

IN THE MATTER OF MARY YOLANDE PRIYANI FERNANDO and  
MICHAEL F ANDREWS, solicitors

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

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Mr A N Spooner (in the chair)  
Mrs K Todner  
Mr S Howe

Date of Hearing: 19th January 2010

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## **FINDINGS**

of the Solicitors Disciplinary Tribunal  
Constituted under the Solicitors Act 1974

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An application was duly made on behalf of the Solicitors Regulation Authority by Peter Harland Cadman of Russell-Cooke LLP of 8 Bedford Row, London WC1R 4BX on 21<sup>st</sup> January 2009 that Mary Yolande Priyani Fernando (a solicitor) be required to answer the allegations contained in the statement which accompanied the application and that such Order be made as the Tribunal should think fit.

On the same date Peter Harland Cadman applied on behalf of the Solicitors Regulation Authority that Michael F Andrews, solicitor's clerk, have an Order made in respect of him by the Tribunal directing that as from the date to be specified in such Order no solicitor, Registered European Lawyer or incorporated solicitor's practice shall, except in accordance with permission in writing granted by the Law Society for such period and subject to such conditions as the Law Society may think fit to specify in the permission, employ or remunerate in connection with his practice as a solicitor, Registered European Lawyer or member, director or shareowner of an incorporated solicitor's practice the person with respect to whom the Order is made or any such other Order as the Tribunal should think right.

The allegations against Mary Yolande Priyani Fernando (Mrs Fernando) were that:-

- (a) Books of account were not properly written up.

- (b) Monies were withdrawn from client account other than as permitted by the Solicitors Accounts Rules.
- (c) Money was improperly paid into client account.
- (d) False entries were created on ledgers.
- (e) Secret profits were made.
- (f) There was unreasonable delay in the conduct of professional business.
- (g) She practised without a valid current practising certificate.
- (h) She utilised clients' funds for the benefit of other clients.
- (i) Client ledgers were not made available upon reasonable request.
- (j) She failed to reply to correspondence from the Solicitors Regulation Authority promptly or at all.
- (k) She failed adequately or at all to supervise staff.
- (l) She failed to rectify breaches of the Solicitors Accounts Rules promptly or at all.
- (m) She failed to lodge her Accountant's Report promptly or at all with regard to the year ending 31<sup>st</sup> August 2007.

The allegations against Michael F Andrews (Mr Andrews) were that:-

He, having been employed or remunerated by a solicitor but not being a solicitor has, in the opinion of the Law Society, occasioned or been party to, with or without the connivance of the solicitor to whom he was or has been employed or remunerated, an act or default in relation to a solicitor's practice which involved conduct on his part of such a nature that in the opinion of the Solicitors Regulation Authority it would be undesirable for him to be employed or remunerated by a solicitor or European Foreign lawyer in connection with his or her practice or by an incorporated solicitor's practice in the following particulars:-

- (n) Books of account of the solicitor's practice were not properly written up.
- (o) He created false entries on client ledgers.
- (p) He created false entries in solicitor's books of account.

The applications were heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London EC4M 7NS on 19<sup>th</sup> January 2010 when Peter Harland Cadman appeared as the Applicant, Mrs Fernando was represented by Stephen John Battersby, solicitor and partner in the firm of Jameson & Hill of 72-74 Fore Street, Hertford, Herts SG14 1BY and Mr Andrews appeared in person.

The evidence before the Tribunal included the admissions of the facts and allegations by Mrs Fernando. Mr Andrews denied the facts and the allegations. The Forensic Investigation Officer, Ms Beenham, gave oral evidence as did Mrs Adams.

**At the conclusion of the hearing the Tribunal made the following Orders:-**

The Tribunal Orders that the Respondent, MARY YOLANDE PRIYANI FERNANDO, solicitor, be suspended from practice as a solicitor for an indefinite period to commence on the 19th day of January 2010 and it further Orders that she do pay the costs of and incidental to this application and enquiry fixed in the sum of £32,000.00. Mr Andrews to be responsible for one quarter of these costs and Mrs Fernando to be responsible for three quarters. Mr Andrews to pay £2,500 and Mrs Fernando to pay £7,500 within twenty eight days of today's date. The balance of the costs in the proportions ordered to be paid are not to be enforced against either Respondent without the consent of the Tribunal.

