

IN THE MATTER OF FAWZIA AMTUL-HABIB SHUTTARI, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr. J N Barnecutt (in the chair)
Ms T Cullen
Ms A Arya

Date of Hearing: 5th October 2000

FINDINGS

of the Solicitors Disciplinary Tribunal
Constituted under the Solicitors Act 1974

An application was duly made on behalf of the Office for the Supervision of Solicitors ("the Office) by Gerald Malcolm Lynch, solicitor, of Cumberland House, 24-28 Baxter Avenue, Southend on Sea, Essex SS2 6HZ, on 17th February 1997 that Fawzia Amtul-Habib Shuttari, solicitor, of c/o Shuttari Paul & Co, 33/35 South Road, Southall, Middlesex UB1 1SW might be required to answer the allegations contained in the statement which accompanied the application and that such order might be made as the Tribunal should think right.

In a supplementary statement dated 6th November 1997, the applicant made further allegations, and further application was made by Gerald Malcolm Lynch, solicitor and consultant with the firm of Messrs Drysdales of Cumberland House, 24/28 Baxter Avenue, Southend-on-Sea, Essex SS2 6HZ, on behalf of the Office on 18th July 2000 that Fawzia Amtul-Habib Shuttari, solicitor, of c/o Shuttari Paul & Co, 33/35 South Road, Southall, Middlesex UB1 1SW, might be required to answer the allegations contained in the statement which accompanied the application and that such order might be made as the Tribunal should think right.

The Tribunal had dealt with part of the allegations contained in the statement which accompanied the application of 17th February 1997 in November 1999.

The allegations contained in the supplementary statement dated 6th November 1997 had been adjourned pending an application for judicial review made by the respondent, and had again subsequently been adjourned following a hearing of 25th July 2000, when the Tribunal was notified that the Office intended to bring further allegations. The Tribunal considered it right that both sets of outstanding allegations should be dealt with together.

The Tribunal notes that (ii) is a request for a Direction and is not in itself an allegation.

The allegations set out below are those contained in the supplementary statement dated 6th November 1997 and those contained in the statement dated 18th July 2000.

The allegations were that:-

- (i) the respondent had failed to act in accordance with a decision of the Client Relations Casework Appeals Sub Committee of the Office for the Supervision of Solicitors dated 16th July 1997 and had failed to reply to correspondence addressed in that regard to her by the Office and accordingly had been guilty of conduct unbecoming a solicitor.
- (ii) Pursuant to the provisions of Schedule 1A to the Solicitors Act 1974, paragraph 5, an Order was sought that the direction as to inadequate professional services thereinbefore referred to be treated for the purpose of enforcement as if it were contained in an Order made by the High Court.
- (iii) The respondent had failed alternatively failed with reasonable expedition to reply to correspondence and enquiry addressed to her by the Legal Aid Board and the Office for the Supervision of Solicitors.
- (iv) The respondent had been guilty of unreasonable delay alternatively had failed to act with reasonable expedition in relation to assistance sought by the Legal Aid Board from her relating to enforcement of a costs order.
- (v) By virtue of the aforementioned, had been guilty of conduct unbecoming a solicitor.

The applications were heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London EC4M 7NS, on 5th October 2000, when Gerald Malcolm Lynch, solicitor and consultant with the firm of Messrs Drysdales of Cumberland House, 24/28 Baxter Avenue, Southend-on-Sea, Essex, appeared as the applicant and the respondent appeared in person.

The evidence before the Tribunal included explanations given by the respondent, who did not give evidence on oath.

At the conclusion of the hearing the Tribunal made the following Order namely that Fawzia Amtul-Habib Shuttari of Shuttari Paul & Co., 33/35 South Road, Southall, Middlesex UB1 1SW, solicitor, be suspended from practice as a solicitor for an indefinite period of time to commence on the 18th November 2000 unless she has by the 18th November 2000 complied with the Direction of the Law Society of the 16th July 1997. If the respondent is able to satisfy the Tribunal by the 18th November 2000 that she has complied with the Direction of

the Law Society then the Tribunal will impose a fine of £10,000 in substitution for the order that she be suspended from practice indefinitely. The financial penalty to be forfeit to Her Majesty the Queen. The Tribunal further ordered that the respondent do pay the costs of and incidental to the application and enquiry fixed in the sum of £1,790.45 inclusive.

