerns were not restricted to the apparent breach of the Solicitors Accounts Rules disclosed by the facts to which I have just referred. The Society's case was that monies had been taken from client account without any justification. That case was set out at paragraph 31 of the closing submissions delivered in writing on 13 May 2005:

> "31 . . .
>
> (4) . . . According to the client ledger dated March 2004 there was a nil balance on the office side but a £1196.20 balance on the client side. The new schedule of client balances as at 31st January 2005 shows a debit of £918.80 on office in favour of the firm and a nil balance in favour of the client. The client balance of £1196.20 had been taken in its entirety by [Miss Sheikh]. The estate was distributed in March 2002. The distribution was based on existing bills. A bill of £17,000 plus VAT was described by Mr Shelley as the 'final' bill on his investigation of that file. She had also issued a bill of £18,000 which she claimed to have cancelled. She produced other Assets and Liabilities Schedules in this proceedings but not this one. The distribution calculation must have been based on the old bill plus VAT. The actual

> distribution was based on the smaller bill. That resulted in a residual balance owing to the client. She has later decided to take it. That description was not challenged until Mr Sampat gave evidence. The distribution was plainly not predicated on another bill. [Miss Sheikh] gave the file to the Law Society for the explicit purpose of costing. No additional bill was suggested. No prospect of additional billing was picked up by Mr Shelley. Mr Shelley's report was produced to [Miss Sheikh] and discussed on 21 July 2004. He criticised the existing level of billing as excessive and suggested an overcharge of £3,750. . . . After that, Mr Sampat explained that [Miss Sheikh] had raised an additional bill. It was presumed to be for £2115. He could not recall. However he had just studied the bill and recalculated it to discover that there was an error and money was owed to the client. The beneficiary appears to have been ignorant of all this. The Bill was not produced. The Law Society has neither seen nor found a copy."

50. In order fully to understand the points made in that sub-paragraph it is necessary to have in mind that the effect of distributing the estate on the basis of a bill of costs of £18,000 (ex VAT) rather than on the basis of a bill of costs of £17,000 (ex VAT) is that, when the transfer from client to office account was made in March 2002, there could be expected to be a credit on client account of £1,175 (an amount close to the actual balance of £1,196.20); and that, in order to convert a credit balance of £1,196.20 on client to a debit balance of £918.80 on office account, it would be necessary to render a bill of costs in the sum of £2,115. The Law Society observed, at paragraph 31 of its closing submissions, that:

> " . . . There is no innocent explanation of this transaction. It was dishonest. No reputable solicitor could have thought it proper to carry it out. The initial balance [£1,196.20] may have been a mistaken failure to account to the client. The transfer to office [£2,115] was not."

And, at paragraph 13(5) of those closing submissions, the transfer (or elimination) of the balance (£1,196.20) standing to the credit of the client account more that two years after final distribution was relied upon as a reason to suspect dishonesty.

51. The judge did not address the Law Society's concern that the £1,196.20 had been taken from client account between March 2004 and January 2005 without justification ("missing funds"). He treated the complaint in relation to the Sills estate as a complaint that Miss Sheikh had failed to account for interest - see paragraph [119] of his judgment. It will be necessary to return to that issue later in this judgment. But he had held, (at paragraph [54] of his judgment) that: "Perhaps the most important general observation is that in this case . . . there is no evidence that any client's money has gone missing". And, at paragraph [104], he said this:

> " The Law Society investigators identified a number (not many) of apparently dormant ledgers where there were small credit balances on the client side of the ledgers. In my judgment these matters cannot make any significant contribution to this case. It is not suggested to me that the existence of the balances is a breach of the Solicitors Accounts Rules. As regards suspicion of dishonesty, as long as the balances are on the client side of the ledger and all money representing them is held in the client bank account (which the solicitor cannot touch except in breach of the Solicitors Accounts Rules), there is no basis on which the solicitor can dishonestly divert the money to her own use. It would only be if the solicitor attempted to transfer the credit balances from the client side of the ledgers to the office side that something objectionable would be happening. That is precisely what was attempted in *Bultitude v The Law Society* [2004] EWCA Civ 1863 and led to Mr Bultitude being struck off the Roll of Solicitors by the Solicitors Disciplinary Tribunal, a decision which was ultimately affirmed by the Court of Appeal."

The judge seems to have overlooked the Law Society's submission – clearly raised in its closing submissions – that, in the Sills matter, the £1,196.20 was taken from client account in circumstances which fall squarely within the vice that he identified in the penultimate sentence of that paragraph. At the least, the judge did not explain why he rejected that submission.

(iii) Burrows

52. Miss Sheikh was co-executor of the estate of Mr Cecil Burrows. She obtained a grant of probate in her sole name, with power reserved to the other named executor, the testator's widow Mrs Rose Bayley. Miss Sheikh was instructed as solicitor in the administration of that estate. On 28 January 2003 she raised a bill in the amount of £15,000 (ex VAT) for her professional services. That followed two earlier bills, dated respectively 7 and 12 August 2002, for smaller amounts of costs incurred in relation to the conveyance of the property which formed the only substantial asset in the estate. The bill of 28 January 2003 was challenged by solicitors instructed by the widow and the other residuary beneficiaries. On 27 February 2003 they wrote:

> "Our clients are appalled and horrified at the extent and costs rendered by your firm for the administration of a simple estate with assets of approximately £137,000 of which £129,000 was accounted for by the sale of the property."

and, after setting out detailed grounds of objection to the bill, concluded:

> ". . . Our clients are minded . . . to seek the detailed assessment of the costs pursuant to section 71 of the Solicitors Act 1974. Please confirm that you have not and will not transfer costs from client account pending resolution of the dispute concerning your bill of costs."

On 31 March, the beneficiaries sought a remuneration certificate. On 9 September 2003, an adjudicator appointed by the Office for the Supervision of Solicitors ("OSS") issued a provisional assessment in the sum of £3,850 (exclusive of disbursements and VAT) in respect of the work covered by the 28 January 2003 bill of costs. The adjudicator indicated (at paragraph 6 of his provisional assessment) that, subject to the outcome of any review of that assessment, he would direct the OSS to investigate whether the matter should be seen as culpable overcharging.

53. That certificate was sent to Miss Sheikh on 15 September 2003, under cover of a letter which informed her that she could seek a review of that assessment within 14 days. She did so, out of time, by a letter received by the OSS on 7 October 2003. That letter indicated that "Formal points of objection will follow within the next 14 days". That was not done. An OSS attendance note records that Miss Sheikh was telephoned on 22 October 2003 and 12 November 2003. The attendance note records that, on the latter occasion she was told that if points of objection were not submitted by 18 November 2003, the final certificate would be sent. Her response, as recorded was: "that's fine". The remuneration certificate, in the amount provisionally assessed (£3,850) was issued pursuant to section 80 of the 1974 Act on 18 November 2003.

54. In the meantime, on 13 October 2003 and in the knowledge of the provisional assessment which had been sent to her on 15 September 2003, Miss Sheikh transferred £12,000 from client account to her office account, at a time when the office bank account was substantially overdrawn. The Law Society's case was set out at the following sub-paragraphs of paragraph 25 of the closing submissions:

> "25 . . .

(8) On the same day [13 October 2003] [Miss Sheikh] debited the client ledger of Burrows with sum of £12,000. It is quite evident that this was wholly improper and was a wrongful round sum transfer. As to that impropriety [Miss Sheikh] initially accepted in cross-examination when shown the assessment of 9 September 2003 that it would have been wholly improper to have taken £12,000 fees in the light of that assessment and that as soon as she had notice in November she has immediately repaid funds. When she had been shown the letter of 2nd October 2003 from her firm she instead stated that it would not have been improper to take £12,000 as there was no final determination. That is a clear demonstration of [Miss Sheikh] setting and resetting standards of propriety according to perceived expediency. That is at least symptomatic of dishonesty.
(9) In any event it is perfectly plain that there remains at the least a suspicion that the claimant was aware of the reduction in fees and took them nevertheless because she had an immediate need and it was convenient. Her explanation that, although she is intimately familiar with all her files, a letter was sent out as a standard letter to seek review of a provisional assessment without her knowledge is hard to accept as an honest or true explanation. The application for review was already out of time. The reference was to the writer being away. It is not a pro forma letter. It is not a pro forma matter anyway. A bill had been slashed to £3,850. A recommendation for referral to the OSS for culpable overcharging had been made. Yet she states that she was not shown it and her staff dealt with it as a mere matter of administration. This is even odder when it is taken [into account] that she opens all incoming mail herself.
(10) On 20th November 2003 the Adjudicator upheld the assessment reducing the bill to £3,850. [Miss Sheikh] claimed in cross-examination that she was unaware of the reduction in fees until receipt of this final adjudication. This is untrue. She had a telephone conversation with the Law Society on 22 October 2003 of which there is an attendance note regarding putting in points of objection to the provisional assessment. This also shows that her evidence that she never considered a review is untrue. She simply did not pursue it."

On 13 December 2003, £7,341.25 was transferred back from the office to the client account. There is no obvious explanation for a transfer of that amount: the difference between £12,000 and £3,850 is £8,150.

55. The judge sought to address the complaint at paragraphs [112] and [113], in the section of his judgment headed "Overcharging". He said this, so far as material:

> "[112] . . . Miss Sheikh's bill in the amount of £15,000 plus VAT had been entered into the records on 7 May 2003. The ledgers show that on 13 October 2003 Miss Sheikh, on the basis of that bill, caused £12,000 to be transferred from client bank account to office bank account. Apart from the existence of the family's request for a remuneration certificate she would, in my view, have been fully entitled to make that transfer by virtue of rule 19(2) of the Solicitors Accounts Rules. However, the family had requested a remuneration certificate. Indeed the transfer of the £12,000 occurred at a time when the first adjudicator had already issued a certificate for only £3,850 but the matter had not yet been decided by the second adjudicator on review. [Counsel] suggested that in the circumstances it was wholly improper for the transfer to have been made when it was. Miss Sheikh's general answer to the question was:
>
> > 'I am not sure I agree with that. If there is a challenge and you believe you have made a fair and proper charge to the client, I am not clear that you should not take the funds. Obviously you have to repay them if the challenge goes against you.'