The Tribunal Orders that as from 19th day of March 2010 no solicitor, Registered European Lawyer or incorporated solicitor's practice shall, except in accordance with permission in writing granted by the Law Society for such period and subject to such conditions as the Society may think fit to specify in the permission, employ or remunerate in connection with the practice as a solicitor, Registered European Lawyer or member, director or shareowner of an incorporated solicitor's practice MICHAEL F ANDREWS, a person who is or was a clerk to a solicitor and the Tribunal further Orders that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £32,000.00. Mr. Andrews to be responsible for one quarter of these costs and Mrs Fernando to be responsible for three quarters. Mr. Andrews to pay £2,500 and Mrs Fernando to pay £7,500 within twenty eight days of today's date. The balance of the costs in the proportions ordered to be paid are not to be enforced against either Respondent without the consent of the Tribunal.

**The evidence before the Tribunal is set out in paragraphs 1-44 hereunder:-**

1. Mrs Fernando, born in 1949, was admitted as a solicitor in 1982. Her name remained on the Roll of Solicitors. She practised as a sole principal under the style of Fairways Solicitors from offices at 1 St George's Road, Hemel Hempstead, Hertfordshire, HP3 0AR.
2. Mr Andrews was employed and/or remunerated by Mrs Fernando to write up her firm's books of account. He was an independent contractor in that respect. Mr Andrews resided in Weymouth, Dorset.
3. The inspection of Fairway Solicitors' books of account began on 21<sup>st</sup> November 2007. A Forensic Investigation Officer (FIO) of the Solicitors Regulation Authority (SRA) produced a written report dated 23<sup>rd</sup> July 2008 which was before the Tribunal.
4. The FIO's report recorded that Mrs Fernando had opened her firm as a sole principal in 2001. She primarily handled conveyancing matters. She had closed her firm owing to her ill health. At the time of the FIO's inspection she had seven or eight matters which she continued to handle which were close to being finalised. Mrs Fernando did not employ any staff.
5. The firm's books of account did not comply with the Solicitors' Accounts Rules as dealings with client money had not been appropriately recorded in the books of account and interest earned on client bank account (office money) had been paid into client account.

6. A list of liabilities to clients as at 31<sup>st</sup> October 2007 totalled £14,440.86. The FIO expressed concern about concealment of overdrawn balances on client account and considered it not practicable to rely on the books of account. She was however able to determine that there was a minimum cash shortage of £8,649.65 at that date.

7. The minimum cash shortage had arisen in the following way:-

|       |  |                  |
|-------|--|------------------|
| (i)   | Over transfers from the client to the office bank account:                       |                  |
|       | VAT charges  | £2,582.63        |
| (ii)  | Overpayments made when insufficient funds had been held on behalf of the client: |                  |
|       | J  | 2,419.76         |
|       | K  | 2,000.00         |
|       | DJ   | 387.26           |
| (iii) | Payments made from the client account in error:                                  |                  |
|       | K  | 1,200.00         |
|       | R  | 60.00            |
|       |  | <u>£8,649.65</u> |

8. Mr Andrews had been engaged by Mrs Fernando to write up her firm's books after she had answered his advertisement in the Law Society Gazette. He had been engaged in about November 2006. Mr Andrews undertook such work for about six firms of solicitors. When he took on bookkeeping for Mrs Fernando the writing up of the books had been in arrears.

9. The client account reconciliation as at 31<sup>st</sup> October 2007 prepared by Mr Andrews showed that sufficient funds had been held to meet client liabilities. The FIO established that a number of "costs transfers" had been recorded on the ledgers but had not been effected at the bank, which served to conceal shortages on the client account.

