No. 10358-2009

On 26 October 2012, Mr Fry's appeal against the Tribunal's decision was withdrawn by consent.

SOLICITORS DISCIPLINARY TRIBUNAL

SOLICITORS ACT 1974

IN THE MATTER OF JOHN HOWARD CASWALL FRY and
[RESPONDENT 2], (The Respondents)

Upon the application of Jayne Willetts
on behalf of the Solicitors Regulation Authority

Mr D Green (in the chair)
Ms A Banks
Mr M C Baughan

Date of Hearing: 13th & 14th July 2010

FINDINGS & DECISION

Appearances

Jayne Willetts, Solicitor Advocate & Partner in the firm of Townshends LLP, Cornwall House, 31, Lionel Street, Birmingham B3 1AP, the Applicant.

The Respondents, who were present, were both represented by Timothy Nesbitt of Counsel.

The application to the Tribunal, on behalf of the SRA, was made on 22nd October 2009.

Allegations

The Allegations against both John Howard Caswall Fry (the First Respondent) and [RESPONDENT 2] (the Second Respondent) were that: -

1. Accounting records had not been kept properly written up in breach of Rule 32(1) of the Solicitors' Accounts Rules 1998 (SAR 1998).

2. Bills of costs or other written notification of costs had not been sent to clients prior to the withdrawal of monies from client account in breach of Rule 19(2) SAR 1998.

3. Monies had been improperly transferred from client account to office account otherwise than in accordance with Rule 22(1) SAR 1998. The allegation, as against the First Respondent only, was an allegation of dishonesty. The allegation of dishonesty was withdrawn as against the Second Respondent.

As against the First Respondent only (allegation 4 was withdrawn as against the Second Respondent):-

4. The First Respondent had improperly used client monies for his own purposes contrary to Rules 1(a); 1(c); & 1(d) of the Solicitors' Practice Rules 1990 and contrary to Rule 1.02; 1.04 & 1.06 of the Solicitors' Code of Conduct 2007. (The allegation, as against the First Respondent only, was an allegation of dishonesty.)

As against both Respondents:-

5. Monies had been withdrawn from client account in excess of the amount held for the client on whose behalf the withdrawal had been made in breach of Rule 22(5) SAR 1998.

6. A payment had been made from client account before the client's funds had been cleared contrary to Rule 22 note (v) SAR 1998.

7. There had been a failure to rectify the breaches of the SARs 1998 promptly upon the discovery in breach of Rule 7 SAR 1998.

As against the First Respondent only:-

8. He had permitted funds to be paid into and/or out of the firm's client bank account when there had been no underlying legal transaction in breach of Rule 1(a) and 1(d) of the Solicitors' Practice Rules 1990 and Rule 15 note (ix) SAR 1998.

9. When acting in a conveyancing transaction, he had failed to check the identity of those providing the purchase monies or the provenance of those purchase monies in breach of Regulation 4(3) (d) of the Money Laundering Regulations 2003 and Rule 1(d) of the Solicitors' Practice Rules 1990.

10. He had failed to advise his lender client that the borrowers had not been providing the balance of the purchase monies from their own funds in breach of Rule 1(c), 1(d) & 1(e) of the Solicitors' Practice Rules 1990.

11. He had provided clients with misleading costs information by charging clients a telegraphic transfer fee in excess of that which his firm had been charged by the bank contrary to Rules 1(c) & 1(d) and Rule 15 of the Solicitors' Practice Rules 1990 (before 1st July 2007) and Rules 2.03(5) & 1.04 & 1.06 of the Solicitors' Code of Conduct 2007 (after 1 July 2007).

12. He had provided clients with misleading costs information by charging clients a disbursement for sundry charges contrary to Rules 1(c) & 1(d) and Rule 15 of the Solicitors' Practice Rules 1990 (before 1st July 2007) and Rules 2.03(5) & 1.04 & 1.06 of the Solicitors' Code of Conduct 2007 (after 1st July 2007).

Factual Background

1. The First Respondent, born in 1950, was admitted as a solicitor in 1980. As at the date of the hearing, he held a current practising certificate and practised on his own account as J Howard Fry Solicitors, 1 Russell Road, Wimbledon, London SW19 1QN.

2. The Second Respondent, born in 1950, was admitted as a solicitor in 1990. As at the date of the hearing, he did not hold a current practising certificate.