The Tribunal further Ordered that the Direction of the Law Society dated 16th July 1997 be treated for the purposes of enforcement by the Law Society as if it were an Order of the High Court.

The facts are set out in paragraphs 1 to 21 hereunder: -

1. The respondent had been admitted as a solicitor in 1984. At all material times she practised on her own account under the style of Shuttari Paul & Co at 33/35 South Road, Southall, Middlesex.
2. The respondent acted for Mr L in a matrimonial case. He complained to the Solicitors Complaints Bureau ("the Bureau") of inadequate professional service. After investigation, a synopsis containing all relevant facts was produced for consideration by an Assistant Director under delegated power which was dated 14 October 1994. The client had not received the proper sum in respect of interest on the proceeds of sale of the former matrimonial home. He had thought that he was legally aided throughout the matter when that was not the case. He had not been advised on the availability of Legal Aid at an early stage.
3. An Assistant Director of the Bureau considered the position and on 24th February 1995 expressed herself satisfied that there had been inadequate professional service, and that a bill delivered by the respondent dated 10th October 1991 should be cancelled and a further bill prepared and submitted to the Legal Aid Board. The Assistant Director of the Bureau also stated that the costs should be limited to £5,000 and that a similar sum should be paid to the Legal Aid Board in respect of the statutory charge, that the respondent should pay to the client £3,893.25, monies due on the Client Account, and the respondent should pay to the client a further sum of £250 for loss of interest.
4. The respondent appealed against this award. The appeal was dismissed. The respondent was so advised by letter of 10th May 1995, and she was asked that the matter be dealt with within 14 days. No response was received to that letter and the Bureau wrote again on 8th June. A response was required by return of post.
5. The respondent resolved then to seek leave to apply for judicial review of the decision of 26th April 1995. The application was initially heard on 20th December 1995, when it was adjourned. The substantive application was heard on 21st February 1996.
6. The respondent then appealed that decision to the Court of Appeal. At a hearing on 25th November 1996 leave was granted to the respondent to apply for judicial review.
7. On 6th January 1997, the Office for the Supervision of Solicitors ("the Office" which had superseded the Bureau) wrote to the respondent saying that in the light of the Court of Appeal decision, the appeal against the original decision of the Assistant Director would be the subject of reconsideration by an Appeals Committee of the

Office. It was made clear to the respondent that the matter would be considered de novo.

8. No application for judicial review was made by the respondent within the time limit, (three months from the date of the Court of Appeal decision). The respondent did not file further representation with the Office in relation to the matter, despite invitation to do so by letter of 16 April 1997.
9. The Client Relations Casework Appeals Sub Committee of the Office considered the matter de novo on 16th July 1997. The Committee resolved to note that this was a reconsideration of the solicitor's appeal following the application for leave judicially to review and the Court of Appeal Decision of 25th November 1996. The Committee found that the client was likely to have been overcharged and were concerned about breaches of the Civil Legal Aid (General) Regulations 1989. The Committee determined that the professional service provided by the respondent was not of the quality which it was reasonable to expect of her as a solicitor, and that this was an appropriate case for the solicitor's costs to be reduced to reflect the inadequacy of service.
10. The Committee determined that the costs to which the respondent should be entitled should be limited to £4,500 (a reduction of £2,250), or such lesser sum as might be found to be due after taxation of the Legal Aid element of the respondent's costs, plus VAT and disbursements. The Committee directed that the respondent should within 14 days of notification of the decision issue an undertaking to the Legal Aid Board that the respondent's costs, including both private and Legal Aid elements, should be so limited to £4,500 plus VAT and disbursements and that that sum should be remitted to the Legal Aid Board in respect of the statutory charge. The Committee further directed that subject to any direction to the contrary by the Legal Aid Board the sum of £4,500 plus VAT and disbursements should be remitted within 14 days of notification of the decision. The Assistant Director's decision to award compensation in the sum of £250 was upheld. In all other respects, the decision of the Appeal Committee of 24th February 1995 was upheld.
11. On 20th August 1997, the Office wrote to the respondent informing her of the Committee's decision and asking that she should confirm that she would be contacting the Legal Aid Board in compliance with the same. No response was made to that letter and the Office wrote again on 24th September 1997 requiring response within 7 days. Nothing had been heard.
12. The respondent had not acted in accordance with the directions of the Committee.
13. On 30th September 1997, an Assistant Director under delegated power and in the light of the failure by the respondent to act in accordance with the Committee decision, resolved that it was appropriate to take disciplinary proceedings both in relation to the respondent's failure to comply with the direction, and to obtain a direction from the Tribunal that the direction should be treated for the purposes of enforcement as if contained in an order made by the High Court.
14. The respondent told the Tribunal that she would not be making a claim upon the Legal Aid Fund. Costs of £4,500 would be regarded as costs relating to the private