10. The FIO in her report set out examples of client matters where funds had been transferred between client ledgers and between the office and client accounts with no corresponding physical transfer of funds. Some of these accounting entries involved the apparent transfer of costs from the client to the office account that were not properly made and Mrs Fernando had insisted that she had not authorised them.

11. A number of journal entries dated 31<sup>st</sup> August 2006 had been made. This date represented the firm's financial year end. Eighty four debits and thirty eight credits had been posted to unrelated ledgers in the client account and recorded the net sum of £7,579.99 credited to the firm's suspense account. An example of such an entry was the transfer of £45.94 from the F/O ledger. A review of the client matter file revealed that the £45.94 had been interest earned on the clients' designated deposit account and there was no evidence that the firm was entitled to transfer these funds to unrelated ledgers. When asked about these matters Mrs Fernando had given certain indications and also said, "I find that most of these entries appear to make up a shortfall in the account. This should not have been done". Mrs Fernando had gone on to indicate

that she had not expended her time on these matters as she had expected to be directed by the SRA upon the steps she should take.

12. There were a number of “costs transfers” dated 1<sup>st</sup> September 2006 which included sixteen transfers of funds, ranging from £6.27 to £1,100.00 totalling £2,927.67 from the office to the client bank account where there was no corresponding physical transfer of funds at the bank. Eleven of these transfers had been a full or partial reversal of a 31<sup>st</sup> August 2006 journal entry.
13. The transfers from the office to the client account were offset by “costs” pertaining to two clients, namely Mr T (£747.26) and Am (£2,180.41). When these transfers were made in Mr T’s matter £152.75 was due to the firm and no moneys were due to the firm in the Am matter.
14. In some cases funds had been “transferred” from the office to the client account. Mrs Fernando was asked to explain why the balances on the ledgers needed to be increased using office funds. She provided no explanation, but had insisted that she had not instructed her bookkeeper to make the 1<sup>st</sup> September 2006 costs transfers.
15. There were seventeen transfers of funds, ranging from £0.50 (“BL”) to £2,419.76 (“J”) totalling £6,742.05 from the office to the client bank account, none of which involved a physical transfer of funds at the bank. These bank transfers were offset by nine sets of “costs” ranging from £69.75 (“B”) to £2,585.00 (“N”) totalling £6,742.05. On review of the client matters relating to larger transfers it was ascertained that the firm had not been entitled to the entire sum transferred.
16. By way of example in Mr and Mrs N’s property sale, which was completed on 20<sup>th</sup> June 2006, £2,585.00 was retained in the client account earmarked for estate agent fees. The ledger recorded a payment of £2,585.00 to the estate agent but there had been no actual payment from office bank account. It had been Mrs Fernando’s position that she had received verbal confirmation from the estate agent that their fees had been paid although she could not provide evidence to support this.
17. Mrs Fernando had not disputed that the transfers were improper. She stated that her bookkeeper had advised her that, “the costs were transferred on the basis that the practice was entitled to the same and that this was normal accounting practice”. She said she had come to realise that where transfers were only on paper, they could have involved covering shortages on the client account. She had not authorised such transfers.
18. A number of “costs transfers” dated 30<sup>th</sup> April 2007 had been made including fifteen ranging from £10.00 to £2,764.68 and totalling £5,367.26 from the office to the client bank account where there was no physical transfer of funds at the bank. These transfers were offset by thirty-nine sets of “costs” ranging from £0.31 to £1,755.00 and one balancing entry in the sum of £1.00. The FIO set out four cases which had been reviewed where the firm was not entitled to the majority of the funds transferred.
19. In the case of St, Mrs Fernando said that although the funds had been earmarked to pay the firm’s costs, as at the date of the investigation she had not yet raised a bill of costs. In another case the £142.22 transferred represented interest earned on the client’s designated deposit account and there was nothing to suggest that such amount was due to the firm. In another matter £250.00 had been a “retention against service

charges” and was not due to the firm. Mrs Fernando again explained that she had not been aware that these transfers had been made and she could not explain the reasons for them.