> When the second adjudicator upheld the decision of his predecessor, so that the challenge to Miss Sheikh's charge to the estate had definitively gone against her, she did precisely what she said in her answer she would have to do. She repaid to client account the amount which had been transferred to office account. (Or possibly she repaid the excess of the transfer over the amount properly payable according to the remuneration certificate.)
> [113] In my view for Miss Sheikh to cause the transfer of £12,000 to be made when it was was a rather provocative thing to do. Or at least it was if Miss Sheikh realised that the bill by reference to which she was making a transfer of £12,000 was the one which an adjudicator had reduced so drastically. She said in evidence that she was not sure that she even knew about the first adjudicator's decision. I think, on the basis of letters on the file, that she must have been informed about it. I would not, however, rule out the possibility that, when she was carrying out her morning exercise (described in paragraph 83 above) of looking at the day's print out of (1) amounts owed by clients and (2) amounts held on client account for those clients, with a view to highlighting matters as respects which a transfer to office account should be made, she did not realise that a matter which she highlighted for a transfer of £12,000 was the one where the adjudicator had already reduced the pre-VAT fee down from £15,000 to £3,850. She did say in her evidence: *'You have to accept that one is sometimes putting two hats on. When I put my accountancy hat on I, to some extent, shelve other matters.'* But, even accepting that the transfer was provocative, and one which it would have been better for her not to have made, I am not clear that there was anything about it which was in breach of the Solicitors Accounts Rules, and certainly I cannot see any dishonesty. I repeat that in evidence Miss Sheikh said that 'obviously' if the adjudication went against her she would have to pay the money back, and that that is precisely what she did. The transfer may have been unwise, and it may merit some criticism, but I do not think that it has any valid impact on the specific issues with which I am concerned: the issues of whether an intervention expressed to have been based on reason to suspect dishonesty and on breaches of the Solicitors Accounts Rules (which must in the context mean serious breaches) should be allowed to continue."

56. In my view there is force in the Society's criticism that the judge did not deal adequately with the case that it had advanced in its closing submissions. It may be said that the judge ignored the fact that Miss Sheikh had been specifically requested by solicitors to the beneficiaries, in February 2003, to make no transfer from client account to office account until their challenge to her bill had been resolved. It may be said that he ignored her own answer to the question, put to her in cross-examination, that: "It would be wholly improper to take that money on the back of a bill which had been reduced from 15,000 to 3,000?". She accepted that: "It would be if one was aware of that fact". It was, as it seems to me, impossible for the judge to find (and he did not find) that Miss Sheikh was unaware of the provisional assessment. She had been warned that, absent a successful challenge to the assessment, the adjudicator would advise an investigation into culpable overcharging; yet, despite two reminders by telephone, she did nothing to pursue a challenge. I find it difficult to accept – as the judge suggested at paragraph [111] of his judgment – that "being a busy solicitor with many other current matters on the go, she found that she had more pressing things to which to devote her time". There was an obvious need to submit objections promptly if she intended to challenge the provisional assessment. Her own evidence – to which the judge made no reference – was that she never intended to do so: "I did not even consider arguing it –arguing against it. My costs were reduced and I paid." (Transcript, 9 May 2005, page 140, lines 9-10). She did not return to client account the amount (£12,000) which had been transferred to office account. She did not even return the excess of the transfer over the amount properly payable according to the remuneration certificate. That would have required a re-transfer of £8,150. What she did was to re-transfer a lesser sum (£7,341.25) some three weeks after she had received the final remuneration certificate.

Failure to account for interest

57. The Law Society's complaint was set out at paragraphs 76 to 91 of its closing submissions. The Society identified five probate matters – Sills, Suckling, Beasley, Strupczewski and Stanton – in relation to which it is said (at paragraph 83) that:

> ". . . monies were held on general client account for periods which triggered a requirement to account for interest to the client. In each case there were ledgers showing interest. In each case there were failures to account for this or to account for it properly."

Miss Sheikh had stated (at paragraph 41 of her first witness statement) that:

> ". . . the failure to account for interest in certain, but not all, cases was clearly not systematic. There was no policy not to account for interest and therefore the failure to do so in specific cases was merely an oversight on my part. This omission does not give rise to any basis for suspecting dishonesty."

The Society did not accept that the failure to account was random. But, even if it were, the Society viewed the failure to account for interest as giving rise to serious concern. The concern was explained in paragraphs 78 to 81 of the closing submissions:

> "78 . . . It simply does not follow that an absence of policy or systematic approach to [Miss Sheikh's] failure to account for interest would mean that a failure to do so in specific cases was not dishonest. At the very least the individual cases are sufficient to have raised, and to continue to raise, a suspicion of dishonesty. Further the attempt now to categorise those failures as a mere oversight is not accepted by the Law Society. In reality it is not consistent with her answers on investigation taken as a whole. Her failure was deliberate or calculated disregard.
> 79 [Miss Sheikh] now seeks to reverse what she said at interview, what she put in her witness statement and what her counsel advanced in his skeleton argument. Her current suggestion is that she did account for interest. This yet again is an implicit acknowledgment of the untenability of her position. It is not acceptable. She claims that when she reduced bills she did so by giving credit for interest. That might have had slightly more credibility if she had in fact told anybody this including the clients, co-executors or beneficiaries themselves. She appreciated that to do so required authority. She said in one interview that a new letter with revised terms of business was being drawn up for the purpose . . . It could not be seen then. It has never been produced to date. This is a specious if ingenious attempt at retrospective justification.
> 80 It must be clear that the failure to account for interest is also (a) a breach of fiduciary duty; (b) a breach of account rules; (c) deprives the clients/beneficiaries directly of monies due to them; (d) ultimately benefits the firm. Mr Shaw's unchallenged evidence is that the interest which accrues on general bank account is periodically paid to office bank account. The fund is then used (directly or indirectly) to fund payments of interest to individual clients. The end result is that interest not paid accrues to Ashley & Co. This kind of piecemeal or opportunistic default is of a kind which can be glossed over by her. It was only discovered incidentally. It did not prevent the books being reconciled. In one way that is what makes it so dangerous. It is a dishonest retention of trust funds. At best [Miss Sheikh] adopted a 'can't be bothered with this' approach. Such an approach would be actually dishonest.
> 81 Ultimately the simple answer to the issue of whether this was a mere oversight is tested by the question 'did she correct it when it was shown to her?' The answer is no. She has continued to retain those funds."

58. The judge accepted that the failure to account for interest was made out on the evidence. But he dismissed the suggestion that Miss Sheikh's failure to do what, plainly, she should have done was indicative of dishonesty. At paragraph [116] of his judgment he said this:

"[116] In paragraph 23 above I outlined the provisions of the Solicitors Accounts Rules which require a solicitor, subject to de minimis limits, to account to clients or to controlled trusts (typically deceased's estates in the course of administration) for interest calculated by reference to money held by the solicitor in the general client bank account. The Law Society say that in some of the probate matters which were investigated Miss Sheikh did not account for interest to the extent that the rules provided. I accept this, but for reasons which I will attempt to describe without getting excessively bogged down in a morass of detail, I think that it was a matter of slackness (perhaps understandable slackness but slackness nevertheless) and not of dishonesty. . . ."

He then examined the five matters to which I have referred:

"[119] The Law Society had looked at five specific matters - all concerned with deceaseds' estates - to examine whether interest had been properly accounted for. . . . "

i) *The estate of Teresa Sills deceased.* Interest was properly accounted for. The Law Society, always inclined to assume the worst of Miss Sheikh, presented the case to the Panel in the Fl· Report, and to me in this case, on the basis that the interest had only been accounted for after a beneficiary of the estate had specifically asked for it. The innuendo was that, if the beneficiary had not asked for the interest, Miss Sheikh would not have paid it. That was not the correct position. It is correct that, when the beneficiary had signed a receipt for the final distribution to him of the capital sum due to him under the estate, he added in manuscript: *'Looking forward to hearing from you in due course with cheque for accrued interest of monies while held by you.'* A payment of interest followed. However, contrary to the Law Society's supposition, Miss Sheikh had always been intending to pay interest. Miss Sheikh said in cross-examination that she was confident that she had sent the distribution of capital under cover of a letter which said that a payment of interest would follow. That explained the beneficiary's manuscript addition to the receipt (which had been enclosed in draft in the letter). Since the Law Society (through Russell-Cooke) were holding the file she had not been able specifically to check. The file was in fact available in court. No-one on behalf of the Law Society disputed what Miss Sheikh had said, and I believe I recall her saying to me later that she had looked at the file during an adjournment and that the letter which she had described was indeed there.

ii) *The estate of Walter Suckling deceased.* This was the matter for which there were two files and two client ledgers. One was for the administration of the estate; the other was for the sale of a house. By reference to the administration of the estate interest of £806.63 was paid to the beneficiaries. By reference to the sale of the house interest of £123.79 had accrued and had not been paid. It appears that the failure to pay the interest was a breach of the rules, and it ought not to have happened. But it was surely no more than a mistake. I cannot give serious credence· to a suggestion that Miss Sheikh may have dishonestly stolen £123.79 of the Suckling estate's money by deliberately failing to pay the interest which she ought to have paid.

iii) *The estate of Helen Strupczewski deceased.* According to the computer calculation in the client ledger just over £580 of interest had accrued. That amount was never specifically paid to the estate. Miss Sheikh's evidence was that this was the matter where she wrote to her co-executor explaining that she was going to reduce her fees by just over £3,000 (see paragraph 114(viii) above). She said that it was because of that reduction that she did not account for a sum of interest to the estate. I can accept that she thought that that was an adequate explanation, but I do not think that it really was.

> It might have been if she had explained the position in full to the beneficiary, and he had agreed to what she proposed. However, she did not explain it at all. It appears to have been her unilateral decision that, because she was reducing the fees, it would be acceptable for her not to comply with the obligation to account for interest. But of course the reduction of fees did not remove the statutory obligation to account for interest. This feature also takes some of the gloss off her letter to the beneficiary, which he received so favourably.
> iv) *The estate of Ruth Stanton deceased.* No specific amount of interest was accounted for in this case. Miss Sheikh's explanation was in principle the same as her explanation in Strupczewski deceased, although the figures are smaller. As in Strupczewski I do not think that the explanation really removes the criticism of non-compliance with the interest rules.
> v) *The estate of William Beasley deceased.* No interest has as yet been accounted for in this matter, but Miss Sheikh gave an explanation, that, contrary to what was said by the Law Society in the FI Report, this is still an open matter. She explained why. It had to do with the estate having to be kept in the course of administration until an infant beneficiary was of sufficient age to sign a deed relating to an asset comprised in the estate. Miss Sheikh said that the interest position would be dealt with when the estate was finally closed. I am prepared to accept her explanation on this particular matter."

At paragraph [120] the judge concluded:

> "[120] Generally on interest, I consider that this may be the weakest part of Miss Sheikh's case, and as I said at the beginning of this part of my judgment she needs to tighten up and comply properly with the rules. . . . I do not think that Miss Sheikh's inadequacies in this respect justify intervention, particularly given her acceptance in her evidence that she needs to improve in this respect. . . . I of course accept that, if Miss Sheikh's firm omitted to pay interest in cases where it should have paid it, she must accept responsibility for the breach of the legal obligation. Miss Sheikh would not question that that is so. But allegations of personal dishonesty on her part are not seriously maintainable."

