

IN THE MATTER OF BUSHRA ANWAR, former solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr A G Gibson (in the chair)
Mrs K Todner
Mrs V Murray-Chandra

Date of Hearing: 10th July 2007

**APPLICATION FOR RESTORATION TO
THE ROLL OF SOLICITORS**

of the Solicitors Disciplinary Tribunal
Constituted under the Solicitors Act 1974

An application was duly made by affidavit dated 6th April 2007 by Bushra Anwar of 102 Woodlands Road, Sparkhill, Birmingham, B11 4ES that her name be restored to the Roll of Solicitors.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London, EC4M 7NS on 10th July 2007 when the Applicant was represented by Mr William Hansen of Counsel and the Law Society was represented by Mr Geoffrey Williams of Queen's Counsel, solicitor of Geoffrey Williams & Christopher Green Solicitor Advocates, 2A Churchill Way, Cardiff, CF10 2DW

The disciplinary history of the Applicant

1. At a hearing on 18th May 1999 the following allegations were substantiated against Ms Anwar, the Respondent in those proceedings, namely that she had been guilty of conduct unbecoming a solicitor in each of the following respects, namely that she had:
 - (a) failed to maintain properly written books of account contrary to Rule 11 of the Solicitors Accounts Rules 1991;

- (b) drawn monies out of a client account otherwise than as permitted by Rule 7 of the Solicitors Accounts Rules 1991 and contrary to Rule 8 of the said Rules;
 - (c) given false and misleading information to a bank;
 - (d) breached undertakings given to the High Court;
 - (e) been found to be in contempt of Court and fined and ordered to pay damages for such contempt;
 - (f) again drawn monies out of a client account otherwise than as permitted by Rule 7 of the Solicitors Accounts Rules 1991 contrary to Rule 8 of the said Rules;
 - (g) improperly employed or remunerated in connection with her practice as a solicitor one Trevor Porter, a struck off solicitor, without the prior written permission of the Law Society contrary to Section 41 of the Solicitors Act 1974.
2. The facts found on that occasion are set out below at paragraphs 3 to 32.
 3. At the beginning of the time material to the application Ms Anwar practised in partnership and subsequently had practised as a solicitor on her own account under the style of Anwar at 17 Johnstone Street, Blackburn moving to 2 Strawberry Bank, Off Preston New Road, Blackburn.
 4. Following notice duly given to Ms Anwar an inspection of her books of account was carried out by the Investigation Accountant of the Law Society. The investigation began on 2nd July 1996 at the Strawberry Bank office. The Investigation Accountant's Report dated 14th October 1996 was before the Tribunal.
 5. The Investigation Accountant's Report revealed that Ms Anwar's books of account were not in compliance with the Solicitors Accounts Rules as they were incomplete and unreconciled since 17th June 1996. In view of that the Investigation Accountant did not consider it practicable to attempt to compute Ms Anwar's total liabilities to clients. He had been able to calculate that a minimum cash shortage existed on client bank account of £1,251.25.
 6. That minimum cash shortage arose entirely from an alleged misappropriation by an ex-employee. A cash sum had been received by the firm and kept in the office overnight. The money had been found to be missing when the banking was carried out on the following day. The matter was reported to the police. Ms Anwar believed one of her staff to have been responsible and dismissed her.
 7. Ms Anwar agreed the existence of the shortage of £1,251.25 on client bank account but she had not rectified it at the date of the Investigation Accountant's Report although Ms Anwar informed the Investigation Accountant that she had made payments totalling £4,000.00 into client bank account in order to rectify earlier shortages which she had herself identified before the inspection.