20. The FIO went on to report that the firm’s accounting records had been incomplete and contained inaccurate entries.
21. The list of client balances forming part of the firm’s reconciliation as at 31<sup>st</sup> October 2007 that had been produced for inspection included twenty four client matters. The total of the balances was £14,440.86. The FIO established that this list was incomplete.
22. Mrs Fernando provided another list of nineteen client names with balances, two of which were overdrawn. That list was also incomplete and did not include seven identifiable clients nor did it include all of the clients shown in her bookkeeper’s list of client balances presented for inspection nor any of the clients who had paid VAT unnecessarily.
23. The FIO reviewed a sample of six client matter files involving a “credit” where “costs transfers” had been made. In three cases, the “costs transfer” entry had been recorded on the ledger using an incorrect date which had the effect of concealing a shortage on the client account. An example cited by the FIO was that of J’s conveyancing matter (see paragraph 7 above).
24. The first transaction recorded on J’s ledger was dated 1<sup>st</sup> October 2006, being a transfer from the office to the client account in the sum of £2,419.76. This was two months before J instructed the firm. £2,419.76 represented the overdrawn balance on Mrs J’s ledger, which did not occur until eight months later, after the firm paid Stamp Duty Land Tax on her behalf in August 2007 without having sufficient funds available.
25. In a telephone conversation between the FIO and Mr Andrews on 9<sup>th</sup> January 2008, Mr Andrews said that Mrs Fernando had not instructed him to use the 1<sup>st</sup> October 2006 date for the “costs transfers” but he had used it because the firm had been “due money” and it was done as a “spring cleaning exercise”. Mr Andrews told the Tribunal that he had appropriately dealt with adverse balances. He also told the Tribunal that he recognised that some of the dates entered did not reflect the actual dates of individual transactions but he had determined the position on individual ledgers with much difficulty and had achieved a record of what he believed to be the correct position and did not attribute significance to the date entered on the ledger.
26. Mrs Fernando had acknowledged that it appeared that her bookkeeper had prepared the ledgers in such a way as to conceal shortages. Mrs Fernando had indicated that she did not understand why her bookkeeper had not recorded the transactions on the ledgers from the financial information her staff had provided him on a monthly basis. He had been provided with lists of client account receipts, payments, costs transfers and CHAPS transfers. Mr Andrews explained that he had not been supplied with opening balances at the time he was first engaged. He had had to take it that all was in order at the date of the then most recent “SRA Audit”.
27. The FIO reported that ledgers were not available for thirty of the thirty eight “credit journal entry” matters. Mrs Fernando explained that she called her bookkeeper when

she required to know a client's ledger balance. She had not received any ledgers from her bookkeeper until the investigation. Save in the matters of H & W, ledgers were not available for the clients who had unnecessarily paid VAT.

28. The firm maintained a suspense ledger entitled "Suspense – due to Mrs M Fernando" the commencing date was 1<sup>st</sup> September 2006 recording a balance forward of £13,592.41, the source of which could not be explained by Mrs Fernando.
29. The residual balance of the journal entries dated the day before the suspense ledger commencing date was recorded as a credit on the suspense account in the sum of £7,579.99.
30. The FIO referred as an example to the matter of Mr Kh, a property purchasing client. His ledger contained two financial transactions resulting in a nil balance. Such property transaction would have generated more than two transactions. When requested to do so Mrs Fernando submitted a revised ledger which she said she herself had prepared for Mr Kh showing an overdrawn balance of £2,000.00.
31. The matter of K & T provided office transactions that had not been recorded on the office side of the relevant client ledger. In the case of K, the firm received a refund of overpaid SDLT of £1,205.03 which had been deposited into the office account on 2<sup>nd</sup> August 2007 but not entered on the office side of the client ledger. In the case of T, the firm paid £152.75 from the office account which was not recorded on the office side of the client ledger.
32. Mr Andrews had confirmed to the FIO that the office side of the client ledgers was incomplete. Mrs Fernando had confirmed that her staff had not provided Mr Andrews with all of the information that he needed.
33. There were instances where journal entries dated 31<sup>st</sup> August 2006 prepared by Mr Andrews had not been recorded on the relevant ledger.
34. The firm's client account bank statements showed monthly direct debits in payment of office expenses. The office expenses, dating from November 2006, had been recorded on the firm's suspense ledger account. The total sum paid out was £6,334.96. Interest earned on the client bank account had been recorded on the suspense ledger account but the office expenses paid from client account were primarily drawn from the balance forward sum, the source of which could not be identified. Mrs Fernando acknowledged that these payments were for office expenses and had been charged to the client account in error because she had inadvertently given her bank the wrong account number but the shortage had been replaced on 19<sup>th</sup> May 2005.
35. Generally clients were not charged VAT by the firm. In the matters of W and H VAT had been charged unnecessarily and those funds had been transferred to the office account. Mrs Fernando explained that in the latter part of 2006 she started to charge VAT because she had (wrongly) believed that her firm's income would exceed the exemption threshold and she had opened a separate VAT bank account. When it became clear that she need not be registered for VAT, the VAT bank account had been closed and the closing balance paid into office account. A refund had been made to one client but there were twenty eight clients to whom a total of £2,582.63 was due.