3. At the material time, the Respondents had practised in partnership in the firm of Thomas & Co of 10, The Broadway, London SW19 1RF until that firm had ceased to practice on 20th September 2008.

SRA Forensic Investigation

4. A first inspection of the books of account and other records of Thomas & Co had commenced on 1st October 2007 (the First Inspection). The extraction date for that inspection had been 31st August 2007. On 13th December 2007 the Respondents had been interviewed by the Investigating Officers (IOs).

5. A second inspection had commenced on 17th June 2008 with an extraction date of 5th December 2008 (the Second Inspection).

Allegations 1 – 7 Books of Account

6. The IOs had identified that there had been a historic shortage of £118,960 on client account from 9th November 2006 until it had been rectified on 28th February 2007.

7. To repay the shortage the Respondents had obtained personal loans of £50,000 each and had funded the remaining £18,960 from their own resources. Those sums had been credited to the firm's client account on 28th February 2007; some three months after the shortage had arisen on 9th November 2006.

8. In interview, the First Respondent had explained that following the identification of the historical shortage, the Respondents had sought to find unbilled work to generate fees and had also agreed to charge separately for work done by the First Respondent in the evenings and at weekends under the guise of "Fry & White".

9. The Respondents had adopted two methods of transferring monies from client to office account;-

    (i) Dormant balances – credit balances on client account had been transferred to office account and described as non VAT-able disbursements; and

    (ii) Replaced bills – unpaid bills recorded on the office account side of the ledger had been cancelled. Monies had then been transferred from client account to office account and had been described as non VAT-able disbursements.

10. The bank statements showed that three transfers totalling £53,563.15 had been made in May, June and July 2007 from client account to office account as a result of the two methods adopted.

11. The May payment of £27,155.05 had subsequently been paid out of the firm's office account and had been described as "Fry & White Agency Fees". The June payment of £22,255 again subsequently paid out of office account had been described as "Fry & White Disbursements on Account".

12. The IO had noted that despite the fact that some £53,563.15 had been physically transferred from client account to office account, the totality of the book keeping entries had only shown a total of £45,270.05 transferred. The difference of £8,293.10 had been transferred without any corresponding posting on any individual client ledgers.

13. In interview the Respondents' book-keeper had confirmed that she had been given a list of individual client to office transfers that had already been made at the bank. She had said that the list had been prepared by the firm's accountants and that she had been instructed to post the individual transfers into the books as non VAT-able disbursements".

14. The First Respondent had explained to the IOs that he had agreed with the Second Respondent that if he had been doing additional work at weekends and in the evenings, he would have been able to charge for it, separately, through Fry & White.

15. The IOs had noted that on some files bills had already been raised but the money had not been transferred to office account. The First Respondent had said that the Respondents had been informed by their accountants that they should cancel those bills and transfer the money to office account in respect of disbursements payable to Fry & White.

16. As an example of a dormant balance the IO had examined the file of Mr T. The First Respondent had acted for Mr T in the purchase of a property. Completion had taken place on 28th May 2004. The property had been registered at the Land Registry on 15th September 2004. The transaction had appeared to have been completed. A credit balance of £142.51 had remained on client account; due to the client.

17. Some three years later, on 30th June 2007, £100 had been transferred from the client to the office side of the ledger and described as a disbursement for Fry & White. The file had not revealed any evidence of work done for that sum or any correspondence with Mr T to indicate that he had given his consent to the payment to the Respondents.

18. The First Respondent had said that he had given Mr T's wife and her brother advice by telephone concerning a trust and that the advice had not been recorded. There had been no record of Mr T giving his consent to his funds being used for the payment of legal fees for his wife and her brother.

19. An analysis by the IOs of some 93 ledgers for files with dormant balances had revealed that 91 of those ledgers had been in respect of conveyancing matters that had

been completed some years previously and would not appear to have required follow-up work. A total of £19,990.94 had been transferred from client to office account in circumstances where there had appeared to have been no evidence of the clients having given their consent to the transfer of those funds.

20. During the Second Inspection the IOs had further identified debit balances on client account of £20,321.24 as at 31st May 2008. During the First Inspection the IOs had identified a debit balance on client account of £2,610.87 as at 31st August 2007.

21. The IOs had established that the books of account for the Respondents' practice had not been properly written up. During the First Inspection 88 ledgers, with office credit balances totalling £38,908.24, had been noted and during the Second Inspection 97 ledgers, with office account credit balances totalling £105,461.16, had been noted. Further, as at the First Inspection, there had been a cash shortage on client account of £56,227.69, on the Second Inspection, there had been a cash shortage of £73,944.79.