59. The Law Society submits that that was not an adequate response to the concern which it had raised. As it was put in the skeleton argument deployed in this Court:

> ". . . This is also a further example of the impression of the character of a witness affecting the judge and his leaving out relevant material, because the judge's starting point is to believe [Miss Sheikh's] evidence, and such belief is taken as enough to dispel suspicion of dishonesty even if the actual documentary and other evidence suggests it. [Miss Sheikh's] earlier explanations as to interest needed to be analysed in order for it to be possible adequately to deal with whether there was a reason to suspect dishonesty."

In my view there is force in that criticism. The judge did not address the inconsistencies between the explanations which Miss Sheikh gave in the course of her oral evidence and the explanations which she had given earlier, at interview and in her witness statement. Nor, as it seems to me, did he address the point that, in failing to account for interest, she was benefiting her firm at the expense of those interested in the estates of which she was executrix. As I have said earlier in this judgment (in the context of her dealings with the Thirkettle estate), the fact that Miss Sheikh was her own client – coupled with the fact that she did not tell the beneficiaries what she was doing – made it the more important, as it seems to me, that she should be scrupulous in her dealings with the estates of which she was executrix.

The FI Report and Mr Shelley's evidence

60. The Law Society placed reliance on the evidence of Mr Shelley in support of its allegation of systematic overcharging. As I have said, Mr Shelley's report was before the adjudication panel, as an appendix to the FI Report, on 17 February 2005, when that panel resolved to intervene in Miss Sheikh's practice.

61. I have already referred to Mr Shelley's evidence in the context of Miss Sheikh's costs for work done in the administration of the Thirkettle estate. In that context the judge had observed, at paragraph [69] of his judgment, that:

> "[69] . . .
>
> ii) I should not in any event be understood as accepting that, because Mr Shelley considers that £35,000 (before VAT), was too large an interim fee in the circumstances, therefore it was too large. This is no criticism of Mr Shelley. On the contrary I thought that he was a careful, impressive and fair-minded witness. For example, if his reading of files in the six probate cases which had been referred to him exhibited features of which he approved, he said so and gave credit to Miss Sheikh where he thought that it was due. In so far as his evidence identified aspects of billing techniques by Miss Sheikh which he considered to be inappropriate he was very much in his specialist field, and his evidence was helpful. However, in so far as he was asked by the Law Society to give his personal opinions on matters such as the number of hours that the work on a particular probate might have required or what hourly rates for probate work were acceptable, I doubt that he was within his true expertise. He is not a solicitor, and he gives no evidence that he has personal experience of acting in the administration of an estate. He has been a costs draftsman for the last ten years, having for many earlier years been a probation officer. In the course of one of the visits by Miss Patrick and Mr Shaw to Ashley & Co's office Miss Sheikh was asked to comment on Mr Shelley's view that the hours spent on the Thirkettle estate were more than double the number which were needed. Her reply was: 'Absolute rubbish. The matter was extremely complicated. I spent days on this. If he could do it in a lesser time he's a better lawyer than me.' She expressed herself rather sharply, but her point that Mr Shelley (who had not spoken to Miss Sheikh) was not well equipped to opine on how much work a quite substantial estate required was, in my view, well taken. . . ."

62. The judge made more general observations on the weight to be placed on Mr Shelley's evidence at paragraph [114] of his judgment, in the course of his consideration of the allegation of systematic overcharging. He said this:

> "[114] . . . I have a number of observations to make with reference to the evidence of Mr Shelley, the costs draftsman whose report for the Law Society was among the appendices to the FI Report which the Panel had before it. Mr Shelley gave evidence before me, and he confirmed that his report represented his opinions.
>
> i) The report was balanced and fair, as also was Mr Shelley's oral evidence. Mr Shelley identified respects in which he considered that Ashley & Co's techniques for determining its bills were unsatisfactory, but he also specifically mentioned positive aspects. On his reading of the six files which were sent to him, usually Miss Sheikh was expeditious and adopted a planned and systematic approach to dealing with assets and liabilities. Bills were issued at appropriate intervals, and there was evidence that costs were considered before billing. Generally the contents of the files appeared to be comprehensive, and contained contemporaneous records of the work done.
>
> ii) On the other hand Mr Shelley put forward several criticisms of Miss Sheikh's billing techniques. I have mentioned earlier that she still used the

technique of charging for her time at a basic rate and then adding an uplift for care and conduct. . . . However, as Mr Shelley explains, that technique, though not specifically prohibited by any specific rule, has been generally superseded in the profession by charging at a composite hourly rate which reflects all aspects of the work done. Miss Sheikh has herself consulted a costs draftsman, Mr Adams, and she accepts Mr Shelley's opinion on this.
iii) A detailed criticism which Mr Shelley makes is that the print outs which give detailed information about the work done from time to time do not identify the fee earner. Mr Adams' report to Miss Sheikh says that she has changed the system now, and more recent print outs do identify the fee earner.
iv) The identity of the fee earner is relevant particularly to a point which I have mentioned earlier in connection with the Thirkettle estate. . . . I will briefly repeat the central points here. There was a considerable quantity of work of an accounting nature to be done on the estate, and Mr Sampat did it. He told me in evidence that Thirkettle was the only probate matter on which he had been needed to do work of that nature. In setting the amount of the interim estimated bill (£35,000 before VAT) Miss Sheikh proceeded on the basis that Mr Sampat's time should be charged for at the same rate as her own. Mr Shelley considered that that was inappropriate, and I take the same view. I hope that, on considering this judgment, Miss Sheikh will agree.
v) Another of Mr Shelley's criticisms is that on some occasions Miss Sheikh duplicated charges as respects some letters. She charged a basic amount for each letter that she read or wrote (described by Mr Shelley as charging item rates), and in some instances she also made time charges for considering letters received or preparing letters written. Miss Sheikh in her evidence agreed that she did that in some instances. Her practice was that if a letter which she received or wrote was just a routine matter she charged only the item rate. If the letter required time and thought to be applied to it she also charged for her time. In [counsel's] written closing submissions he says that there is nothing wrong with Miss Sheikh charging for her time on letters which required time and thought, but if she did that she should not also charge item rates for the same letters. I cannot pretend to have the knowledge or experience to say who is right on this. What [counsel] says sounds convincing, and I note that Mr Adams says nothing about it. If he had disagreed with Mr Shelley I think it likely that he would have said so. I hope that Miss Sheikh will reflect on it and consider whether her practice in this respect needs to be changed. . . .
vi) When it came to the six specific probate matters which Mr Shelley was asked to consider he stated his opinion in each case that Miss Sheikh's charges were higher than he would have expected. Reasons included his opinion that the matter did not need the number of hours which Miss Sheikh had worked on it, and that her hourly rate was excessive. I am not convinced that Mr Shelley's views in these respects should carry much weight with me. I have explained why not already in paragraph 69(ii) above with specific reference to the Thirkettle estate, which was one of the probate matters which Mr Shelley was asked to consider. I refer here to what I said there, but I will not prolong this already very long judgment further by saying it all again in relation to the other five estates as well.
vii) One point which I will make is that in one or two cases Mr Shelley has observed that Miss Sheikh, having notified her charging rate to the client at the commencement of a matter, omitted to notify the client in the course of the matter of an increase in the rate. In such cases she should not have charged for part of her work at the increased rate. Mr Adams advised her to a similar effect, with particular reference to a probate matter relating to the estate of Walter Suckling deceased. Miss Sheikh accepts this. . . .

viii) One of the matters which Mr Shelley considered and on which he expressed the view that Miss Sheikh's charges were higher than he would have expected was Strupczewski deceased. Miss Sheikh was one of two executors of the estate. Her firm charged £17,000 (before VAT). I must record, however, a letter of 11 December 2000 which Miss Sheikh wrote to her co-executor, a Mr Postlethwaite. It includes the following:

> 'This was a sizeable estate: the, number of assets, the sheer volume of documentation, and the difficulty of obtaining information from some of the asset holders made it more cumbersome than would be usual, but while the estate made administrative demands upon me, I cannot pretend that it was legally complex. In the circumstances I do feel that the level of charge, based on recorded time, is higher than I would myself have expected. I have given the matter some thought and my reaction would be to reduce it by a percentage. I have applied a 15% reduction."

There is a reply from the co-executor praising Miss Sheikh's professionalism and thanking her warmly for the reduction in her fees. Mr Shelley was aware of the exchange of correspondence, and fairly quoted it in his report. He still assessed the charge which he would have expected as no higher than £12,655. I do not for a moment doubt the total sincerity with which he holds his views, but I have to say that this particular detail reinforces my uncertainty about how reliable his own evaluations of how much should have been charged for a matter can be assumed to be."

In reading that final sub-paragraph – sub-paragraph (viii) - of paragraph [114] it is pertinent to have in mind the judge's observation, at sub-paragraph (iii) of paragraph [119] that, Miss Sheikh's decision not to account for interest in the Strupczewski estate "takes some of the gloss off her letter to the beneficiary [her co-executor], which he had received so favourably."

63. The Law Society criticises the judge's treatment of Mr Shelley's evidence. It is said that that evidence could not be rejected as of little relevance or weight. It is said expert evidence of that nature provides "a useful starting point in evaluating the issue as to whether there has been not merely culpable but possibly dishonest overcharging, and the extent of the judge's disregard for this evidence sets a dangerous precedent".

64. To suggest that "the judge's disregard for this evidence sets a dangerous precedent" is, as it seems to me, to overstate the position. It is clear that the judge gave weight to Mr Shelley's evidence in a number of important respects. The two matters in respect of which he did not give weight to Mr Shelley's evidence were (i) the number of hours of solicitor's time that work on a particular file demanded and (ii) the hourly rate to be charged by a solicitor for probate work – see (ii) of paragraph [69] and (vi) of paragraph [114]. And it is important to have in mind that the judge seems to have thought that, in relation to those two matters, Mr Shelley had gone outside his own expertise: "he gives no evidence that he has personal experience of acting in the administration of an estate". But, having said that, I do not share the judge's view (if it were his view) that the evidence of an expert costs draftsman, experienced in drawing bills of costs in relation to probate work, would be of little or no assistance as to what would be a usual time charge in relation to the administration of a small, uncomplicated, estate – both as to the hours usually spent and the hourly rate usually charged. In principle, evidence from a costs draftsman with suitable experience as to what he would expect to see in such cases does provide "a useful starting point in evaluating the issue as to whether there has been not merely culpable but possibly dishonest overcharging" – in the sense that significant deviation from the norm may require explanation. But, of course, the costs draftsman's view is not determinative in the individual case; it does no more than provide a standard against which the actual charges made by the solicitor in his (or her) cases, taken together, can be measured. If, taking the solicitor's cases together, it can be

seen that his (or her) charges are significantly higher than the norm, then the Society is right to look for an explanation; and (absent an explanation) right to suspect overcharging.