36. The firm had made payments from the client account in excess of the funds held on behalf of the relevant client. In all of the cases, the overdrawn client balances had been “corrected”, and the FIO considered concealed, by one of the “Cost Transfer” transactions set out in paragraphs 9 and 10 above. An example cited by the FIO was that of the client J in which J had authorised the firm to complete her property purchase using the funds she had supplied for SDLT. She did not provide the balance due as promised and in August 2007, the firm paid £7,770.00 for SDLT, overdrawing client account by £2,419.76.
37. In correspondence with the SRA Mr Andrews had explained that he had,
- “prepared all the journal entries and cost transfers mentioned. I prepared draft monthly schedules of client ledger balances and Mrs Fernando would advise me of the transfers to be made based on these – sometimes verbally and sometimes by marking the items on the draft ledger balances schedules.”
38. Mrs Fernando had not agreed that she had authorised Mr Andrews to make the journal entries and “costs transfers”, reiterating that she had been unaware of them.
39. Mr Andrew’s written explanation for the fact that entries on certain client ledgers had not been prepared in chronological order had been that he had been,
- “dealing with the bookkeeping in arrears – I did not catch up until the latter half of 2007 – and so the entries mentioned, whilst recorded in the cash book in the months stated, were prepared and entered some months later.”
- It had been Mrs Fernando’s position that Mr Andrews had had “some catching up to do”, but he received accounts information on a monthly basis.
40. From 1<sup>st</sup> November 2007 Mrs Fernando did not hold a practising certificate. She had continued to operate her client bank account and had authorised four withdrawals when she had no practising certificate.
41. Following his review of a sample of twenty two conveyancing matter files, the FIO found that in six cases, Mrs Fernando had delayed effecting the registration of the transfer and the charge. In this respect Mrs Fernando had accepted that she had not ensured the protection of her lender clients’ interests.
42. Mrs Fernando had been hospitalised. She had since ensured the finalisation of these conveyancing matters.
43. The FIO also recorded that Mrs Fernando’s firm charged £35.00 for “Postage, Telephone & Incidentals” shown as a disbursement in its client care letter. Mrs Fernando had believed this to be a standard practice.
44. The firm also charged £35.00 as a disbursement described as a “Bank Transfer Fee” in the client care letter. The bank’s telegraphic transfer fee to the firm was £20.00. Mrs Fernando said that the extra £15.00 fee was compensation for the time her staff spent in arranging a telegraphic transfer. The £15.00 overcharge had produced a substantial profit for Mrs Fernando.

### **The Submissions of the Applicant**



45. Mrs Fernando had admitted the allegations.
46. Mr Andrews had cross examined the FIO and had made submissions but had not himself given formal evidence.
47. The Tribunal was invited in the light of the evidence to make the Order sought in respect of Mr Andrews. Such Order was not punitive but regulatory. After that the Tribunal was invited to consider such mitigation as might be placed before them and the question of costs.
48. The Applicant confirmed that dishonesty was not alleged against either Respondent.