22. The First Respondent had been instructed to act for a client Mr A4 in relation to his purchase of a lease. The client's ledger card had shown monies being paid into and out of the account after the purchase of the lease had been concluded. The transaction noted had borne no relationship to the original instructions. The First Respondent had stated that "a number of transactions have been jammed on the file".

23. The Respondents, by the Second Inspection, had failed to rectify the breaches of the SARs 1998 identified on the First Inspection. The position had worsened in that the office account credit balances had increased from £38,908.24 to £105,461.16 and the cash shortage had increased from £56,227.69 to £73,944.79.

Allegation 8 – No underlying legal transaction – Mr A1

24. In or around October 2006, the First Respondent had been approached by a client, Mr A1, in relation to a potential business arrangement involving investment partners in the US. Mr A1 had informed the First Respondent that he had needed to send a sum of money to a firm of accountants, P&Co, in order to reassure his potential fellow investors that he was in funds to continue with the investment business.

25. On 9th November 2006 Mr A1 had given the First Respondent a cheque in the sum of £119,000 which had been paid into client account. Before the funds had cleared, a payment by telegraphic transfer had been made on Mr A1's behalf. However, Mr A1's cheque had subsequently not been met by the bank. That had resulted in a shortage on client account of £118,960 from 9th November 2006 until it had been replaced on 28th February 2007.

26. There had been no underlying transaction, merely the passing of money into and out of client account. The First Respondent explained that his fee for providing banking facilities had been £1500.

Allegations 9 and 10 – funds from a third party – Mr A2

27. The First Respondent had accepted instructions from Mr A2 to act on behalf of a syndicate (the Syndicate) of six purchasers, including Mr A2, in relation to the purchase of six flats in London.

28. The purchase monies were to have been made up of money provided by unknown sources in Nigeria and a balance raised by way of mortgages on behalf of the individual purchasers.

29. Mr A2 had been said to represent the Syndicate and a ledger card, in his sole name, had been opened.

30. On 1st September 2005 the sum of £1,359,554.52 had been paid into the firm's client account. That money had been sent from Nigeria by a third party, Mr A3, who had been said to have been collecting it, on behalf of the Syndicate, from a variety of sources unknown to the First Respondent. The First Respondent had made no enquiries as to the source of the money other than it had been from a Mr A3 in Nigeria.

31. The First Respondent, who had been acting for an institutional lender client in relation to the transaction, had failed to inform his lender client of the fact that a significant proportion of the purchase monies would be coming from an unknown source and not from the purchasers themselves.

Allegations 11 and 12 – billing practices

32. The First Respondent had charged his clients £35 plus VAT for telegraphic transfer fees when the bank had charged his firm £20. The telegraphic transfer fees had been incorrectly charged to the clients as a disbursement. A "disbursement" is defined in Rule 2(2) (k) of the SAR 1998 as being any sum spent or to be spent by a solicitor on behalf of the client or trust (including any VAT element).

33. The First Respondent had charged clients for "sundry expenses" that in fact had been overheads of the firm such as "faxes, phone, postage". Such overheads had been incorrectly charged to the clients as a disbursement.

34. The SRA had written to the Respondents on 4th & 9th February 2009 seeking an explanation of the matters contained in the FI Report of 5th December 2008. The Respondents had replied by letter of 24th March 2009. It had been resolved to refer the conduct of the Respondents to the Tribunal on 27th April 2009.

Documentary Evidence before the Tribunal

35. The Tribunal reviewed the Rule 5(2) Statement together with the documentary exhibits as detailed in that Statement. The Tribunal also considered the statements from both Respondents and from the firm's book-keeper, Ms Daniels.

Preliminary Matters

36. Having reviewed the statement and the evidence of the Second Respondent, the Applicant sought the permission of the Tribunal to withdraw the allegation of dishonesty in allegation three, together with the withdrawal of the whole of allegation 4 as against the Second Respondent. The Tribunal allowed the application.

37. Counsel for the Respondents explained that both Respondents admitted allegations 1, 2,3,5,6 & 7 although Counsel stressed that the First Respondent denied acting dishonestly in relation to allegation 3. The First Respondent admitted allegations 8 – 12 but denied allegation 4 including the allegation of dishonesty.