8. The Investigation Accountant went on deal with another matter relating to Ms Anwar's purchase of the Strawberry Bank office. Ms Anwar had acted for herself in the matter of the purchase. Contracts were exchanged on 6th October 1995 and completion arranged for 27th October 1995. The purchase price shown in both parts of the contract was £58,000.00. Barclays Bank had provided financial assistance to Ms Anwar and in their letter dated 13th October 1995 requested "confirmation of purchase price in the sum of £68,000.00." In the Bank's standard pro forma undertaking Ms Anwar confirmed that the purchase price was £68,000.00. The Investigation Accountant asked Ms Anwar why an inaccurate figure had been included in the form and Ms Anwar was reported to have said "there was no need to put a false figure in the application. I don't have a good reason, I wish this hadn't happened." Ms Anwar told the Investigation Accountant that she had taken financial advice on the purchase and had been told that her action reflected "normal commercial practice".
9. Ms Anwar had advanced monies by way of loan to Mr A in order to facilitate his completion of a conveyancing transaction. Mr A then became indebted to Ms Anwar under the terms of a Promissory Note in the sum of £3,019.50 together with interest.
10. Ms Anwar commenced civil proceedings to recover the sum due to her from Mr A. A County Court Judgment was obtained by default by Ms Anwar.
11. Subsequent to the entry of judgment against Mr A Ms Anwar obtained further orders against him namely a Mareva Order and an Anton Piller Order.
12. In each order Ms Anwar, who was the plaintiff in the civil proceedings against Mr A as well as being a solicitor, gave certain undertakings. Those undertakings were those routinely given where orders of that type were granted.
13. The Anton Piller Order (dated 7th September 1995) under the heading "Undertakings" stated:

"the plaintiff's solicitors and the supervising solicitor gave to the court the undertakings contained in Schedules 3, 4 and 5 respectively to this order."

"SCHEDULE 3

Undertakings given by the Plaintiff

- 1) If the Court later finds that this order or carrying it out has caused loss to the defendant and decides that the defendant should be compensated for that loss, the plaintiffs will comply with any order the court may make.
- 2) To serve on the defendant at the same time as this order is served upon him
 - (i) copies of the affidavits and copiable exhibits containing the evidence relied on by the plaintiff.
- 3) To serve on the defendant a copy of the supervising solicitors report on the carrying out of this order as soon as it is received and produce a copy of the report to the Court.

- 4) Not without the leave of the court, to use any information or documents obtained as a result of carrying out this order except for the purposes of these proceedings or to inform anyone else of these proceedings until after the return date.

SCHEDULE 4

Undertakings given by the Plaintiff's solicitors

- 1) To answer at once to the best of their ability any question whether a particular item is a listed item.
- 2) To return the originals of all documents obtained as a result of this order (except original documents which belong to the Plaintiff) as soon as possible and in any event within two working days of their removal.
- 3) While ownership of any item obtained as a result of this order is in dispute, to deliver the article into the keeping of solicitors acting for the defendant within two working days from receiving a written undertaking by them to retain the article in safe keeping and to produce it to the Court when required.
- 4) To retain in their own safe keeping all other items obtained as a result of this order until the Court directs otherwise.

SCHEDULE 5

Undertakings given by the Supervising Solicitor

- 1) To offer to explain to the person served with the order its meaning and effect fairly and in everyday language and to inform him of his right to seek legal advice and apply to vary or discharge the order as mentioned in para 3 of the order.
 - 2) To make and provide to the plaintiff's solicitors a written report on the carrying out of the order."
14. In the Mareva Order dated 7th September 1995 in which Ms Anwar was the plaintiff under the heading "Undertakings" it was stated:
- "that the plaintiff gives to the court the undertakings set out in Schedule 1 to this order."
15. The undertakings contained in Schedule 1 were as follows:

"SCHEDULE 1

Undertakings given to the Court by the Plaintiff

- 1) If the court later finds that this Order has caused loss to the defendant and decides that the defendant should be compensated for that loss, the plaintiff will comply with any order the court may make.
- 2) As soon as practicable the plaintiff will issue and serve on the defendant;
 - (a) the writ of summons in the form of the writ produced to the court claiming appropriate relief together with this order.