#### **The Submissions of Mr Andrews**

49. Mr Andrews confirmed that he had acted upon Mrs Fernando's instructions. He had not been given opening balances and he had had to cope with a back log of unposted transactions. He had been confronted with a very difficult job. He had formerly been a chartered accountant and was experienced in handling bookkeeping for solicitors. Mr Andrews invited the Tribunal to consider the question "what was in it for him?" He was to gain nothing by acting improperly. He had simply done what he had been instructed to do. He said that he believed that Mrs Fernando had found herself to be totally out of her depth.

#### **The Tribunal's Findings of Fact**

50. The Tribunal accepted the Investigation Accountant's evidence. It confirmed that Mrs Fernando had given some instructions to Mr Andrews and he had acted as instructed. The Tribunal also found that Mr Andrews had taken some steps of his own volition in order to provide what he considered to be a satisfactory bookkeeping outcome. In particular the Tribunal found that he had entered dates for transactions which were inaccurate and had sought to make a number of transfers in what he himself had described as a "spring cleaning exercise". In making these findings of fact the Tribunal wishes to make it plain that it has considerable sympathy for the position in which Mr Andrews found himself. Dishonesty had not been alleged against him and the Tribunal considered that he had acted erroneously but with the best of intentions in difficult circumstances.

#### **The Mitigation of Mr Andrews**

51. Mr Andrews confirmed that he wished to add nothing further to his initial admissions save to say that he was 66 years of age and currently enjoyed an income of about £1400.00 per month which would reduce considerably if he no longer acted as bookkeeper to his current solicitor clients.

### **The Mitigation of Mrs Fernando**

52. The Tribunal was invited to take into account the fact that Mrs Fernando had made early admissions. She had filed written statements with the Tribunal. It was regretted that she had not appeared at the hearing. She had intended no disrespect but her medical advisers had told her that she should avoid stressful situations.
53. Mrs Fernando had qualified as a lawyer in her native Sri Lanka in 1974. Following her move to England she had been admitted as a solicitor in 1982. She had set up on her own account in October 2003 having previously worked for several firms in an assistant solicitor or locum capacity. She had no experience of dealing with the management side of a practice. Her business outgoings had left her with little or no profit.
54. Initially Mrs Fernando had paid an accountant to look after the firm's books. She had taken on Mr Andrews in about November 2006. He appeared to be experienced in this type of work. Before Mr Andrews had been engaged Mrs Fernando had been able to file unqualified annual Accountant's Reports. Mr Andrews had expressed dissatisfaction with the method used for keeping the books prior to his involvement.
55. Mrs Fernando accepted that as a sole practitioner the responsibility for ensuring compliance with the Solicitors Accounts Rules was hers alone.
56. Mrs Fernando had come to accept that the way in which she worked with Mr Andrews was far from ideal. She was based in Hertfordshire and he was based in Dorset. She had sent accounting information to him on a regular basis and he had kept the firm's books.
57. Mrs Fernando had employed Mr Andrews because she had not been fully conversant with bookkeeping procedures. She had trusted him to look after that aspect of her practice. He had not worked from her office but he had visited the office periodically.
58. Mrs Fernando had not immediately put right Solicitors Accounts Rules breaches when they were drawn to her attention by the FIO as she was concerned that that would be seen as a hasty attempt to cover up the position. She believed, somewhat naively, that she would be advised by the FIO or the SRA how to regularise the situation. She had also believed that she should wait for guidance from the SRA before attempting to lodge her Accountant's Report.
59. Mrs Fernando would have liked to have taken steps to get her accounts in order but had been unable to achieve that owing to financial constraints. She had repaid VAT incorrectly charged to clients. Mrs Fernando had cooperated fully with the FIO and the SRA.
60. Importantly dishonesty had not been alleged against Mrs Fernando. She was unaware of any loss caused to anyone nor was she aware of any client or other complaint. She had never knowingly asked Mr Andrews to do anything improper. Mr Andrews himself had not believed that he had done anything improper.
61. The unfortunate events before the Tribunal had come about because of lack of understanding of what was required and Mrs Fernando's ill health. She accepted that

she had not dealt with matters as she should have done, she had become overwhelmed and apologised for her failures.