element. She said it was entirely her decision as to whether or not she sought a Legal Aid taxation of any part of her costs. She had never submitted a bill to the Legal Aid Board. The statutory charge did not apply and never had applied. The client had been successful in his action and the respondent had released money to him. There had been no need to implement the statutory charge: the respondent had not claimed legal aid costs. The Legal Aid Board had confirmed and had said that the respondent had been entitled to the costs in connection with the private work. Mr L had been told of the availability of Legal Aid, but the respondent had considered that his financial status was such that he would not qualify for Legal Aid. Mr L had become entitled to Legal Aid when he became unemployed in a period ending in October 1991. The Legal Aid Board was not in a position to receive the sum of £4,500: the respondent posed the question, "what would the Legal Aid Board do with that money?"

15. On 26 May 1999, the Debt Recovery Department of the Legal Aid Board wrote to the Office complaining that the respondent had been involved in legal proceedings in which an order for costs had been obtained against the other side where, having met the respondent's claims for costs, it was available to the Legal Aid Board to recover costs from the other party, but difficulties had been experienced in correspondence with the solicitors acting for the other party in relation to an incorrect allocatur for costs. In this regard the Legal Aid Board had written to the respondent seeking assistance. Despite numerous letters, no positive assistance had been received.
16. The Legal Aid Board's correspondence to the respondent commenced with a letter of 13th January 1997. A reminder was sent on 27th February which led to a response of 5th March from the respondent saying that she would obtain the file of papers and take the matter up with the Court. The Board addressed further letters of 29th May, 2nd September and 27th November 1997, without response. Further months went by and a letter was sent on 15th April 1998 which did lead to a response from the respondent, who apologised for the delay and sought seven further days to reply. On 28th April 1998 it was said that the respondent would be considering the papers. Nothing more was heard until 12th June, following a telephone conversation and it was said that the question of costs would need to be referred to a draftsman and the respondent apologised for the delay.
17. The Board wrote again on 9th July. On 13th July the respondent wrote confirming the order that was made and saying that the matter was being taken up with the Brentford County Court. A letter of 13th July had been addressed to the District Judge at that Court. On 27th July, the respondent submitted a bill of costs.
18. The Board wrote to the respondent again on 6th December pointing out that the matter had been extant for nearly two years, and that no satisfactory response had been received. A complaint would be made if the matter was not adequately dealt with. On 16th December the respondent wrote to say that there was to be a hearing on 8th January at Brentford County Court, when it was hoped the matter would be resolved.
19. The Board awaited the said hearing, but having heard nothing, wrote to the respondent again on 23rd February 1999 asking the outcome. There was no response and a further letter was sent on 25th March 1999. This again was ignored and on 5th May 1999 a letter of formal complaint of failure to respond was sent to the respondent

indicating that the matter would be referred to the Office if no adequate response was received.