Submissions by the Applicant in relation to the allegations

38. Inter alia, in relation to allegations three and four, the Applicant submitted that the First Respondent had acted dishonestly in improperly withdrawing monies from client account otherwise than in accordance with Rule 22(1) of the Solicitors' Accounts Rules. In addition that he had acted dishonestly in utilising those monies for his own purposes.

39. The Applicant referred to the case of Twinsectra v Yardley [2002] UKHL 12 and submitted that the First Respondent had acted with conscious impropriety. The Applicant noted that on an objective basis, the taking of client funds without any entitlement and without the consent of the client was regarded as acting dishonestly. Moreover, on a subjective basis, the Applicant submitted that the First Respondent had been engaged in a pre-meditated plan to raid the firm's client account for funds to offset the losses suffered as a result of the repayment of the historic shortage caused by the dishonoured cheque.

40. The Applicant also submitted that the fact that the First Respondent had structured the withdrawals from client account to avoid a VAT liability provided further evidence of dishonest intent. She submitted that the use of disbursements via Fry & White had appeared to be a device to enable the First Respondent to take additional sums of clients' monies without those monies being claimed by way of profit costs and distributed as drawings in accordance with the firm's partnership agreement.

Witnesses

41. Christopher Norton, a senior investigation officer with the SRA, who had been present during the interviews of the Respondents, gave sworn oral evidence as to the contents of the Report dated 5th December 2008. He explained that the Report had been prepared by a member of his investigation team who was no longer employed by the SRA.

42. Mr Norton explained that the SRA's records showed that the firm of Fry & White had been formed on 3rd November 2000 and closed on 30th September 2002. After its closure, Mr Norton said that Fry & White would no longer have been a practising solicitor's firm with professional indemnity cover and, as such, would not have been able to engage in activities reserved to solicitors or to licensed conveyancers.

43. Mr Norton referred to a list of some 15 pages of invoices for work said to have been carried out by Fry & White for Thomas & Co during various periods both before and after Fry & White had closed. He explained that he had been told by the First Respondent that the list had been compiled by the firm's accountants in order to help the firm to raise funds to replace the shortage caused in November 2006 by the payment out of some £119,000 as against a dishonoured cheque.

44. Mr Norton referred to various invoices from the list prepared by the firm's accountants that related to clients whose matters had been completed but where there had been residual balances that had not, as would have been normal, been returned to the relevant clients. He explained that the ledgers of those clients had subsequently recorded the transfers of funds as payments of disbursements owing to Fry & White. A composite list and all the relevant ledgers were before the Tribunal. However, the various invoices addressed to Thomas & Co had not contained any details of the work done and there had been no evidence of any time-recording relevant to the bills on dormant matters.

45. In cross-examination, Mr Norton explained that monies, from the list of available funds prepared by the firm's accountants, could only have been transferred to the firm's office account following the preparation and delivery of relevant bills for work properly done or of some other written intimation. He said that it was very unusual for sums to remain on client ledgers of completed conveyancing transactions, although he had not known if the relevant clients' matters had still been active as at the date of the Fry & White invoices. However, he had not seen any evidence of additional work on the matter files, although he agreed that the First Respondent had not sought to recover the whole of the remaining balances. Mr Norton stressed that Fry & White could only recover costs for work done prior to its closure.

46. In response to a question about the replacement bills, Mr Norton said that he had noted that work had originally been billed as profit costs but then, before the delivery of the bill, it had been cancelled and replaced as a non-VAT disbursement. He had been told that had been done, on the advice of the firm's accountants, because of tax advantages.

47. John Howard Caswall Fry (the First Respondent) gave sworn evidence relying on his statement signed on 13th July 2010. He explained how his accountant had advised him to deal with his un-billed work by raising invoices through Fry & White. Although the invoices, in the list prepared by his accountant, had referred to Fry & White as "Solicitors", he explained that those invoices should have said "Forensic Services". He handed to the Tribunal three invoices dated 30th June 2007 where the words "Forensic Services" had been used. Mr Fry insisted that Fry & White had been acting as agents for Thomas & Co and that the firm's clients had received regulatory and indemnity protection through Thomas & Co.

48. Mr Fry explained that whereas [RESPONDENT 2] had been organised and always up to date with his billing, he himself had been disorganised and year on year un-billed work had mounted up. About £20,000 of unbilled work, done by him, had been ascribed to Fry & White while replacement bills, as advised by his accountants, had amounted to some £30,000. Mr Fry insisted that he had believed the system of

replacement bills had been a lawful tax avoidance scheme. He stressed that in all cases he had honestly believed that he had been entitled to the monies claimed.