- 3) The plaintiff will cause affidavits to be sworn and filed, substantially in the terms of the affidavits produced to the court, confirming the substance of what was said to the court by the plaintiff's counsel.
 - 4) As soon as practicable the plaintiff will serve on the defendant a notice of motion, summons for the return date together with a copy of the affidavits and exhibits containing the evidence relied on by the plaintiff.
 - 5) Anyone notified of this order will be given a copy of it by the plaintiff's solicitors.
 - 6) The plaintiff will pay the reasonable costs of anyone other than the defendant which have been incurred as a result of this order including the costs of ascertaining whether that person holds any of the defendant's assets and that if the court later finds that this order has caused such a person loss, and decided that the person should be compensated for that loss, the plaintiff will comply with any order the court may make.
 - 7) The plaintiff will not without leave of the court begin proceedings against the defendant in any other jurisdiction or use information obtained as a result of an order of the court in this jurisdiction for the purpose of civil or criminal proceedings in any other jurisdiction.
 - 8) The plaintiff will not without the leave of the court seek to enforce this order in any country outside England and Wales or seek an order of a similar nature including orders conferring a charge or other security against the defendant or the defendant's assets.
16. On the day after the two orders were made Ms Anwar with others attended at Mr A's property purporting to enforce the orders. Incidents took place and the police attended. Various items of property and documents were taken away by Ms Anwar or others acting on her behalf.
 17. Mr A took the advice of solicitors. His solicitors, Messrs Farleys of Richmond Terrace, Blackburn, complained to the Solicitors Complaints Bureau about the conduct of Ms Anwar by letter dated 19th September 1995. The complaining firm also issued an application against Ms Anwar seeking her committal for contempt of court.
 18. The contempt of court proceedings were heard in the High Court at Manchester on 25th September 1996. The Tribunal had before it a copy of the transcript of the Judgment of Sachs J.
 19. Ms Anwar was found to have been in contempt of court in five different respects. Ms Anwar was ordered to pay a fine of £1,500.00 and to pay specific damages of £56.99 and damages of £1,000.00. Because both parties were legally aided the Learned Judge said that the defendant was entitled to his costs against the plaintiff not to be enforced without leave of the court. The Learned Judge directed that a copy of his

Judgment should be sent to the “Head of Professional and Public Relations at the Office for the Supervision of Solicitors.”

20. Upon notice a further inspection of Ms Anwar’s books of account by the Investigation Accountant of the Law Society took place. The inspection began at the Strawberry Bank office on 8th October 1997. The Investigation Accountant’s Report dated 10th November 1997 was before the Tribunal.
21. The books of account were not in compliance with the Solicitors Accounts Rules. A list of liabilities to clients as at 31st July 1997 was produced for inspection and totalled, after adjustment, £21,656.96. A comparison of adjusted total liabilities with cash held on client bank accounts at that date, after allowance of uncleared items, revealed a cash shortage of £5,577.44.
22. The cash shortage had arisen in the following way:
- | | | |
|-------|---|------------------|
| (i) | Debit Balances | £5,890.60 |
| (ii) | Bank Error – Costs Taken Twice | <u>440.62</u> |
| | | 6,331.22 |
| (iii) | Less: Bank Interest Retained
in Client Account | <u>(753.78)</u> |
| | Net Cash Shortage | <u>£5,577.44</u> |
23. During the period of 27th March 1995 to 25th July 1997 debit balances varying in amount between £3.75 and £1,676.25 and totalling £5,890.60 had arisen in respect of forty clients. The largest debit balance of £1,676.25 had arisen in a conveyancing transaction when £5,000.00 was drawn from client account to complete the transaction when only £3,323.75 was standing to the credit of the client concerned, £176.25 representing the firm’s costs had already been debited. Ms Anwar agreed the existence of the debit balance and resulting cash shortage attributing the matter to an error made by her firm’s conveyancing executive. Ms Anwar had been unaware of the position until it had been brought to her attention by the Investigation Accountant.
24. The cash shortage of £5,577.44 had been partially replaced prior to the inspection following the credit of £440.62 to client bank account on 28th August 1997 by one of the firm’s bankers and by the credit of funds of £65.00 received on 26th September 1997 from a client. Ms Anwar had not been in a position immediately to replace the balance of the cash shortage of £5,071.92 but expressed the hope that following the taxation of a litigation matter there might be sufficient monies available to replace the remainder of the net cash shortage.
25. A subsequent inspection of Ms Anwar’s books of account found due compliance with the Solicitors Accounts Rules.
26. On 5th June 1997 a solicitor, Trevor Porter, had been struck off the Roll of Solicitors.