20. Upon reference to the Office, the Office wrote on 13th October 1999 to the respondent giving full details of the complaint and seeking formal response. No reply was received to that letter and a further letter was sent on 29th October following a telephone conversation in which the respondent asked for a further seven days. Nothing further had been heard from the respondent.
21. The respondent told the Tribunal that there had been confusion when the Court had issued two allocaturs citing different figures. The respondent's client, Mr S, had been successful in his defence of the claim brought against him and his counter claim (having had judgement set aside), and the respondent's costs were properly payable by the plaintiff. The plaintiff had raised no objection to the respondent's bill. The respondent had heard nothing in the matter for a considerable period of time and had discovered that the plaintiff's solicitors had had the allocatur set aside without notifying the respondent. At that stage the respondent had difficulty in locating Mr S's file of papers. The Court had not been able to trace its file. The respondent said she had received a visit from the Law Society's Investigation Accountant and had given a full explanation to him.

The submissions of the Applicant

22. The respondent had not complied with a decision of the Client Relations Casework Appeals Sub Committee of the Office dated 16th July 1997, and she had failed to reply to correspondence addressed to her in that regard. A failure by a solicitor to comply with a direction made by her own regulatory body was a serious matter, as was a failure to reply to correspondence addressed to her by that body.
23. The respondent had been guilty of inordinate delay in responding to correspondence and enquiries addressed to her, both by the Legal Aid Board and by the Office. She had not speedily given the assistance sought by the Legal Aid Board, which she should have done.
24. The matters before the Tribunal painted a bleak picture of only sporadic responses from the respondent and of failure to comply with a Direction.

The submissions of the Respondent

25. Some of the respondent's explanations are set out above under the heading "The facts". The respondent went on to explain that her health had begun to suffer in 1998, and she had become seriously ill by early 1999. She had had to close her office to the public, as she had been unable to appoint a locum solicitor.
26. The respondent described her mind at that time as being "woolly" and she had not been physically able to deal with any matters.
27. The Law Society's Investigation Accountant had visited her firm to inspect its books of account. The Investigation Accountant had told her that she should respond, but she had been "burnt out". The respondent told the Tribunal that every time she saw a

letter addressed to her from the Office, she felt tired. She felt that the Office never seemed to understand or consider her position. She felt that whatever explanation she offered, her letters were simply dismissed.

28. The respondent said she had fully explained the position to the Law Society's Investigation Accountant and had not believed it had been necessary to repeat those explanations to the Legal Aid Board in relation to the matter of Mr S.
29. Upon the Tribunal having found the allegations substantiated against the respondent, they were made aware of earlier disciplinary proceedings. The respondent pointed out that she was considerably in debt and had the deadline of 18th November 2000 to settle outstanding amounts.
30. The respondent confirmed that she would make a payment of £4,500 to the Legal Aid Board, although there was no need to protect the statutory charge. She apologised for her failure to deal with correspondence, reminding the Tribunal that her failures were largely the result of serious ill health. She assured the Tribunal that she had been, and would continue to be, more attentive to dealing with correspondence.
31. The respondent's business had in recent times reduced in size. At the time of the hearing, she employed two assistant solicitors and two trainees (who had been placed on part time work as the respondent had been unable to afford to pay full time rates).

The Findings of the Tribunal

The Tribunal found the allegations to have been substantiated.

On 29th June 1995, the Tribunal found the following allegations to have been substantiated against the respondent. The allegations were that the respondent had:-

- (i) failed alternatively been guilty of unreasonable delay in settling counsels' fees in respect of private clients and has been guilty of delay in securing the taxation of legally aided fees further resulting in delay in settlement of counsels' fees properly due;
- (ii) unreasonably delayed in the release of papers to a client's new solicitors and pursuant to client's instructions delivered therein;
- (iii) unreasonably delayed in the submission of papers for Legal Aid taxation;
- (iv) (not substantiated)
- (v) by virtue of each and all of the aforementioned had been guilty of conduct unbefitting a solicitor.