65. In paragraph [68] of his judgment the judge had observed, correctly, that: "If a solicitor charges a client too much there are clear protections for the client, in particular in non-contentious matters like probates the process of requiring the solicitor to obtain a remuneration certificate from the Law Society". At paragraph [115] he said this:

> "[115] . . . In any event the law provides means for the protection of clients against solicitors who show a tendency to overcharge their clients. In particular there is the remuneration certificate procedure, and of course (something which I have hinted at but not specifically mentioned yet) in contentious matters there are procedures for the assessment of costs by experienced Costs Judges and District Judges. Interventions are not needed to achieve such protection."

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: "The protection of the public entails placing the proper emphasis on the duty of the solicitor to consider fees honestly, and not to take advantage of clients by setting them higher than is reasonable in the first place, particularly in probate matters". I agree: *a fortiori* where the solicitor, as sole executor, is himself (or herself) the client. 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.

The post- intervention transfer of £254,000

66. This is a matter which the Law Society regards as giving rise to particular cause for concern as to Miss Sheikh's fitness to carry on her practice. It is not difficult to understand why the Society takes that view. It is convenient to take the facts (so far as material in this context) from the judge's findings at paragraph [137] of his judgment:

> "[137] . . .
> i) A client of Ashley & Co was a Mr Dogan. For some time he had been involved in an intended property development transaction, which was to be undertaken through a company called Red River UK Ltd (Red River). The project had been running into financial difficulties, and at some stage it had been agreed between Mr Dogan and Miss Sheikh that she would take an interest in the development and would raise some money to contribute to the project in some form. . . .
> ii) . . .
> iii) In or about December 2004 Miss Sheikh applied for a mortgage loan on the security of her house, with a view to raising money which could be made available on some legal basis or other to Red River for investment in the development project.
> iv) On 17 February 2005 the mortgage was completed. . . . The mortgage loan was £254,000, and the money arrived at Ashley & Co at about 1 pm on the 17th. There was a question of where it should be placed in the first instance. Miss Sheikh says in a witness statement that she intended it to be paid into the client bank account at Lloyds TSB; she would post the receipt to the credit of the Red River ledger. . .
> v) . . .
> vi) . . . [One of her secretaries] paid the £254,000, not into Ashley & Co's client account at Lloyds TSB, but into its office account.

> vii) . . . As a result of the Panel's resolution to intervene in the practice of Ashley & Co, Mr Jones of the Law Society notified the banks, including Lloyds TSB, of the intervention on the afternoon of 17 February. . . .
> viii) The next morning Miss Sheikh, while out of the office, received . . . two telephone calls from Mrs Taylor [one of her secretaries], informing her that representatives of the Law Society were coming to the office. From the second call it was clear that it was something more serious than just another inspection visit. I am sure that Miss Sheikh's mind must have turned, among other things, to the £254,000. She believed that it was in the firm's client account at the bank, and no doubt she wished it had not been. She obviously decided that the money should be got out of the client account as soon as possible, and before the Law Society arrived.
> ix) Either in the second telephone conversation with Mrs Taylor or in a third conversation which must have followed almost immediately Miss Sheikh told Mrs Taylor to instruct the bank to transfer the £254,000 out of the client account. . .
> x) At this point Miss Sheikh did something for which she has been denounced time and time again by [counsel for the Society] in this case. The bank would need a signed instruction, and she told Mrs Taylor to prepare one, to sign it 'A Sheikh', and to [send] it to the bank straight away.
> xi) Mrs Taylor did that. . . . The bank should have refused to accept the instruction. The accounts were frozen [following notification of the intervention]. However, the bank failed to realise that that was the case, and transferred £254,000 out of the client account. . . . it was paid into Miss Sheikh's personal account at Barclays Bank. . . .
> xii) The result so far was that the client account was heavily overdrawn, which should never happen; that the office account was heavily in credit; that £254,000 had been added to the balance in Miss Sheikh's personal account at Barclays; and that Lloyds TSB had made a transfer of £254,000 which it ought not to have made.
> xiii) . . . "

Subsequently, following litigation between Lloyds TSB and Miss Sheikh (in the course of which the bank obtained a freezing order in respect of her accounts at Barclays Bank), the £254,000 was returned to Lloyds TSB on 8 March 2005.

67. In its closing submissions the Law Society criticised the instruction to Mrs Taylor (sub-paragraphs (ix) and (x) in the judge's findings at paragraph [137]) as "clearly dishonest and improper" in the following respects: (a) deliberately procuring an act in breach of rule 23 of the Solicitors Account Rules; (b) procuring a false signature on a transfer instruction, thereby deceiving Lloyds TSB; and (c) acting in contravention of the relevant provisions of the 1974 Act (paragraph 6, schedule 1) following the intervention.

68. The judge found that, at the time when she told her secretary, Mrs Taylor, to sign the CHAPS transfer instruction and send it to the bank (shortly after 10 o'clock on the morning of 18 February 2005) she did not know of the intervention. The events of that morning are set out paragraph [136] of his judgment: his finding on this point is at sub-paragraph (ix). The Society does not challenge that finding of fact on this appeal. But it is, I think, entitled to rely on the judge's observation (at sub-paragraph (viii) in paragraph [137]) that Miss Sheikh knew (before she told Mrs Taylor to sign the transfer instruction) that the imminent visit by the Law Society's representatives to the offices of Ashley & Co was "something more serious than just another inspection visit". As the judge put it, at paragraph [139] of his judgment:

> "[139] I should, however, say that I do believe that Miss Sheikh was impelled to give the instructions to Mrs Taylor because of a generalised feeling that she just did not want the money to be in the client account when the Law Society arrived. She would, I believe, have felt exactly the same way if she had realised that the money was in

> the office account, not the client account: she would still have wanted to get the money out of any practice account."

It seems to me impossible to avoid the conclusion that, whether or not Miss Sheikh knew that intervention notices had been served, she must have had in mind that intervention was a real possibility: that is why she wanted "to get the money out of any practice account".

69. The judge did not find that a matter which gave rise to a suspicion of dishonesty. At paragraph [140] of his judgment he said this:

> "[140] 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 Mrs Taylor 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. . . ."

It is pertinent to have in mind that, on the judge's findings, Miss Sheikh thought that the £254,000 was in the firm's client account; that was where she had intended it would be because it was to be treated as client money held to the account of Red River. But the judge went on to say this:

> "[140] . . . 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 said in evidence to me that her first thought on hearing that Law Society officers were coming was that she would be castigated by them for allowing money which, on proper analysis was still her own money to be held in a client account, in breach of the Solicitors Accounts Rules, and in particular rules 1 (b) and 15(2)) . . . 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 (and/or her mother) would be participating as an investor and not in her solicitor capacity."

There was no evidence – or, if there was, the judge did not refer to it – which enabled the judge to decide whether, on the morning of 18 February 2005, the beneficial ownership of the £254,000 lay with Miss Sheikh or with Red River; but, as it seems to me, Miss Sheikh could not be heard to say that she thought it was her money. She had given instructions on the previous day that the money be treated as client money held by her firm to the account of Red River. The judge observed, at paragraph [141] of his judgment, that "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 went on to say that he could well understand "that it did not seem that way to her at the time". I find the latter observation surprising. Miss Sheikh had chosen to treat the £254,000 as client money. There was no basis upon which, faced with the possibility of imminent intervention (even if she did not know that intervention notices had actually been served), her decision to remove it from client account should be excused on the ground that she thought that the money had nothing to do with her practice. She must have had a reason for choosing to hold that money in the Ashley & Co client account.

70. Be that as it may, the judge found that Miss Sheikh had instructed her secretary, Mrs Taylor, to sign the CHAPS transfer in her (Miss Sheikh's) name. The obvious – and, indeed, the only – explanation for that instruction was the bank should be led to think that the transfer had been signed by Miss Sheikh herself. It must be kept in mind that, on the judge's findings, Miss Sheikh thought that the £254,000 was held in the firm's client bank account; and the transfer was to be a transfer from that account. The object was to deceive the bank; so that it would give effect to a transfer which, if it were to comply with rule 23(1)(a) of the Solicitors Account Rules, needed to be signed by a solicitor who held a current practising certificate. The judge addressed the point at paragraphs [142] and [143] of his judgment:

> [142] . . . the other aspect of the events concerning the £254,000 which is strenuously attacked by [counsel for the Law Society] is that [Miss Sheikh] told Mrs Taylor to sign the instruction to the bank and to sign it 'A Sheikh', not for example 'M. Taylor p.p. A Sheikh' . I do not know whether the bank would have acted on a signature in the latter form, but in any event, in so far as a 'p.p signature' instructed a withdrawal from client account (as of course it would have done, albeit mistakenly), it would not have complied with rule 23(1)(a) of the Solicitors Accounts Rules, which requires authorities for withdrawals from client account to be signed by a solicitor who holds a current practising certificate.
> [143] There is no getting away from it: Miss Sheikh should not have told Mrs Taylor to sign the instruction to the bank as she did. [Her counsel] has always acknowledged that on Miss Sheikh's behalf. All the same, how bad a thing to do really was it? I disapprove, [but] not to the extent that I say that it shows that Miss Sheikh is inherently dishonest to such an extent that she should not be allowed to carry on her practice as a solicitor. . . . The person with authority to give instructions to the bank was Miss Sheikh, and she specifically authorised Mrs Taylor to sign the instructions in her (that is Miss Sheikh's) name. There is no suggestion that she told Mrs Taylor to try to make the signature look like her own (Miss Sheikh's signature), and Miss Sheikh said that it did not look at all like her signature. If, as was the case, Miss Sheikh specifically authorised Mrs Taylor to sign a document 'A Sheikh' (but without any instruction to try to copy Miss Sheikh's style of writing), and Mrs Taylor did what she was authorised to do, was Mrs Taylor guilty of forgery? And was Miss Sheikh guilty of some offence associated with forgery? Possibly so, but it is not obvious to me that in either case the answer as a matter of policy ought to be: yes, or that anything inherently blameworthy was being done."

That, if I may say so, fails to confront the question: why did Miss Sheikh instruct Mrs Taylor to sign the CHAPS transfer in her (Miss Sheikh's) name rather that as agent '*per pro*' on her behalf? There is (in the judge's words) no getting away from the fact that that was done in order to deceive the bank. As I have said, it is not difficult to understand why the Law Society takes the view that the circumstances in which this post-intervention transfer took place give rise to particular concern as to Miss Sheikh's fitness to carry on her practice. For my part, I would find it astonishing if the Society did not take that view. It must be a matter of concern that a solicitor is party to a deception. It must be open to question whether a solicitor who is party to a deception is fit to carry on a sole (or any) practice.