27. By a letter to the Office for the Supervision of Solicitors (the Office) dated 26th November 1997 Ms Anwar sought permission to employ Mr Porter as a full time conveyancer.
28. The Office became concerned that Ms Anwar was employing Mr Porter without having obtained the requisite consent. A representative of the Office telephoned Mr Porter at Ms Anwar's office on or about 23rd January 1998. Mr Porter told that representative that he was working through certain of Ms Anwar's files, he was issuing correspondence on Ms Anwar's professional paper and was being remunerated by Ms Anwar for his work.
29. The Office then wrote to Mr Porter seeking his observations upon the matter. He responded to the Office by letter dated 6th May 1998 in which he expressed anxiety at not being able to provide for his family. He went on to say:
- “I feel that I was able to give help to Miss Anwar when help was needed in the practice, she having been let down by previous staff which could have led to difficulties. I was able to deal with, and resolve a number of queries which came from the Society.”
- In all these circumstances I therefore feel that it is unjust, inequitable, inhuman and excessively penal, I have paid my debt to society, that the application for employment should be rejected. I would also now like the application to be treated as an application for restoration to the Roll. It is not my desire to enter into partnership and have those responsibilities but merely to undertake the only work I know and be able to provide for my family.
- I therefore ask that the application for employment be granted to enable me to undertake some work and subsequently look to other firms for employment and for my own application for restoration to be considered favourably.”
30. In correspondence with the Office Ms Anwar maintained that she was made aware of the fact that Mr Porter had been struck off the Roll on 11th March 1998. She further stated in correspondence that Mr Porter “left her employment” on 23rd March 1998 as “a safety precaution.”
31. In Ms Anwar's letter addressed to the Office dated 2nd February 1998 she confirmed that Mr Porter was being remunerated as a clerk.
32. On 21st May 1998 a Professional Regulation Casework Sub-Committee of the Compliance and Supervision Committee of the Office refused Ms Anwar's application to employ Mr Porter. Ms Anwar appealed against that decision. Her appeal was dismissed on 12th August 1998.
33. The Tribunal in 1999 said as follows:
- “The Tribunal were disturbed by this case. Ms Anwar was a young woman who had taken on the undeniably large responsibilities of sole practice as a solicitor whilst at the same time having young children dependent upon her and an elderly mother who was also a dependent. The Tribunal accept that she

was carrying a very onerous burden indeed. The Tribunal has no doubt that the services of a young woman who has a particularly good understanding of the problems met by woman members of a local ethnic minority community were of considerable value. The Tribunal have borne in mind Ms Anwar's youth, inexperience and naivety. She herself accepted that she had in the more serious matters alleged against her been headstrong. It was clear to the Tribunal that at best Ms Anwar's judgement was seriously at fault. The Tribunal have noted that dishonesty was not alleged against Ms Anwar and they have made no finding of dishonesty.

However, having given the matters before them the most careful consideration and bearing in mind all of the mitigating factors so ably presented to them the Tribunal has found itself unable to resile from its conviction that Ms Anwar is not fit to practise as a solicitor. In reaching that conclusion the Tribunal has given much consideration to its duty to protect the interests of the public and to protect the good reputation of the solicitors' profession and the public perception of that good reputation. The Tribunal particularly bear in mind the Judgement of Mr Justice Sachs and his findings.

The Tribunal ordered that Ms Anwar be struck off the Roll of Solicitors and further ordered that she should pay the costs of and incidental to the application and enquiry to include the costs of the Investigation Accountant of the Law Society such costs to be subject to a detailed assessment if not agreed between the parties."

Hearing on 10th July 2007

Application on behalf of the Applicant that two letters submitted on behalf of the Law Society not be admitted by the Tribunal

34. It was submitted on behalf of the Applicant that while the strict rules of evidence did not apply to the Tribunal's proceedings, the balance between the probative value and prejudicial effect of evidence applied to all judicial proceedings. The two letters contained in the Law Society's bundle from a local Law Society and a Blackburn firm of solicitors did not assist the Tribunal and would not add to the Tribunal's findings. The spirit of the Tribunal's Rule 4(7) was that if substantial weight was to be placed on the letters the writers ought to be subject to cross-examination. The letters were general, unhelpful and no deponent had been identified.
35. On behalf of the Law Society it was submitted that these were important letters which should be read. The Rules permitted any person to object in writing to an application for restoration to the Roll. The request for readmission to the Roll had to be publicised. This was part of the fabric of the jurisdiction. The letter from the local Law Society had been edited by Mr Williams QC to delete purely prejudicial material. It was submitted that the Tribunal should read the letters and give them such weight as they considered appropriate.

The Decision of the Tribunal

36. Mr Williams had fairly said that the views of local persons had to be sought in relation to an application for restoration to the Roll by means of advertisement and he had produced the letters in his bundle. It was right that the Tribunal be able to consider the views put forward but they would be given such weight as the Tribunal thought appropriate. They had not been given on oath and were not subject to cross-examination.