62. The Tribunal was invited to give due weight to the written references submitted in her support. They came from a variety of sources and gave a good indication of Mrs Fernando's character. She was described as cheerful, helpful and understanding. She was a good Christian lady who not only worked as a solicitor but undertook pro bono and voluntary work. She was not the sort of person that would intentionally do anything improper.
63. Mrs Fernando had the current additional concern that steps might be taken in respect of her failure to file Accountant's Reports and the possibility of an intervention into her practice.
64. Mrs Fernando did not enjoy comfortable financial circumstances relying upon her somewhat older husband who had retired on a modest pension. They had a son who was a student and remained dependent upon them.
65. The Tribunal was invited to consider guidance given in the case of Merrick when it came to the question of the imposition of a financial sanction and/or costs.
66. Mrs Fernando accepted that she had made money in circumstances where she should not have done. Where this had occurred the clients had paid only what they had expected to pay and her errors had been genuine. She had not deliberately set out to be paid more money by her clients than was proper. Office payments out of client account had been the result of genuine error.
67. Mrs Fernando had done her best to cooperate with the FIO and where she had not made client ledgers available immediately those ledgers had not been in her hands.
68. Mrs Fernando had not replied to letters addressed to her by the SRA owing to her illness.
69. The Tribunal was invited to note that Mrs Fernando had not been criticised for the way in which she supervised her employed staff. With regard to her relationship with Mr Andrews she trusted him and relied upon his expertise and experience.
70. The Tribunal was invited to impose a financial sanction. It was hoped that the Tribunal would take a lenient stand and consider this to be a proportionate sanction in all of the particular circumstances.

### **Costs**

71. The Applicant sought the costs of and incidental to the application and enquiry. The FIO's costs were £28,318.56 and the Applicant's own costs were £9,597.77. A schedule of costs was handed up.

### **The Tribunal's Sanctions and its Reasons**

72. Mrs Fernando herself had accepted that the responsibility for a proper maintenance of books of account and the proper handling and stewardship of clients' monies was hers and hers alone. On the face of the evidence and her admissions she had simply

abdicated that responsibility. In order to protect the public and the good reputation of the solicitors' profession the Tribunal concluded that it was both proportionate and appropriate to order that Mrs Fernando be suspended from practice as a solicitor for an indefinite period of time. The Tribunal was of the view that a future division of the Tribunal would be very unlikely to bring such a period of suspension to an end unless it was satisfied that Mrs Fernando had become fully conversant with the Solicitors Accounts Rules.

73. With regard to Mr Andrews in all of the particular circumstances of this case the Tribunal concluded that it would be both appropriate and proportionate to make an Order regulating his future employment or remuneration by solicitors' practices.
74. The Tribunal had noted that dishonesty had not been alleged against Mr Andrews and that he provided bookkeeping services to a number of other firms of solicitors. In view of this the Tribunal concluded that it would be appropriate that its Order made pursuant to Section 43 of the Solicitors Act 1974 (as amended) need not come into force until two months after the date of the hearing namely on 19<sup>th</sup> March 2010.
75. With regard to the question of costs the Tribunal had due regard for the schedule of costs submitted by the Applicant and considered that it would be appropriate to fix those costs at £32,000. The Respondents should be ordered to pay the costs in proportions that reflected their respective culpability. The Tribunal concluded that Mr Andrews should be responsible for one quarter of the costs and Mrs Fernando should be responsible for three quarters of the costs. The Tribunal had taken into account the modest financial circumstances of both of the Respondents and concluded that a proportionate order would be that Mr Andrews should pay within 28 days £2,500.00 costs and Mrs Fernando should within 28 days pay £7,500.00. The balance of the costs the subject of the Tribunal's costs order should not be enforced without the consent of the Tribunal first obtained.

Dated this 12<sup>th</sup> day of March 2010

On behalf of the Tribunal

A N Spooner  
Chairman