71. The judge did not think the matter should give rise to any great concern. He said this, at paragraph [144] of his judgment:

> "[144] There is another point affecting this aspect of the matter which should be considered and which, to my mind, substantially mitigates any degree of fault in what was done. The instruction to the bank only became a real problem because, first, unknown to Miss Sheikh the bank was not permitted by law to make the transfer which Miss Sheikh (acting by Mrs Taylor) instructed to be made, and, second, the bank made the transfer which it ought not to have made. Suppose that there had been no resolution the previous afternoon by the Panel to intervene and thus that the firm's bank accounts were not frozen: the Law Society were coming to Ashley & Co's

> offices, but not for the purpose of implementing an intervention. Suppose that in other respects the events were exactly as actually happened: Miss Sheikh told Mrs Taylor to sign an instruction to the bank 'A. Sheikh'; Mrs Taylor did that; the bank acted on the instruction. Suppose that later the bank learned that the name 'A Sheikh' had been written by Mrs Taylor, not by Miss Sheikh. Would there have been a problem? I do not think so. Miss Sheikh obviously would not and could not have complained against the bank for acting on the instruction. Possibly the bank, for good order, might have asked her to confirm the instruction in a letter which bore her own signature written by herself, in which case I am sure that Miss Sheikh would have done as requested. It is of some relevance here to record that Miss Sheikh said in evidence that she knew the bank manager, Mr Martin Cockell, well and had a good relationship with him. Indeed, Mr Cockell himself says in a witness statement that until the recent events involving the Law Society (I think he means the events involving the £254,000) *'Miss Sheikh's account of Ashley* & *Co had been well run, and indeed she was considered to be an excellent customer of the Bank.'* If the Panel's resolution to intervene had not been adopted on 17 February, what happened with the signature on 18 February would, I believe, have been regarded by everyone as no more than an irregularity to which no consequences should attach."

I am unable to share the judge's view that "what happened with the signature on 18 February would . . . have been regarded by everyone as no more than an irregularity". It is, I think, important to keep in mind that it was necessary, in order to comply with the Solicitors Accounts Rules, that the CHAPS transfer be signed by Miss Sheikh and not by a secretary on her behalf. Miss Sheikh clearly thought that it was necessary that the bank did receive a CHAPS transfer which was signed in her name, rather than by an agent '*per pro*'. And it was important to her that the bank received, and acted upon, a transfer in that form before the Law Society's representatives reached her offices: that was why the transfer had to be signed by Mrs Taylor. She intended that the bank should be deceived. That was her reaction to what she must have seen as a real possibility of intervention (even if she did not know, at the time, that intervention notices had been served). I find it impossible to dismiss what took place – even on the judge's hypothesis – as "no more than an irregularity". 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.

72. The judge concluded, at paragraph [145], that:

> "[145] In the foregoing circumstances I consider that it would be harsh, disproportionate and unreasonable for me to be swayed by the post-intervention events involving the £254,000 into upholding an intervention which I believe, on the basis of the pre-intervention events, I should direct to be withdrawn."

I think that the judge was wrong to approach the question which he had to decide – should the intervention notices be withdrawn – in that way. The correct approach, as it seems to me, was to look at the matter as a whole. The conduct of the solicitor at the time of, and immediately following, intervention may well affect the way in which pre-intervention conduct should be viewed. In the present case, Miss Sheikh's conduct in relation to the £254,000 demonstrated that she was willing to deceive: she was capable of acting dishonestly. The judge should have asked himself whether his impression of her as a witness – "She did not remotely strike me as the dishonest, grasping incompetent implied by the Law Society's multiple attacks upon her" (paragraph [55] of his judgment) – which, plainly, had coloured his view of pre-intervention defaults, needed re-evaluation in the light of her willingness to deceive in relation to the £254,000 transfer.

Miss Sheikh's regulatory and disciplinary history

73. The history of complaints against Miss Sheikh appears from the Regulatory Schedule which forms part of exhibit "RP1" to Mr Penson's first witness statement. Particulars of some of those complaints were set out, and relied upon, in the Society's closing submissions of 13 May 2005 (at paragraphs 52 to 60). It is, I think, sufficient in the present context, to note only the following (to which we were taken in the course of argument):

"7 April 1999 [Walker]

The Remuneration Certificates Adjudicator considered Ashley & Co's costs for dealing with the administration of Percival Walker deceased. Ashley & Co had charged £5,000 exclusive of VAT and disbursements. A Provisional Assessment was issued on 15 February 1999 assessing that £4,000 exclusive of VAT and disbursements was a fair and reasonable sum to charge for the work done. The Adjudicator's reasons for the Provisional Assessment were inter alia that there had been a material breach of the Written Professional Standards in that no costs information had been provided to the client, the overall time spent was excessive and a high proportion of the work was conducted by Miss Sheikh's secretary and so the rate applied should have been significantly lower than that of a partner. Neither party appealed against the Provisional Assessment and a Remuneration Certificate was issued on 7 April 1999 certifying that £4,000 exclusive of VAT and disbursements would be a fair and reasonable sum to charge for the work done.

27 September 1999 [Patrick J Cusack & Co]

The Special Professional Regulation Sub-Committee considered allegations made by Patrick J Cusack & Co that Ms Sheikh had breached Principle 17.01 and Principle 30.04. The Committee found that Ms Sheikh had breached Principle 17.01 in that she had used her position as a solicitor to take unfair advantage for herself by seeking to claim her legal charges as testamentary expenses. The Committee also found that Ms Sheikh had breached Principle 30.04 in that she had failed to deal promptly with correspondence from the Office and had failed to provide a sufficient and satisfactory explanation in respect of the complaint. The Committee resolved to severely reprimand Ms Sheikh for her conduct.

10 March 2000 [Clode]

The Remuneration Certificates Adjudicator considered Ashley & Co's costs for dealing with the administration of the estate of Doris Clode deceased. Ashley & Co had charged £4,320 exclusive of VAT and disbursements for administering the estate. A Provisional Assessment was issued on 8 February 2000 assessing that £2,100 exclusive of VAT and disbursements would be a fair and reasonable sum to charge for the work done. The Adjudicator's reasons for the Provisional Assessment were, inter alia, that the solicitor's file and submissions did not substantiate the time claimed, the approach taken to costing was not in keeping with the terms of the business letter and the solicitor had adopted a 50% mark-up although the terms of business letter stated that the mark-up would be 25%. Neither party appealed against the Provisional Assessment and on 10 March 2000 a Remuneration Certificate was issued certifying that £2,100 exclusive of VAT and disbursements would be a fair and reasonable sum to charge for the work done. In view of the costs being reduced by more than 50%, the matter was referred to the Solicitors' Practice Unit for further investigation.

16 October 2000 [Clode]

An Adjudicator considered at first instance an allegation arising out of a remuneration certificate issued on 10 March 2000 that Ms Sheikh took unfair advantage of her clients Mr and Mrs Ives, the executors of the estate of Doris Clode deceased, by overcharging for work done. The Adjudicator found that Ms Sheikh had breached Principle 14.12 of the Guide to the Professional Conduct of Solicitors 1999 by overcharging her clients. The Adjudicator was

satisfied that the charges were so excessive as to amount to culpable overcharging. The Adjudicator severely reprimanded Ms Sheikh for breaching Principle 14.12.

23 September 2003 [Sharma]

The Remuneration Certificates Adjudicator considered Ashley & Co's costs for dealing with an application for a grant of probate on behalf of Ms Anouska Raghuwan in respect of the estate of Suzanne Sharma deceased. Ashley & Co's costs were £941.61 exclusive of VAT and disbursements. A Provisional Assessment was issued on 25 June 2003 assessing that £550 exclusive of VAT and disbursements would be a fair and reasonable sum to charge. The Adjudicator's reasons for the Provisional Assessment were inter alia that the solicitor had failed to comply with the Solicitors Costs Information and Client Care Code in that there was no evidence that she had discussed costs at the initial interview with the client and had delayed in providing written costs information and the overall time spent was excessive and the file did not justify the charge. Ashley & Co requested a review of the Provisional Assessment. However, on 23 September 2003 a Sub-Committee upheld the Provisional Assessment and a Remuneration Certificate was issued certifying that £550 exclusive of VAT and disbursements would be a fair and reasonable sum to charge for the work done.

17 November 2003 [Modood]

An Adjudicator considered a complaint that Ms Sheikh took unfair advantage of her client, Mrs Modood, by getting her to sign a letter of instruction whereby she could charge £185 per hour and backdate this for advice given previously whilst Mrs Modood was admitted to hospital under Section 3 of the Mental Health Act. The Adjudicator found that Ms Sheikh had acted in circumstances which compromised her duty to act in the best interests of the client and compromised the good repute of the solicitors profession (Solicitors Practice Rules 1990, Rule 1(c) and (d)) by getting Mrs Modood to sign a letter of instruction allowing her to charge £185 per hour for legal and non-legal advice, and to backdate this for advice previously given, in circumstances where Mrs Modood clearly did not have the mental capacity to give such instructions. The Adjudicator severely reprimanded Ms Sheikh for her conduct. [25 March 2004: Miss Sheikh requested a review of that decision. An Adjudication Panel were satisfied that the decision reached by the Adjudicator was correct. Given the circumstances, in particular the mental and emotional vulnerability of Mrs Modood at the time, the Panel considered that the imposition of a severe reprimand was warranted.]

20 November 2003 [Burrows]

The Remuneration Certificates Adjudicator considered Ashley & Co's costs for dealing with the administration of the estate of Cecil Burrows deceased. Ashley & Co had charged £15,000 exclusive of VAT and disbursements. The Adjudicator issued a Provisional Assessment on 9 September 2003 assessing £3,850 as a fair and reasonable sum to charge for the work done. The Adjudicator's reasons for the Provisional Assessment were, inter alia, that the solicitors hourly rate was excessive, the solicitors had inappropriately added a mark-up of 50% and the file did not justify the time charged. Subject to the outcome of any review the Adjudicator directed the OSS (Office for the Supervision of Solicitors) to investigate whether the solicitors charging amounted to culpable overcharging. Neither party applied for a review of the Provisional Assessment and a Remuneration Certificate was issued on 20 November 2003 certifying that £3,850 would be fair and reasonable sum to charge for the work done."

[Note: In fact Miss Sheikh had applied for a review; but did not pursue that application – see paragraphs [53] and [56] of this judgment.]

21 May 2004 [McGonnell]

The Remuneration Certificates Adjudicator considered Ashley & Co's costs for drafting will and providing inheritance tax advice on behalf of Mr and Mrs

> McGonnell. Ashley & Co's costs were £900 exclusive of Vat and disbursements. On 23 April 2004, the Adjudicator issued a Provisional Assessment assessing that £300 exclusive of VAT and disbursements would be a fair and reasonable sum to charge for the work done. The Adjudicator's reasons for the Provisional Assessment, inter alia, that there was no evidence on the solicitors' file that written costs information had been provided to the clients, the hourly rate of £225 that appeared to have been charged was inappropriate and the solicitors' file did not justify the charges. Neither party applied for a review of the Provisional Assessment and on 21 May 2004 a Remuneration Certificate was issued certifying that £300 exclusive of Vat and disbursements would be a fair and reasonable sum to charge for the work done."