The Substantive Application

The Submissions on behalf of the Applicant

37. To succeed in her application the Applicant needed to surmount two hurdles:
- (i) Rehabilitation since the original findings;
 - (ii) The standing of the profession and predo minantly the need to maintain public confidence in the profession.
38. The Tribunal was referred to the Applicant's affidavit which set out the facts on which she relied. Some of these were historical and pre-dated the striking off Order, but were relevant.
39. The Applicant had written:

“I opened my office with a partner as soon as I was qualified and being acclaimed to be the First Asian Woman Solicitor in Lancashire and at the time the only one who could speak all the languages, the response from the public was immense. The office was commenced in February 1994 and expanded very quickly. I was new to the profession and inexperienced especially with running an office or business.”

The languages referred to were Hindi, Urdu, Punjabi and English. This was a very valuable resource in the community in which the Respondent worked.

40. The Applicant had further written:

“I accepted all the allegations by the Law Society right from the beginning and at the Tribunal hearing my solicitor only gave mitigation on my behalf. The Tribunal accepted that there was no dishonesty involved...”

Leading Counsel for the Law Society had conceded that there had been no dishonesty and also that the current application was not premature.

41. Without going behind the previous Findings the Applicant had obtained an Anton Piller order in her own cause. The date of that order was important, namely 7th September 1995.
42. The affidavit from the original complainant was not relied on.

43. The Tribunal was referred to the exhibited “Petition to Support Bushra Anwar”. Leading Counsel had said that the petition said nothing. It was accepted that huge reliance could not be placed on the petition but it did show public support. It was accepted that it had not been made sufficiently clear that the petition had been obtained in the context of the Applicant’s disciplinary problems as a solicitor. When the Applicant said in her affidavit that the petition was signed by people who wanted her to be put back on the Roll this did not mean that it was contemporaneous with the current application.
44. The Applicant’s affidavit dealt with her various public speaking engagements and employment. The Tribunal was asked to note in particular her status as Chairperson of the Pakistan Welfare Association of the UK and Chairperson of the Asian Forum of UK and Europe, leading to invitations to the Queen’s garden party. This was clear evidence of an active, public-spirited person.
45. The Applicant’s affidavit further said:

“I was elected by the public to represent the Muslim Communities of Europe in Switzerland where my speech was translated into five different languages simultaneously.

I was invited and attended Pakistan with the Blackburn Delegation led by the Mayor of Blackburn in 2000 with regards to the Kashmir Issue.

I was requested to mark International Women’s Day in Woolwich in the year 2001 with a speech concerning women and discrimination which was televised by Prime TV and I received some very good feedback with regards to it from the public.”

Rehabilitation had to be approached in a multifaceted way and it was accepted that the Applicant could not place more reliance on these achievements than that.

46. More relevant were her attendance on legal or quasi-legal courses including ADR mediation and the LLM in Human Rights. Most significantly the Respondent had become involved in assisting in organising and setting up a free legal clinic for the public and had been elected chairperson of the Whitecastle Trust in Birmingham. This organisation had been principally concerned with immigration law and welfare benefits.
47. The Tribunal was referred to the details of training sessions given by the OISC in which the Applicant had participated.
48. The Applicant had participated in an office management course which was also relevant to her application.
49. She had also been involved in teacher training and teaching in a legal environment.
50. The above body of material was highly relevant to her rehabilitation. Mr Williams QC would say that the best form of rehabilitation was employment as a clerk in a solicitor’s practice. That however was merely one way to obtain rehabilitation, there

were other ways. The Applicant's way had been as good as employment with permission of the Law Society. She had been teaching law and had dispensed legal advice at a legal advice clinic. She had been meeting a public need in a praiseworthy way.

51. The Applicant's affidavit then set out non-legal testimonial evidence to which the Tribunal was referred.
52. The Tribunal was asked to note that the Respondent had been recommended to apply to become a prospective parliamentary candidate and the Tribunal was referred to the documentation relating to that. It would be anomalous if someone was suitable for standing as an MP but was not suitable to be a solicitor.
53. The Tribunal was referred to the letters of support from the legal profession including the Chief Executive of the Immigration Advisory Service, who had set out some of the activities in which the Applicant had been involved.
54. In her affidavit the Applicant had said that since working at the Whitecastle Trust she had assisted clients as a Mackenzie friend, had represented clients for Disability Living Allowance claims, had assisted on a complex civil contract case and had acted in a complex insurance matter.
55. The Applicant had referred in her affidavit to the difficult circumstances in which she had found herself at the time of the matters which had led to the original allegations. She prayed in aid the fact that she had been running a busy practice, was a young mother and was caring for her own disabled mother:

“which involves exceptional stress on top of the usual stress of building a business which is expanding very fast.”
56. The contempt application and judgement had been some years before the strike off, so the Applicant had continued quite properly in practice with success for almost three years before the strike off.
57. The Applicant had been criticised at the time in the area of civil law, which was a subject she now taught. She felt that she was now better equipped with legal knowledge.
58. The Applicant apologised for the errors she had made but said that these were due to inexperience and pressure of work.
59. There was a sound evidential foundation for the application directed towards her personal and professional rehabilitation but also towards her standing in the profession.
60. Cordery at [1701] to [1800] summarised in helpful form the guidance to be extracted from the relevant authorities when the Tribunal was considering an application for restoration.