The Tribunal noted that on that occasion the respondent had included in her submissions the fact that she had come to recognise a personal responsibility for the payment of counsels' fees and accepted that she had exhibited a not inconsiderable lack of judgement when engaging counsel on a client's behalf without ensuring that she had the means to settle his fees. That had not been the case in one matter where

the respondent had understood that the court had ordered a sum to have been made available for legal fees out of the respondent's frozen assets. The respondent told the Tribunal that she had come to learn to balance the best interests of clients with the need to spend time on administrative matters and had ceased to instruct counsel without ensuring that she had received monies in respect of their fees from clients in advance. The respondent had believed that she had been doing her best for her clients in engaging counsel in the past and she had trusted her clients to pay.

12 The respondent told the Tribunal that in 1995 she would discharge counsels' fees. She said she had attended a cost draughtsman's course and had checked all of her files and was confident that the costs generated would provide sufficient moneys to enable her to continue to run her practice and to pay off the outstanding counsels' fees. It was said on behalf of the respondent that she had learned everything the hard way. She had already been punished because members of the Bar would no longer allow her credit.

The Tribunal had at that time expressed itself as being somewhat troubled by the matter. It felt it was clear that the respondent had not been dishonest and indeed no dishonesty had been alleged against her. No client had suffered loss. The Tribunal had heard what the respondent said about putting the affairs of her clients first and foremost and had said that they could only admire her dedication. The respondent had been well aware of the fact that she had been both naïve and stupid. She had had to learn that it was necessary to balance her proper duty to look after her clients' interests with her other duties generally as a solicitor. There had been no doubt in the mind of the Tribunal that a failure to pay counsels' fees when they properly fell due served to bring the solicitors' profession into disrepute. The Tribunal had noted that the respondent had accepted her personal liability for the payment of counsel's fees and pointed out that it was important that those fees were met as a matter of honour.

The Tribunal had also noted the respondent's intention to pay counsels' fees but expressed themselves to be somewhat disappointed that no formal scheme to achieve such end had been placed before them. The Tribunal said it wished to make it very plain indeed that a failure to meet the fees of counsel would amount to a continuing breach of the respondent's duty as a solicitor and would render her subject to further disciplinary proceedings. She was not to take the view that the substantiation of allegations before the Tribunal on that occasion would absolve her from liability in that behalf. The failure to pay counsel's fees was a serious matter.

The Tribunal considered at the 1995 hearing that considerable anxiety and inconvenience had been caused to counsel and the total amount involved was considerable.

The Tribunal had expressed the hope that the respondent would seek appropriate formal advice as to financial matters and to arrange for a formal scheme for the payment of fees to be drawn up and if possible agreed with counsel concerned.

The Tribunal had recognised that the respondent had incurred a large personal debt and she would be bound to pay the costs of The Law Society in bringing the application as well as the costs of her own defence. Because the respondent had already been penalised in effect by the large sums of money which she would be

bound to pay out, the Tribunal considered it appropriate to exercise leniency. A fine was the appropriate sanction to impose upon the respondent, but they wished to make it very plain that the level of fine reflected the very large amounts of money that had to be found by the respondent and did not reflect the seriousness with which they regarded the respondent's behaviour. The Tribunal ordered that the respondent should pay a fine of £1,000, together with the costs of the application and enquiry, to be taxed if not agreed.

On 18th November 1999, the Tribunal found the following allegations to have been substantiated against the respondent. The allegations were that the respondent had:-

- (i) failed, alternatively had been guilty of unreasonable delay in settling counsels' fees in respect of private clients and been guilty of delay in securing the taxation of legally aided costs resulting in further delay in settlement of counsels' fees properly due;
- (ii) was in breach of her duty to pay the proper fees due to a professional agent, alternatively had failed so to pay with reasonable expedition;
- (iii) failed to reply, or alternatively failed with sufficient expedition to reply to correspondence and enquiry addressed to her by the Office for the Supervision of Solicitors;
- (iv) by virtue of each and all of the aforementioned had been guilty of conduct unbecoming a solicitor.