74. The judge referred to these complaints (or some of them) at paragraph [30] of his judgment (where he speculated that the reason for the Law Society's decision (in February 2004) to investigate Miss Sheikh's practice might be related to the number of complaints against her which had been upheld) and at paragraphs [58] to [60] of his judgment. At paragraph [30] he said this, so far as material in the present context:

> "[30] . . . Miss Sheikh says in one of her witness statements that over 17 years of practice she has been the subject of 16 successful complaints, of which five were requests for remuneration certificates (that is, the client challenging the amount of the bill). Over the years she believes that she has opened between 2,000 and 2,500 files, and that in recent years she has been opening some 200 files a year. The point she is making is that against that background 16 successful complaints does not seem unacceptably bad. I am wholly unable to form a view about this. . . ."

At paragraph [58] he made the following comments

> "[58] . . .
> i) We live in an age when people are much more inclined to complain about things than they used to be a generation or more ago. It would, I imagine, be a comparatively rare solicitor's practice which never had a complaint which the Law Society considered to be valid. . . .
> ii) Prima facie I would assume that, if a complaint has been upheld by an adjudicator within the Law Society, then the complaint was justified. I have to mention, however, that Miss Sheikh (without going into the matters at length rightly, in my view, because I do not think that the subject matter of this case should be significantly affected by the outcome of complaints, unless they raised an inference of dishonesty) - made observations about some of the upheld complaints, and that what she said did cause me to wonder whether there was room for two views about some of the complaints. For example, on a matter called Modood, where a complaint was upheld and Miss Sheikh was severely reprimanded, Miss Sheikh has produced a letter from the son of the elderly lady in relation to whose affairs the complaint had been made. The complaint had been made by a stepson of the lady. The letter is from her son, with whom she now lives. All I will say is that the son's letter gives a very different impression from the view of the matter put forward by the stepson and accepted by the Adjudicator. . . .
> iii) Although the complaints show that there have been clients who have been dissatisfied with Miss Sheikh's performance as a solicitor, an impressive collection of testimonials from other persons which her present solicitors have assembled shows that there are many other people who think highly of her. . . ."

75. At paragraph [59] the judge referred to the submission, made to him on behalf of the Law Society, that, although matters of complaint which were not within sub-paragraphs 1(1)(a)(i)

and 1(1)(c) of schedule 1 to the 1974 Act could not have been relied upon to justify the decision to serve notices of intervention on 17 February 2005, nevertheless "once the intervention had been implemented on the basis of a resolution by the Panel that there were reasons to suspect dishonesty . . . and that there had been breaches of the Solicitors Accounts Rules . . . , other matters . . . should be taken into account by the court in deciding under paragraphs 6(4) and 9(8) whether to direct the withdrawal of the notice of intervention." He did not accept that proposition. At paragraph [60] he said this:

> "[60] . . . 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. . . . . In deference to the submissions made to me on behalf of the Law Society (which appeared to me to seize on any aspect, large or small, of Miss Sheikh's conduct of her practice which the Society thought might warrant criticism) I shall comment on at least some such aspects. But I do so on the basis that, as it seems to me, many of the complaints which the Law Society ventilated before me, while no doubt highly relevant to matters such as charges brought against Miss Sheikh before the Solicitors Disciplinary Tribunal, ought to carry little or no weight on the particular question which I have to decide."

76. The Law Society challenges the judge's conclusion that an established history of complaints should carry little or no weight on the question whether to direct withdrawal of intervention notices which have been properly served. It is said that a poor regulatory history is plainly relevant to the question whether the intervention notices should be withdrawn. For the reasons which I shall explain in a later section of this judgment, I think the Society is right to make that submission.

Material under the five heads: summary of conclusions

77. I have examined, in the preceding paragraphs, the material upon which, under the five heads limited by the order of this Court made in April 2006, the Society is able to rely in support of the three grounds of appeal which it was given permission to pursue. It is convenient to summarise the conclusions which I have reached in the light of that examination. Save where otherwise indicated, the paragraph references are to paragraphs of this judgment.

78. *The Thirkettle, Sills and Burrows matters*. I am satisfied that the Law Society has made out its complaint that the judge did not deal adequately with matters which caused legitimate concern. In particular, in relation to *Thirkettle*: (i) he did not address the points on which the Society relied for doubting the authenticity of the date (9 July 2002) on the interim account (paragraph [44]); (ii) he understated (or overlooked) the inference of serious dishonesty which would have to be drawn if that interim account had been back-dated to disguise a breach of the Solicitors Account Rules (paragraph [45]); and (iii) he was too ready to attribute the obvious overcharging which had occurred (paragraphs [46] and [47]) to "mistakes" and "an error of judgment" without engaging with the more rigorous analysis of the material which had led the Society to take the view that those matters gave rise to suspicion of dishonesty (paragraph [47]). In relation to *Sills*, the judge did not address the Society's concern that £1,196.20 had been taken from client account without justification

(paragraph [51]), In relation to *Burrows*, he did not deal adequately with the case advanced by the Society in its closing submissions of 13 May 2005. He did not explain how – having regard (i) to the letter of 27 February 2003 from the beneficiaries' solicitors, (ii) to her knowledge of the provisional assessment sent to her on 15 September 2003 and (iii) her own evidence that she never intended challenging that assessment – Miss Sheikh could have thought it consistent with the duties which she as solicitor/executrix owed to the estate to transfer £12,000 from client account to office account on 13 October 2003 (paragraph [56]).

79. *Failure to account for interest*. The judge accepted that the failure to account for interest – in four out of the five matters which he examined at paragraph [119] of his judgment – was made out on the facts. But I am satisfied that the Society has made out its complaint that he did not adequately address its concern that the failure to account for interest was indicative of dishonesty. In particular, he did not address the inconsistencies between the explanations which Miss Sheikh gave in the course of her oral evidence and the explanations which she had given earlier, at interview and in her witness statement; and he did not address the point that, in failing to account for interest, she was benefiting her firm at the expense of those interested in the estates of which she was executrix (paragraph [59]).

80. *The FI Report and Mr Shelley's evidence*. The judge may have been entitled to take the view (if he did) that Mr Shelley had gone outside his own expertise in commenting on the level of costs in particular estates. But, if the judge intended to suggest that the evidence of an expert costs draftsman, experienced in drawing bills of costs in relation to probate work, would be of little or no assistance as to what would be a usual time charge in relation to the administration of a small uncomplicated estate, then I think he was in error (paragraph [[64]). Further, I am satisfied that the judge was wrong to take the view that the availability to the client of the right to request a remuneration certificate in relation to non-contentious work was a sufficient safeguard; so that the Society's powers of intervention should not be used even in cases where there was evidence of persistent and deliberate overcharging (paragraph [65]).

81. *The post-intervention transfer of £254,000*. I think that the judge was wrong to approach the question which he had to decide – should the intervention notices be withdrawn – on the basis that, if he were not satisfied on the basis of the pre-intervention events that the notices should not be withdrawn, he should not alter that view in the light of the post-intervention transfer. He should have looked at the matter as a whole (paragraph [72]). Further, as it seems to me, the judge failed to appreciate the importance of the post-intervention transfer in the context of the whole. In particular, he failed to recognise that the post-intervention transfer provided a significant demonstration of the way in which Miss Sheikh was prepared to act in the face of what she must have seen as an impending crisis in her practice (paragraph [71]). The judge did not confront the question: why did Miss Sheikh instruct her secretary to sign the CHAPS transfer in her (Miss Sheikh's) name rather than as agent '*per pro*' on her behalf? And, because he did not confront that question, the judge did not give weight to the fact that that instruction must have been given in order to deceive the bank; and did not follow through the implications of Miss Sheikh's willingness to be party to deception (paragraph [70]).

82. *Miss Sheikh's regulatory and disciplinary history*. As I have said, I will explain in a later section of this judgment why I take the view that the judge was wrong to conclude that an established history of complaints should carry little or no weight on the question whether to direct withdrawal of intervention notices which have been properly served (paragraph [76]).

The two stage test

83. I have referred earlier in this judgment (at paragraph [33]) to the observations of Mr Justice Neuberger in *Dooley v Law Society* (unreported, 15 September 2000) in relation to the court's role on an application under paragraph 6(4) of schedule 1 to the 1974 Act. Those

observations were endorsed by Lord Justice Carnwath in this Court in *Holder v Law Society* [2003] EWCA Civ 39, [15], [2003] 1 WLR 1059, 1065. Mr Justice Neuberger said this (at page 10 of the transcript):

> "The court's decision is a two-stage process. First it must decide whether the grounds under paragraph 1 are made out; in this case, primarily, whether there are grounds for suspecting dishonesty. Secondly, if the court is so satisfied, then it must consider whether in the light of all the evidence before it the intervention should continue. In deciding the second question, the court must carry out a balancing exercise between the need in the public interest to protect the public from dishonest solicitors and the inevitably very serious consequences to the solicitor if the intervention continues."

84. There is, if I may say so, some potential for confusion in the two-stage test as formulated. It is pertinent to note that, in making those observations, Mr Justice Neuberger referred to the comments of Mr Justice Sedley, sitting in this Court in *Giles v The Law Society* (1995) 8 Admin LR 105, 118. After pointing out that it was appropriate to describe sub-paragraph 6(4) of schedule 1 as "conferring jurisdiction upon the court to direct the Law Society to withdraw from an intervention", Mr Justice Sedley went on to say this:

> "On such an application [under paragraph 6(4)] it is for the court to decide whether or not to direct withdrawal on the material then before it.
> If it is demonstrated to the court that a notice given under Part II of the schedule is fundamentally flawed (for example because it is based on an *ultra vires* resolution) it may well be that a direction for withdrawal should be made *ex debito justitiae*, leaving it to the Law Society to decide whether, in the light of what it then knows, it ought to pass a fresh resolution to intervene. But while the para 6(4) procedure is manifestly provided in substitution for the ordinary recourse to judicial review (see *Buckley v The Law Society* [1983] 2 All ER 1039) so that any point as to *vires* which might have been available under ord. 53 of the Rules of the Supreme Court is equally available on the originating summons under para. 6(4) in the Chancery Division, the relationship of discretion to law will not necessarily be the same. For instance, even in a case where it can be shown by the solicitor that the original notice ought not to have been issued because, say, the original evidence prompting the intervention was too exiguous to found a reasonable suspicion, the court need not direct withdrawal if on intervention abundant evidence of dishonesty has been found. . . . For the rest, it is by common consent a matter for the court's judgment (I prefer not to use the word discretion in this context) whether it should direct withdrawal – a judgment which may be significantly, though not conclusively, affected by the Law Society's own view of the facts, since the view taken by the professional body charged with the regulation of solicitors is in itself a relevant evidential factor to which the Judge not only can but must have regard."

85. 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", to adopt the words of Mr Justice Sedley. 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).

86. 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.