61. The facts and matters set out in the Applicant's affidavit demonstrated beyond question her complete rehabilitation to the point where, had she not been guilty of the original fault, there would be no question about her being suitable to be admitted as a member of the profession.
62. It was submitted on behalf of the Law Society that "rehabilitation involves not only general personal conduct and development but ... rehabilitation within the profession by means of a lengthy and good record in employment as a clerk with the permission of the Law Society".

It was not accepted that there was any such requirement. Rehabilitation was a highly significant factor but what mattered was whether the Applicant had conducted herself in an exemplary fashion since her striking off (Re A Solicitor No. 15 of 2001 [2002] EWCA Civ 68). It was submitted that she had.

63. It was eight years since the strike off and 13 years since the Applicant had obtained, quite improperly, Anton Piller relief. The lapse of time of highly relevant. She had been a model citizen and a public-spirited legal adviser doing difficult work at a charity. There was no suggestion of misconduct in any shape or form. This impacted on her rehabilitation and also on the standing of the profession, which was the predominant concern of the Tribunal and a heavy burden to discharge. This case was however very different from the case law, especially the absence of dishonesty and the exceptional circumstances in the original misconduct. The Tribunal could be satisfied that the public interest in maintaining the standards of the profession would be met.
64. The present case was factually very different from the cases in which the relevant principles had been developed and articulated. On the facts of this case there was no reasonable basis for contending the restoration of the Applicant would be injurious to the public interest and would in any way undermine the standing of the profession in the eyes of any reasonably-minded member of the public.
65. There was also no suggestion that the Applicant should not be restored for reasons of public protection. No member of the public lost money as a result of the Applicant's previous default and there was no evidential basis for contending that the Applicant would default again in her professional obligations. It could reasonably be said that the Applicant was guilty of a moment of complete and utter aberration which was totally out of character (Application no. 5 of 1987).
66. It was clear from the original Findings that what weighed most heavily against the Applicant was her breach of undertakings and consequential committal for contempt. Without downplaying the gravity of the other offences it was submitted that the other allegations would not have justified striking off. With regard to the breaches of the Accounts Rules the previous Findings stated that a subsequent inspection of the Applicant's books of account had found due compliance with the Solicitors Accounts Rules. With regard to the struck off solicitor Mr Porter, there had been no explicit finding of a precise period of time involved and the Tribunal was referred to the comments of the Divisional Court which heard the Applicant's appeal in relation to this.

67. In those circumstances the Tribunal had to consider whether exceptional circumstances attended the obtaining and execution by the Applicant of the Anton Piller order. It was submitted that that was clearly the case. The following circumstances were material:
- (1) The Applicant was admitted as a solicitor on 15th September 1993;
 - (2) The Applicant acted in her own cause in obtaining the Anton Piller order on 7th September 1995;
 - (3) The Applicant's practice was not in the field of complex civil litigation;
 - (4) Anton Piller relief was notorious for its complexity and difficulty;
 - (5) No junior barrister of two to three years' call, even in a magic circle commercial set, would ever be sent off to Court to obtain Anton Piller relief;
 - (6) In the ordinary course, no Judge would ever have entertained such an application in respect of a judgment for £3,000.
 - (7) At the material time, as the Tribunal said in its Findings, the Applicant "was carrying a very onerous burden indeed". She was running her own practice and caring for young dependent children and an elderly mother.
 - (8) It was, in short, a serious error of judgment borne of inexperience, naivety, pressure of work and pressing domestic circumstances amounting to overwhelming stress.
68. The above circumstances were exceptional within the meaning of that term as discussed in the Authorities (Application no. 5 of 1987).
69. A reasonably-minded member of the public, whose views were all-important, if given the details of the Applicant's default and the circumstances in which that default occurred, and told of her rehabilitation since then, would say: "Really any profession should be proud to readmit the applicant as a member".
70. The standing of the profession depended, in part, on rigorous enforcement of its standards of integrity and probity. It would however be out of keeping with changing times and the public's perception of the profession if there were no place for proportionality or mercy in its dealings with fallen members of the profession who wished to redeem their reputations. The public was a sophisticated and mature audience who would say that the Applicant could be safely readmitted and that she had redeemed herself.
71. This was a case where restoration would enhance, not diminish, the standing of the profession. The public would expect the profession to adopt a proportionate response.