After finding the allegations to have been substantiated at the hearing in November 1999, the Tribunal reached the conclusion that the respondent's stand had been disgraceful. The Tribunal could not help but remark that if the respondent had continued to pay £1,500 per month in reduction of the outstanding counsels' fees, then all of those outstanding fees would have been paid off by the date of this hearing. The respondent had shown no respect for her own professional body and her behaviour in that regard was seriously open to question, although no formal allegation had been made against her. This was one of the most serious cases of its kind to come before the Tribunal: it was apparent that the respondent had learned little or nothing from her earlier appearance before the Tribunal.

The Tribunal was very concerned that counsel should not be kept out of their money. The Tribunal had seriously considered making an order striking the respondent off the Roll of Solicitors. The Tribunal recognised as they had done on the earlier occasion when she appeared before the Tribunal, that the respondent had not been guilty of dishonesty and further recognised that such an order would deprive the respondent of her ability to generate fee income as a solicitor. Not only would that damage the respondent, but was likely to ensure that the outstanding counsels' fees would not be paid in the foreseeable future.

In all of the very unfortunate circumstances of this case, the Tribunal made an order which in effect would give the respondent a year fully to discharge all outstanding counsels' fees. If by 18th November 2000 she discharged all of those fees then a fine of £10,000 would be imposed upon her. If, however, the respondent had not

discharged all outstanding counsels' fees, then the Tribunal's order would be that she be suspended from practice for an indefinite period of time. The Tribunal further ordered that the respondent pay the costs of and incidental to the application and enquiry fixed in the sum of £5,051 inclusive.

The Tribunal required the respondent to satisfy it that she had fully discharged all outstanding counsels' fees by lodging with its Clerk an affidavit to that effect to which there are exhibited counsels' receipted fee notes and a letter of confirmation from the General Council of the Bar that it is satisfied that all outstanding counsels' fees have been paid by the respondent together with a letter from Ms H confirming that her outstanding fees have been discharged.

In October 2000 the Tribunal was alarmed to discover that the respondent had appeared before the Tribunal on two earlier occasions. They were further dismayed to find that the respondent had apparently adopted an arrogant disregard for her duties and obligations as a solicitor. Her failure to respond promptly to enquiries made of her by the Legal Aid Board and her own professional body caused inconvenience and expense, and prevented either of those bodies from fulfilling their own duties and obligations. The Tribunal takes a very serious view indeed of a solicitor who apparently refuses to comply with a direction made by his own professional body. The direction remains in full force and effect. The Tribunal could not countenance the continuation of the respondent in practice while she continued to flout a direction made by the Office. Bearing in mind the earlier Tribunal's order, the Tribunal in October 2000 considered it right that the respondent would be suspended from practice as a solicitor for an indefinite period of time if by 18th November 2000 she had not complied fully with that direction. Full compliance with that direction must be evidenced to the Tribunal by way of affidavit lodged at the Tribunal's office by the respondent, to which are exhibited letters from the Office and the Legal Aid Board confirming due compliance. If the respondent does so comply, then in respect of all of the allegations found to have been substantiated against the respondent on this occasion, the respondent will not be suspended from practice for an indefinite period of time, but she will pay a fine of £10,000. The Tribunal wish to make it perfectly clear that this fine is in addition to that imposed upon her on 18th November 1999, in the order of the Tribunal dated 18th November 1999.

In addition to these sanctions, the Tribunal made an order to the effect that the direction made by the Office should for the purposes of enforcement be treated as an order of the High Court.

If the respondent is able to regularise her position by 18th November 2000 and avoid being suspended from practice, the Tribunal wish to recommend to the Law Society that she should not in future be permitted to practise other than in approved employment, or in a partnership first approved by the Law Society.

DATED this 4th day of December 2000
on behalf of the Tribunal



J N Barnecutt
Chairman

*Findings filed with the
Law Society on the
18 DEC 2000*