

Law Society Gazette Article

'The Law Society is the body that represents and regulates the majority of the country's 96,000 solicitors. In the past it has faced some pretty severe criticism for not regulating them strongly enough. Now it is under fire for, well almost the reverse.

The allegation is that the Society's been overzealous in exercising its most draconian power, the power to 'intervene' in a solicitor's practice.

Intervention may sound rather gentle and sedate, but it is every practising solicitor's worst nightmare and amounts to the Law Society 'sending the boys round' to close down a practice that they suspect of dishonesty. Anal Sheikh is a sole practitioner who was subject to a Law Society intervention, and is perhaps the first person to successfully challenge it in the High Court'

'In a landmark judgment that runs to over 130 pages, Mr Justice Park found in her favour and directed the Law Society to withdraw the notices of intervention.

How significant is the case? Clive Coleman talks to Anal Sheikh and the Chief Executive of the Law Society, Janet Paraskeva.

'TO INTERVENE OR NOT TO INTERVENE?

In Anal Sheikh v Law Society (2005) EWHC 1409 (Chancery) 010705 it was held that a general opinion by the Adjudication Panel of the Law Society that a Solicitors practice was unsatisfactory was not enough for an intervention under Section 35 of the Solicitors Act 1974. In most cases once a solicitor had seen the material that had been before the panel the reasons for the intervention would be obvious. In Ms Sheikh's case, however, the panel had given no particulars of its reason to suspect dishonesty or of the alleged breaches of the Solicitors Conduct Rules'

SILK APPOINTMENTS: independent selection panel with lay membership primed

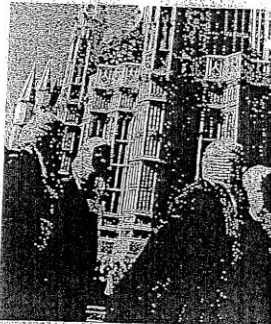
Date for QCs round nears

The starting gun for the long-awaited 2005 Queen's Counsel (QC) competition will be fired next Tuesday, the *Gazette* has learned.

With the exception of the honorary status given to Mike O'Brien MP when he became Solicitor-General, no new silks have been appointed since 2003 when the then Lord Chancellor, Lord Irvine, announced the award would be suspended pending consultation.

The old system for appointing QCs had been roundly criticised, in particular for its reliance on so-called secret soundings. The Office of Fair Trading had also called for the award to be scrapped on the grounds that it was anti-competitive.

The current Lord Chancellor, Lord



Photograph: UPP
Competition: starts next week

Falconer, relieved the rank in June 2004, subject to a reformed selection process.

The Law Society – which had in

the past campaigned against the system – and the Bar Council struck a deal last December on how to reform the system to make it fairer and more transparent (see [2005] *Gazette*, 2 December, 1).

An independent selection panel with professional, judicial and lay membership was announced in April.

Solicitor-advocates were first invited to apply for silk in 1995, but so far only eight solicitors have been appointed out of 53 applicants.

The Society hopes that the new system will increase the number of solicitor-advocates, of whom there are now more than 2,000, making the grade as QCs.

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Catherine Baksi

Legal aid

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tendering are aimed at crude cutting at the expense of access to justice,' she warned. 'The C Review must be used to assess whether value for money can be achieved in a way that does not leave vulnerable individuals at risk and must also take account of the assessment of impact on people working in black and minority ethnic communities.'

Criminal Law Solicitors Association chairwoman Helen Coussens said: 'A review of procurement will give us all an opportunity to work towards a legal aid system which is sustainable into the future.'

Turf war

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process rather than lawyers.

Four-fifths of the heads of firms surveyed said the procurement departments were essential to embedded needed procurement discipline in the organisation.

Almost half of the companies surveyed claimed such departments enhanced the company's relationships with law firms. However, some 15% thought they harmed relationships with external lawyers.

Fulcrum chief executive Rishi Patel said: 'When it comes to purchasing legal services, procurement departments have not been allowed in the game in the past. Now the increased focus on cost means boards are telling in-house lawyers to let them in. That is causing a turf war with the lawyers.'

He added: 'Procurement departments are very successful at hammering down costs. They bring more discipline and scrutiny to selecting firms – for example, if they run a tender they are less inclined to select the incumbent provider. Boards believe the relationship with external advisers has got in the way for their in-house lawyers – if they have had a relationship with a firm for, say, six years, that gets in the way of commercial terms.'

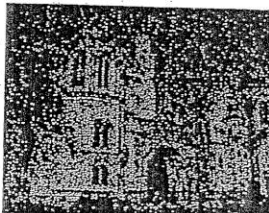
Judge criticises intervention

A failure to prove dishonesty was central to why the High Court for the first time overturned a Law Society decision to intervene in a solicitor's practice, it emerged last week.

In detailed reasons handed down to explain his ruling last month (see [2005] *Gazette*, 16 June, 1), Mr Justice Park said the adjudication panel – which decides whether the Law Society should intervene in firms – did not explain why it suspected sole practitioner Anal Sheikh of dishonesty. She was also accused of accounts rules breaches.

By deciding to intervene in her north London firm Ashley & Co in February, the three-strong panel also went further than staff recommendations, which were for stringent conditions to be placed on Ms Sheikh's practising certificate.

The judge found it standard practice that panels do not record reasons for decisions, which usually does not matter as they are obvious. According to the ruling, nobody at the Law Society except for the panel members – none of whom gave evidence – appeared to know why it



Photograph: ABB
High Court: 'no dishonesty'

suspected dishonesty in this case and this meant Ms Sheikh's challenge to the decision was drawn out.

In a 136-page ruling, he criticised Chancery Lane's pursuit of numerous allegations, large and small, against Ms Sheikh to justify the intervention. 'She made a very good impression,' he said. 'She did not remotely strike me as the dishonest, grasping incompetent implied by the Law Society's multiple attacks on her.'

He added: 'On the basis of the evidence and arguments before me, I do not think that there is reason to suspect Ms Sheikh of dishonesty.'

The judge said that while there had been staffing and administrative

problems at Ashley & Co, including breaches of the accounts rules, about which the Law Society could legitimately feel concern, 'in my view they were not remotely as bad or unacceptable as has been contended'.

In the event of breaches of the accounts rules that are not dishonest, Judge Park said 'an intervention ought, I suggest, to be unusual. I would expect the Law Society to look to other regulatory or disciplinary powers'.

He expressed general sympathy for firms in complying with the accounts rules, saying his impression was that 'very few' did not 'slip up in one respect or other... from time to time'.

A Law Society spokesman said: 'The Society is giving careful consideration to the judgment of Mr Justice Park and will decide in due course whether it is necessary to seek permission to appeal.'

It was represented by London firm Russell-Cooke. Westminster firm Radcliffe LeBrasseur advised Ms Sheikh.

Neil Rose