The Submissions on behalf of the Law Society

72. The Application was opposed.

73. Dishonesty had never been alleged so it was accepted that the Applicant had no bad character to repair. The application was not premature.

74. It was clear that the Applicant was resourceful and energetic and was doing much valuable work, especially community work. She had put her case on the basis of these achievements and had said in her affidavit:

“I believe my case is a truly exceptional one, both with regards to what I achieved before and after being struck off.”

Her achievements before the strike off were not relevant. The current application was not an appeal.

75. Restoration to the Roll was an exceptional case. The Tribunal was invited to consider the facts in this matter.

76. In relation to the breaches of the Solicitors Accounts Rules, the Tribunal was referred to the details of those breaches. Lord Justice Kennedy in the Applicant’s appeal said that the allegations relating to accounting were serious and were not isolated.

77. In relation to giving false and misleading information to a bank, Lord Justice Kennedy said:

“There were allegations in relation to giving false information to a bank that, in my judgment, cannot simply be brushed aside as something that others do. This was the conduct of a solicitor behaving in a way in which no solicitor should behave. If a solicitor cannot be trusted when he or she says to a bank what he or she has paid or is going to pay in relation to a conveyancing transaction, then a sorry state of affairs has been arrived at.”

78. In relation to the breaching of undertakings to the court and contempt of court, Lord Justice Kennedy said:

“Sachs J heard an application for committal which was put forward on five separate bases. He identified them thus: (1) using information improperly; (2) failing to serve the defendants copies of affidavits of copyable documents; (3) failure to return the originals of the documents within two working days; (4) failing to retain in her own safekeeping items seized; and (5) causing, permitting or suffering the removal of items from the defendant’s premises other than those specified in the order.

...

When the whole matter was brought before Sachs J an attempt was made to mislead the court which resulted in the judgment of that judge.”

79. Finally in relation to the employment of a struck off solicitor in breach of Section 41 Lord Justice Kennedy had said:

“...I accept, in the light of the findings of the Tribunal, that it was only for a short period of time that she retained his employment after she had discovered that he had indeed been struck off. She obviously chose to employ him, even on her case, at a time which she knew that his employment was conditional, without obtaining clearance from the Law Society that it was appropriate to have him in her employ, and that at the time when she herself was experiencing difficulties with the Office for the Supervision of Solicitors.”

80. The Tribunal was referred to the appeal judgment to show that the Applicant had been guilty of serious professional misconduct over a wide range and over a wide period of time.
81. It was not submitted that the Tribunal could only restore someone to the Roll who had obtained employment with the consent of the Law Society, but it was submitted that in this case the Tribunal would look for professional rehabilitation for the following reasons:
- (i) All the misconduct was committed in the course of professional practice;
 - (ii) In relation to the misleading of the bank and the contempt of court the Applicant’s personal interests had come into conflict with her professional obligations;
 - (iii) The Applicant’s conduct had been and still was being blamed on inexperience and pressure of work;

The Tribunal had been told that stress was an exceptional circumstance. Nothing had been said in 1999 about stress, although the Applicant had had an experienced representative. Stress had not been put forward as part of the appeal. This was a case of inexperience and naivety so this was a case where professional rehabilitation was a vital part of rehabilitation generally.

82. There were no exceptional circumstances regarding the original offence. It would be wrong to restrict the original misconduct to the Anton Piller order.
83. Inexperience afflicted everyone. Pressure of work afflicted most solicitors most of the time. The Tribunal was asked to consider bearing in mind the misconduct and bearing in mind that the Applicant had not set foot in a solicitor’s office since the strike off whether the public would feel that the profession would be proud to readmit her. It was submitted that the Applicant would need to show that she had committed herself to the profession by working within it and gaining experience to overcome her inexperience. In those circumstances the Law Society might take a different view of her position. Teaching and the giving of some advice did not assist her in this.
84. The Tribunal was referred to Re A Solicitor, No. 7 of 2006 where the solicitor had had a great deal of rehabilitation although dishonesty had been fatal to his application. It was clear from that case that professional rehabilitation was considered to be important. This confirmed the principles set out in the case of Bolton -v- The Law Society 1994 1 WLR 512 and that approach still held good.