49. When checking dormant balances, Mr Fry said that he had been able to check the clients' ledgers and the firm's computer records in order to bill outstanding work in terms of time spent. Because he did not always have access to the relevant files, Mr Fry said that he had usually under-estimated the chargeable work. As a typical example, inter alia, he referred to the ledger of Mr C, a purchase completed in 2004, in which although there had been a credit balance of £108.52 in client account from 2004, he had failed to take sufficient money on account to render a bill and, in 2007, he had raised a Fry & White invoice for £80, whereas the work actually done on the file had been worth some ten times that amount. Another typical example had been Mr D where £250 had been paid on account in 2004, there had been a local authority disbursement that year of £126 and then the client had decided not to proceed. The firm had done some three hours work but did not bill until 2007 by way of a Fry & White invoice of £90. That sum of £90 had been transferred to office account but the client had not been informed.

50. In all the cases on the dormant balances list, Mr Fry insisted that he had carried out all the work charged for and in many cases much more work but he agreed that he had not informed his clients about the Fry & White invoices raised in or about 2007. Mr Fry explained that in conveyancing matters, he had always sent a completion statement showing the retention of monies and that those monies would have been retained with the clients' agreement against the expectation of future work.

51. In cross-examination, while Mr Fry agreed that fixed fees had been usual in conveyancing matters and that there had been no time-recording, he explained that there had been many cases where further work had been anticipated or other issues had arisen, for example, disputes about service charges. He said that such work might have been dealt with by 'phone with the client or have been recorded in the firm's computer records.

52. Mr Fry accepted that his accountant had not given his advice as to dormant balances and replacement bills in writing and that he had not sought to call him to give evidence. He had understood that the scheme had been designed to save his firm VAT payments.

53. [RESPONDENT 2] (the Second Respondent) gave sworn oral evidence relying on his statement signed on 13th July 2010. He confirmed that the firm's accountants had advised him and Mr Fry about the use of invoices to be raised through Fry & White and he had relied on their expertise. He had been aware that Mr Fry had been working all hours and that he had been extremely disorganised with lots of un-billed work.

54. Jan Daniels gave evidence and relied on her statement signed on 14th July 2010. She denied most strongly saying to one of the IOs that "the partners had fiddled the books". She explained that she might have said that they had fiddled around with the figures in accordance with the accountant's instructions. Ms Daniels said that she had known that what the partners had been doing, on the instructions of their accountant, had not been correct way.

55. Ms Daniels explained that Mr Fry had already prepared a whole load of bills and that she had already entered them on the computer when she had been told to cancel them all and deal with them as disbursements as specified by the accountant. She had been aware of the shortage in client account and said that the initial invoices had been prepared some two to three weeks after the cheque had failed to clear. Ms Daniels also said that she had been involved in helping to identify matters in which bills had been outstanding.

56. In cross-examination, Ms Daniels said that the initial list, prepared by the accountant, had been inaccurate and that she had adjusted it and had not entered it until it had been fully checked when she had then entered all the items on the revised list at the same time and not in bits and pieces, hence the difference in the reconciliations. She stressed that billing had been done late but that the monies had been owed to the firm.

Submissions on behalf of the Respondents

57. Counsel submitted that the First Respondent had acted on the advice of his accountant as to the method for billing work that he had undertaken and in addition that replacement bills had been for lesser amounts. Dormant balances had reflected the First Respondent's late and chaotic approach to billing. Counsel further submitted that the First Respondent had not knowingly acted in a dishonest way and that he had not sought to take any monies not due to him.

Findings as to Fact and Law

58. Dealing firstly with the Second Respondent, having fully considered all the evidence and submissions, the Tribunal found all the allegations made against the Second Respondent proved to the higher standard and in fact those allegations had all been admitted. The relevant allegations were allegations 1 – 3 and 5 – 7; all arising from the Solicitors' Accounts Rules 1998.

59. Turning to the First Respondent, having fully considered all the evidence and submissions, the Tribunal found all the allegations against the First Respondent proved and in fact all of those allegations, except for allegation 4 and the allegations of dishonesty, relating to allegations 3 and 4, had been admitted. The relevant allegations were allegations1 – 12.