87. 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. As Sir Robert Megarry, Vice-Chancellor, observed in *Buckley (No 2)* (*ibid*, 1105):

> "In short, the question seems to me to be not 'Was it right to issue the notice?' but 'Should the notice now be withdrawn?'"

And there is no doubt that that issue must be determined on the basis of the material before the court at the time of the hearing (*ibid*):

> "When the court is deciding whether or not to make the order, I cannot see why every post-intervention fact or discovery should be ignored. At the time of the hearing by the court, the question is whether or not an order should be made; and in the absence of statutory language to the contrary, it seems to me that the court must decide the matter on all the material available at the time of the decision."

88. That approach was endorsed by this Court in *Buckley v The Law Society (No 3)* (unreported, 9 October 1985) (transcript, page 11E). The circumstances in which this Court decided (in October 1985) not to order withdrawal of intervention notices served in July 1982 in respect of Mr Buckley's practice provide confirmation that there may be cases in which the question whether there was ever reason to suspect dishonesty becomes irrelevant. As Lord Justice Balcombe (with whom the other members of the Court, Lord Justice Oliver and Lord Justice Neill agreed) observed (transcript, pages 11F-12C):

> ". . . the fallacy in [counsel's submissions on behalf of Mr Buckley] is that he submits that the solicitor has the <u>right</u> to have the question of honesty or dishonesty adjudicated upon. The statute certainly gives him no such right; what the statute gives him is a right to apply to the court to have the notice withdrawn. I should say that at no time has it been established before a court whether the Law Society had good reason to suspect Mr Buckley's dishonest (*sic*) and there certainly has been no finding on the substantive question as to whether or not he was dishonest. I should say straight away that I have sympathy for him in the position in which he finds himself, because he has been deprived by supervening events, first the judgments against him, then the inability to obtain a practice certificate and now the bankruptcy, of the opportunity of having that question adjudicated upon. But in my judgment there is no way in which this court, or any court, can determine a question upon which no issue in the proceedings now depends. . . ."

89. It follows, in my view, that there is a danger that a court may be led into error by uncritical adherence to the "two-stage process" suggested by Mr Justice Neuberger in *Dooley*. As I

have said, there may be cases - those in which there is a challenge to the validity of the resolution or to the service of the intervention notices – where the court does need, first, to decide whether the grounds under paragraph 1 were met at the time of the decision to intervene. But those were not, I think, the cases which Mr Justice Neuberger had in mind; as his own approach to the decision which he had to make in that case shows (transcript, pages 37 and 38). For my part, I find instructive the following passage in the judgment of Mr Justice Carnwath at first instance in *Giles v The Law Society* (unreported, 12 April 1995):

> "The grounds for intervention stated in paragraph 1 of the Schedule are not to be construed as separate and mutually exclusive procedures. The difference between the various sub-paragraphs is relevant to certain points in the Schedule, for example the need to give notice under paragraph 1(2) and to some of the powers. However, subject to any express limitations, I can see no reason why the scope of the powers should be confined by the particular sub-paragraph used to initiate the process. Thus, for example, the Society may properly intervene on the grounds of suspected dishonesty, but thereafter maintain the intervention if it becomes apparent that there is a breach of the rules but no actual dishonesty. Similarly they may intervene for a breach of the rules, and subsequently discover dishonesty and pursue the intervention on that basis. There is no policy reason for requiring the notice to be withdrawn, so long as it is justified in the light of the facts known to the court, and the solicitor has had a fair opportunity to deal with any allegations against him (see Buckley (No 2) p.317 d). "

Where there is no challenge to the validity of the resolution or to the service of intervention notices, the single issue for the court is whether the notices should be withdrawn.

90. In addressing that question – described by Mr Justice Neuberger as the "second 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 – as Mr Justice Sedley pointed in *Giles* – and as the body whose members are obliged, through the compensation fund, to underwrite those risks – as I pointed out in *Sritharan* (see paragraph [14] of this judgment). 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, as *Buckley (No 3)* shows*,* 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.

91. I have addressed the potential for error inherent in an uncritical adherence to the "two-stage process" suggested by Mr Justice Neuberger in *Dooley* at some length (in what is, already, an over-lengthy judgment) because, as it seems to me, the judge's observation (at paragraph [55] of his judgment in the present case) that the critical issue which he had to decide was "whether I consider that there was reason to suspect dishonesty on [Miss Sheikh's] part in connection with her practice" may have distorted his approach to the application which was before him. On a true analysis, as I have sought to explain, the issue for decision on the application was whether the intervention notices should be withdrawn. In addressing that issue the judge did not need to ask himself whether, at the time of the Panel resolution to intervene (on 17 February 2005) the Society had reason to suspect dishonesty. His task, given that the Society was opposing withdrawal of the intervention notices on the basis, *inter alia*, that the suspicion of dishonesty which had led to the resolution to intervene had not

been dispelled, was to address the Society's concerns in the context of weighing the risks of re-instatement.

92. I should add (by way of parenthesis) that, for my part, I confess to some doubt whether, as Mr Justice Sedley suggested in *Giles*, the court could refuse to direct withdrawal of a notice which "ought not to have been issued" because the original evidence prompting the intervention "was too exiguous to found a reasonable suspicion" on the basis that abundant evidence of dishonesty had been found on intervention – if he intended to include in that example a case where, on a proper analysis of the position at the time the decision to intervene was taken by the Society, the powers of intervention had not become exercisable. As Sir Robert Megarry, Vice-Chancellor, observed in *Buckley v The Law Society (No2)* [1984] 1 WLR 1101, 1105: "the society ought not to be free to intervene on inadequate grounds in the hope that what will be found will justify the intervention". But I recognise that the Vice-Chancellor clearly took the view in that case that it would be open to the court to refuse to direct withdrawal notwithstanding that, on the facts known to the Society at the time of the resolution, there was insufficient reason to suspect dishonesty. He said this, by way of example, (*ibid*, 1105*)*:

> " . . . On the available material the society concludes (wrongly) that there are sufficient reasons for suspecting dishonesty, and passes the resolution. The intervention then reveals that there are other facts, previously unknown to the society, which demonstrate that the solicitor is in fact grossly dishonest. On the hearing the court may nevertheless direct the society to withdraw the notice (and perhaps pay the costs), and leave the society to begin again. [That] seems to me to be an unjust result that Parliament is unlikely to have intended. . . . "

As I have said, the powers under Part II of schedule 1 to the 1974 Act are exercisable only in circumstances within Part I. If, at the time when the Society purports to exercise its powers under Part II, those powers have not become exercisable - because the pre-condition (the existence of circumstances within Part I) is not met - it seems to me difficult to avoid the conclusion that the exercise of the powers was, indeed, *ultra vires* in the public law sense. But that is not how it has appeared to other judges in other cases. This is not a case in which it is said – or could be said – that the intervention powers were not exercisable at the time when they were exercised. It is unnecessary to decide the point; and I do not do so.

The three grounds of appeal

93. It is with those considerations in mind that I now turn to the three grounds on which the Society obtained permission to pursue these appeals. Those grounds were: (i) that the judge erred in his approach to the question whether there were reasons to suspect dishonesty; (ii) that the judge misdirected himself in his approach to breaches of the Solicitors Accounts Rules; and (iii) that the judge erred in his approach to the decision which he had to take under what has been described as the second limb of the test to be applied on an application to withdraw. It is necessary to consider whether those grounds (or any of them) have been made out on the basis of the material upon which the Society is able to rely under the five heads which I have already examined.

94. *The first ground of appeal: reasons to suspect dishonesty*. As I have said, the theme which runs through the criticisms which the Society makes of the judge's findings of fact in relation to dishonesty is that, having taken the subjective view (from observing her give evidence) that Miss Sheikh was essentially honest, the judge was too ready to overlook matters which did, objectively, give rise to real cause for concern. It is said that, having persuaded himself, from his observation of Miss Sheikh and Mr Sampat as witnesses, that they were not dishonest, the judge was too ready – and without sufficiently rigorous analysis – to accept that matters which, objectively, were capable of giving rise to suspicion of dishonesty, were to be explained in a way which avoided a finding of dishonesty, by treating them as

"mistakes" or "errors of judgment". I have already explained why I think that there is force in that criticism.

95. It is said on behalf of Miss Sheikh (at paragraph 29 of the skeleton argument lodged on her behalf in connection with these appeals) that:

> "In order to determine whether a reason to suspect dishonesty which existed at the time of the intervention has been dispelled, the judge will perform the ordinary judicial task – consideration of all the documentary and oral evidence. Assessing the demeanour of a witness is a highly relevant factor in that exercise, all the more so when a witness has been exposed to cross-examinations of the length of those faced by Ms Sheikh and Mr Sampat. Only the judge can assess not only the answers to those questions, but also the way in which those questions were answered."

We were taken to the observations of Lord Hutton in *Twinsectra Ltd v Yardley* [2002] UKHL 12, [43], [2002] 2 AC 164 at 177:

> "[43] It is only in exceptional circumstances that an appellate court should reverse a finding by a trial judge on a question of fact (and particularly on the state of mind of a party) when the judge has had the advantage of seeing the party giving evidence in the witness box. . . . "

and passages in the judgments of Lord Justice Clarke and Lord Justice Ward in *Assicurazioni Generali SpA v Arab Insurance Group* [2002] EWCA Civ 1642, [12], [15], [21], [22] and [196], [2003] 1 WLR 577, 579, 580, 582-583 and 584.

96. The principles are not in doubt. An appellate court must respect the advantage which the trial judge has enjoyed in seeing and hearing the witness give oral evidence. But it is important to have in mind, also, the caveat noted by Lord Morris of Borth-y-Gest in his speech in *Onassis and Calogeropoulos v Vergottis* [1968] 2 Lloyds Rep 403, 419:

> ". . . it is to be remembered that there can be cases in which it would be open to an appellate court to find that the view of a trial Judge was ill-founded. This was pointed out by Lord Greene, M.R., in his judgment in *Yuill v Yuill* [1945] P 15, at p. 20. After referring to the case of *Hvalfangerselskapet Polaris A/S v Unilever Ltd., Lever Bros., Ltd., and Another,* (1933) 46 Ll.L.Rep. 29, Lord Greene, M.R., indicated that there could be cases in which it could be shown that a Judge had not checked his impression on the subject of demeanour by a critical examination of the whole of the evidence."

To those observations may be added the powerful (albeit extra-judicial) analysis of Sir Thomas Bingham in his monograph *The Business of Judging* (Chapter 1, pages 9 and 10). He observed that: ". . . the current tendency is (I think) on the whole to distrust demeanour as a reliable pointer to . . . honesty".

97. It was unnecessary – and, I would say, inappropriate – in the present case for the judge to make a finding of honesty or dishonesty. The question which he had to decide was whether the suspicion of dishonesty raised by the material on which the Society relied had been dispelled by the oral evidence of Miss Sheikh and Mr Sampat so that he could safely direct withdrawal of the intervention notices notwithstanding the view of the Law Society, after hearing that evidence, that intervention needed to remain in place for the protection of the public. In my view he was wrong to conclude – on the basis of Miss Sheikh's demeanour as a witness – that he should answer that question in the affirmative. He was wrong because he did not address adequately the serious inconsistencies between her 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.