85. The Tribunal was referred to the skeleton argument on behalf of the Law Society. The law was uncontroversial.
86. It was submitted that the petition was of no assistance for the Applicant.

Submissions on behalf of the Applicant on Points of Law

87. It was submitted that Mr Williams QC had elided the two tests in his submissions. He said that the standing of the profession would be damaged if an avowedly inexperienced solicitor was readmitted. It was wrong to elide the tests, which should be dealt with separately.
88. The Applicant had a combination of experience giving legal advice for a charitable trust, teaching and office management. This was valid experience which addressed her earlier inexperience. The first test was therefore established. It would be wrong to set the bar too high.
89. With regards to the second test, Mr Williams QC had referred to the case of *Re a Solicitor*, No. 7 of 2006. In that case a solicitor had gained significant rehabilitation by employment with permission of the Law Society. It was stated in that judgement however:

“The approaches of Sir John Donaldson and Sir Thomas Bingham are entirely consistent. Sir Thomas Bingham used the striking phrase that one of the purposes of orders made by the SDT is to maintain the reputation of the solicitors’ profession as one in which every member “may be trusted to the ends of the earth”. It is important to note, however, that Sir Thomas Bingham also said that real efforts made by the solicitor to establish himself and to redeem his reputation are relevant and must be taken into consideration. In short, all the circumstances must be taken into consideration.”

This supported the submission that there was no requirement that rehabilitation had to be by way of employment with the permission of the Law Society. What was important was redemption of the Applicant through effort and blameless conduct.

90. When considering exceptional circumstances it was important to consider the words of Lord Donaldson MR in *Application No. 5 of 1987*, namely that the relevant public interest was:

“... in the public as a whole being able to deal with members of the profession knowing that, save in the most exceptional circumstances, they can be sure that none of them have ever been guilty of any dishonesty at all.”

The test of exceptional circumstances applied to a dishonest solicitor. It did not apply at all or in its full rigour to an application which did not involve dishonesty.

Submissions as to Costs

91. Mr Williams QC sought costs on behalf of the Law Society in the sum set out in the schedule which had been served.

92. On behalf of the Applicant it was said that costs could not be agreed. The jurisdiction was familiar to Mr Williams QC both as to law and facts. The Tribunal was asked to reduce the hourly rate of time charge on that basis.

The Findings of the Tribunal

93. The Tribunal considered carefully the documentation and submissions.
94. The Applicant's original misconduct had been serious. The Tribunal had taken careful note of the original Findings and also of the comments of Lord Justice Kennedy in the appeal judgment. The misconduct, which was wide-ranging, had occurred in the course of the Applicant's practice as a solicitor. Since the striking off the Applicant had done much commendable work which went to the rehabilitation of her personal reputation as did the references in her support. Given the gravity of the original offences and the context in which they were committed, however, the Tribunal did not consider that the Applicant had addressed her rehabilitation in terms of professional ability. She had claimed that her original faults had been due in part to inexperience. Whilst she had been involved in teaching in a legal context and some advice giving, she had not worked in a solicitor's office with the permission of the Law Society. While this would not always be a requirement, the Tribunal accepted Mr Williams QC's submissions that in this case the Tribunal should expect that kind of rehabilitation. In order to return to the profession in a way which would maintain public confidence in the profession the Applicant needed proper experience in the environment provided by a solicitor's practice. The application was refused.
95. In reaching its decision, although the Tribunal had found that it was entitled to consider the letters submitted on behalf of the Law Society which had been the subject of the earlier application on behalf of the Applicant, the Tribunal had not in fact looked at those letters until it had reached its decision. It was right that the Tribunal having subsequently read the letters make clear that it found the second letter intemperate and unhelpful.
96. In relation to costs it was right that the Applicant pay the costs of the Law Society and in the absence of agreement the Tribunal would order that these be assessed if not agreed.
97. The Tribunal therefore ordered that the application of Bushra Anwar of 102 Woodlands Road, Sparkhill, Birmingham, B11 4ES for restoration to the Roll of Solicitors be refused and the Tribunal further ordered that she do pay the costs of the response of the Law Society to this application to be subject to a detailed assessment unless agreed between the parties.

DATED this 21st day of September 2007
on behalf of the Tribunal

A G Gibson
Chairman