98. *The second ground of appeal: breaches of the Solicitors Accounts Rules*. The judge accepted that there had been breaches of the accounts rules; but he did not think that "they were serious enough to merit the drastic and (in practice) terminal step of intervention" – paragraph [4] of his judgment, set out earlier in this judgment at paragraph [28]. At paragraphs [16] to [24] he examined the relevant accounts rules in some detail. At paragraphs [25] and [26] he made the following general observations:

> "[25] Ashley & Co maintained all of the ledgers and accounts required by the rules, but there are complaints by the Law Society that in some respects they were not maintained correctly, and that breaches of the Solicitors Accounts Rules occurred. I will have to say more about these aspects of the case later, but I can usefully record now that Miss Sheikh accepts that there have been some breaches. However, she says that they have not been serious breaches, and she also says that in several respects things which are asserted by the Law Society to have been breaches were not breaches at all. There are two matters which arose in the hearing which I can usefully mention at this point.
> i) The Law Society maintain that the power of intervention arose both under paragraph 1(1)(a) (suspicion of dishonesty) and paragraph 1(1)(c) (breaches of the Solicitors Accounts Rules) of Schedule 1 to the Act. However, [counsel for the Society], while maintaining that there had been many breaches of the Solicitors Accounts Rules, fairly accepted that, if that was all that there was and there was no suspicion of dishonesty, an intervention would not be justified. I agree with that. The Law Society has other disciplinary sanctions and procedures available to it, and 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 solicitor's compliance with the Rules.
> ii) An underlying theme of some of [counsel's] submissions for Miss Sheikh was, I feel, that in a busy solicitors' practice (particularly one which is somewhat under-resourced in terms of staff) it is unrealistic to suppose that there will not be breaches of the Solicitors Accounts Rules from time to time, and that I should not assume that Miss Sheikh's practice was exceptionally bad in its level of compliance. In his closing submissions he wrote: 'Again and again in this case, one has been tempted to ask how much worse Ashley & Co is than many other firms of solicitors, and whether the Law Society is expecting unrealistically high standards of purity from solicitors'. . . . I have much sympathy with what [counsel] says about this aspect of the case. The rules themselves recognise that breaches may occur: rule 7(1) provides that any breaches must be remedied promptly upon discovery. When, also in his written closing submissions, he referred at one point to 'the unrealistic level of accounting perfection advocated by the Law Society in the present case', his words struck a chord with me. I will add that, although there was no specific evidence about it, the impression which I have gleaned anecdotally over the years (not just in connection with this case) is that there are very few solicitors' firms which do not slip up in one respect or other over the Solicitors Accounts Rules from time to time.
> [26] I will have to come to particular alleged breaches of the rules at later stages in this judgment, but I will round off the more general observations which I am making here by suggesting that breaches may be of various kinds, of which I will mention four. First, at one extreme one may have a case, like *Preedy and Okoronkwo v The Law Society* (supra) [[2004] EWHC 2709 (Ch)], in which the solicitor makes no attempt to comply with the rules at all. In that case there was not even a separate client bank account. Second, one may have a case where there is a client bank account, and the ledgers are maintained more or less as required, but the solicitor, well knowing that the rules prohibit it except on conditions with which he or she cannot comply, simply takes money from client account to meet private expenditure

or (to take a common example) to repay or reduce the office overdraft. The solicitor may find himself or herself in financial straits and, believing that it may be just a temporary problem, takes money from client account in knowing breach of the rules hoping to put things right later when his or her fortunes turn for the better. Several past cases have been of that nature. Third, one may have a case where the solicitor does not maintain the accounts and ledgers in the way that the rules require because he or she does not interpret them as requiring it. Fourth one may have a case where there is a detailed non-compliance resulting from an error or an oversight. No doubt there are intermediate cases. All breaches are wrong: the rules are there to be understood correctly and to be observed, but obviously cases of the third and fourth types which I have mentioned, though regrettable, are not realistically to be equated with cases of the first and second types."

99. The Law Society does not, I think, accept that counsel who appeared on its behalf before the judge (but did not appear on this appeal) had conceded that breaches of the Solicitors Accounts Rules alone, in the absence of any suspicion of dishonesty, would not justify an intervention. For my part, I have no doubt that a concession in such wide terms (if made) cannot stand with the provisions in paragraph 1 of schedule 1 to the 1974 Act. It is beyond doubt that sub-paragraph (1)(c) does enable intervention powers to be exercised if the Council are satisfied that the solicitor has failed to comply with (*inter alia*) the accounts rules, whether or not that failure gives rise to the suspicion of dishonesty. The real point, I think, is that the exercise of intervention powers might be said to be a disproportionate response by the Society to a failure to comply with the accounts rules unless that failure did give rise to the suspicion of dishonesty. That, as it seems to me is what the judge had in mind when he observed (in the final sentence of sub-paragraph (i) of paragraph [25] of his judgment) that: " 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 solicitor's compliance with the Rules".

100. The Society takes issue with that observation. It points out that there may well be cases where client money has been lost or misused through error or oversight in which the circumstances call for intervention. The judge, it is said, has failed to appreciate why detailed and precise compliance with the accounts rules is important – and should be enforced. The Society insists on compliance with the rules because "failures to comply are a breeding ground for risk to funds and failures to deal with money properly".

101. If the judge intended to suggest that there was, or should be, a general rule that – absent grounds to suspect dishonesty - the Society should not exercise intervention powers on the basis of a solicitor's failure to comply with the accounts rules, he went too far. If, as I think, he intended only to suggest that, in a case where there was no reason to suspect dishonesty, the Society should give careful consideration to the question whether the need for compliance with the account rules could be met by the exercise of powers short of intervention, his observation cannot be criticised. But, as it seems to me, on that question the court must give proper respect to the view of the Society. If, after consideration, the Society has taken the view that, in the particular case, compliance with the account rules cannot be achieved by the exercise of powers short of intervention, the court should be slow to substitute its own view on a question which is peculiarly within the experience and expertise of the Society, as the regulatory authority.

102. In the present case, the point is of little materiality. For the reasons which I have sought to explain, I am satisfied that the judge was wrong to hold that the suspicion of dishonesty had been dispelled. And, again for reasons which I have sought to explain, there is force in the Society's contention that, on a proper analysis, this is a case within the second of the four categories identified by the judge at paragraph [26] of his judgment.

103. *The third ground of appeal: the judge's approach to the question whether intervention should continue.* The Law Society submits that the judge's conclusion on the issue whether the intervention notices should be withdrawn was necessarily flawed because he reached that conclusion on a basis which was incorrect: that is to say, he took the view (wrongly) that suspicion as to dishonesty had been dispelled. Given the premise – with which I agree – there is no answer to that submission. But, even if the premise were not established, the Society submits that the judge's approach to the question whether the intervention should continue is open to criticism on four other grounds: (i) that he failed to take account of Miss Sheikh's regulatory history; (ii) that he misdirected himself in refusing to take account of matters which had not been relied upon by the Panel as grounds under paragraphs 1(1)(a)(i) or 1(1)(c) of schedule 1 to the 1974 Act; (iii) that he set too high a level of "misconduct" when considering whether the intervention should continue, once grounds for intervention had been made out; and (iv) that he failed to give proper weight to the importance of complying with the Solicitors Accounts Rules and with the Society's regulatory demands.

104. In my view there is force in each of those points. 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.

105. 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 (see the observations of Mr Justice Carnwath in *Giles*, to which I have referred at paragraph [90] of this judgment). In this context, the judge posed two questions, at paragraph [60] of his judgment:

> "[60] 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"

The judge was correct to answer the first of those questions as he did. But he was wrong to think that the answer to the second question must be the same. 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.

106. 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. As I have said, at paragraph [90] of this judgment, the court must weigh the risks of re-instating the solicitor in his (or her) practice against the consequences to the solicitor and his (or her) existing clients if intervention continues. 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.

107. On the fourth point, I need add nothing to what I have said in the final sentence of paragraph [101] of this judgment.

The order to be made on these appeals

108. It will be apparent from this judgment that I am persuaded that the basis upon which the judge reached the conclusion, on 9 June 2005, that he should direct the intervention notices to be withdrawn was flawed. I am satisfied that he should have dismissed the applications made to him under paragraphs 6(4) and 9(8) of schedule 1 to the 1974 Act. It follows that I would hold that the judge should not have gone on to make the orders which he did make on 16 June and 25 July 2005. But for the fact that, as I have said, the Law Society does not, now, seek to re-intervene in Miss Sheikh's practice on the basis of the intervention notices served in February 2005, I would have been minded to allow these appeals and set aside the judge's orders.

109. It is unnecessary to decide whether that would have been the appropriate order to make. The Society seeks a more limited order. It invites the Court to set aside paragraphs 1, 4 and 5, and 6 of the order of 25 July 2005, and to release the Society from the undertaking set out in schedule 1 to that order. Paragraph 1 and the undertaking relate to the conditions which can be imposed on Miss Sheikh's practising certificate; paragraphs 4 and 5 relate to costs in the court below; and paragraph 6 gives Miss Sheikh liberty to apply in respect of compensation. It was a condition of permission to appeal that the Society should not seek the costs of the appeal (if successful) and it does not do so. Subject to any further submissions which the parties may wish to make as to the form of the order to be made in the light of our judgments, I propose that we make an order in the limited terms sought. That will, I think, enable the adjudicator to approach the issue of further conditions in the light of our judgments on these appeals.

Summary process

110. It is not in doubt that intervention in a solicitor's practice, without advance notice, is likely to have the most serious consequences for the solicitor. Parliament has provided the solicitor with a summary process by which he (or she) can bring the matter before the court; but has imposed short time limits within which that process must be commenced. In *Holder v Law Society* [2003] EWCA Civ 39, [2003] 1 WLR 1059, this Court considered – and rejected – an argument that the procedure for which Parliament had made provision was incompatible with the solicitor's Convention rights. It rejected that argument (*inter alia*) on the basis that the court's power to consider whether a fair balance has 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 the First Protocol. But 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.

111. There is an obvious tension between the need to have an application to the court determined speedily and the need for the court to give full and fair consideration to the task which it has been set under the 1974 Act and, now, the Human Rights Act 1998. This case illustrates the need for the Society to give thought as to how that tension can be resolved. There is force in the judge's observation (at paragraph [51] of his judgment) that the way in which the Society's case was advanced before him had contributed to an over-lengthy trial and to the complexity of the issues which he had to address in his judgment.

112. The judge criticised the Panel 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. 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.

113. 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.

114. 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.

Lord Justice Tuckey:

115. I agree.

Lord Justice Moore-Bick:

116. I also agree.