<u>Allegations 3 and 4</u>

60. In relation to the dormant balances, the Applicant had submitted that all 91 of the conveyancing matters in the accountant's list had been fully completed long before further monies from those dormant balances had been taken by the First Respondent. Moreover, that there had been no evidence on the files of any additional work or of any agreements with clients either during the investigation or subsequently.

61. The Applicant had further submitted that in relation to the replacement bills, the First Respondent had been seeking to evade VAT and that despite the advice of his accountant, had known that VAT was payable on profit costs and as such the First Respondent had failed to comply with his duty to act honestly.

62. The Tribunal considered that allegations 3 & 4 were closely linked in that it was alleged (and had been admitted) that monies had been improperly transferred. The Tribunal was satisfied, so that it was sure, that such monies, once transferred via invoices raised by Fry & White, had been used by the First Respondent to reduce his liability for the deficit on the firm's client account, albeit indirectly, by helping him to repay his borrowings.

63. Taking into account all the evidence and submissions, the Tribunal followed the tests laid down by Lord Hutton in the case of Twinsectra v Yardley [2002] UKHL 12. It was satisfied that by the standards of reasonable and honest people, the First Respondent's conduct, in transferring monies without sending bills to his clients and in seeking to avoid VAT on his services by the use of invoices from Fry & White and in subsequently using those monies, would have been regarded as dishonest. However, the Tribunal was not satisfied that the First Respondent had realised that by those standards he had been acting dishonestly. The Tribunal accepted the evidence of both Respondents and of the firm's book-keeper that the First Respondent had done the work in question but that he had been disorganised, chaotic and extremely late in his billing. The Tribunal accepted that the First Respondent, albeit mistakenly, had believed that he was entitled to the monies that had been transferred, both from the dormant balances and by way of the replacement bills. However, the Tribunal considered that the First Respondent had been reckless both in not seeking a detailed explanation from his accountant in writing and in blindly following his accountant's advice without question. Nevertheless, it did not consider the First Respondent to have been dishonest either in improperly transferring or in using the monies.

Mitigation

64. Counsel for the Respondents detailed their professional histories and their personal circumstances.

65. In relation to the First Respondent, Counsel explained that his client accepted that serious allegations had been both admitted and proved and that they constituted a very significant failure on his part. He informed the Tribunal that the First Respondent ran a small residual practice earning about some £20,000 before tax. While the First Respondent fully accepted that he had failed to follow proper procedures, he hoped that he would be able to continue to practice sometime in the future.

66. In relation to the Second Respondent, Counsel reminded the Tribunal that all the allegations against him had arisen from breaches of the Solicitors' Accounts Rules and, as such, the Second Respondent had admitted them on the basis of strict liability. Counsel submitted that his personal culpability had been far less than that of the First Respondent. Moreover, he had suffered significantly, both financially and professionally, because of circumstances relating to a cheque that had failed to clear in relation to a client and with whom he had had no involvement. As the Second Respondent was no longer practising, Counsel sought an order for suspension rather than a fine.

Application for Costs

67. The Applicant handed in a Schedule of Costs and asked the Tribunal to assess and fix the costs.

68. Counsel for the Respondents provided details of the means of both Respondents. He referred the Tribunal to the case of D'Souza v The Law Society [2009] EWHC 2193 (Admin) and submitted that orders for costs against the Respondents should be fixed at a proportionate and affordable level.

Sanction and Reasons

69. The Tribunal carefully considered the statements and submissions on behalf of the Respondents. In relation to the Second Respondent, the Tribunal accepted his lesser culpability for the Accounts Rules breaches and recognised the fact of his subsequent financial losses arising from actions in which he had played no part. However, the Tribunal considered that a financial penalty, rather than a period of suspension, was the appropriate penalty in the particular circumstances. The Tribunal noted that penalties were imposed to reflect the offence rather than to suit the individual circumstances of the Respondent. Given the allegations as proved and the degree of culpability found, the Tribunal considered a fine of £2,500 to be appropriate and it so Ordered.

70. In relation to the First Respondent, the Tribunal had noted the extremely serious nature of his misconduct and the First Respondent's reckless disregard of the provisions of Solicitors' Accounts Rules, particularly in relation to the delivery of bills. In reaching its decision on penalty, the Tribunal had taken account of the decision of the Court of Appeal in Weston v The Law Society reported in The Times of 15th July 1998. In that case Lord Bingham had stressed that the Solicitors' Accounts Rules existed both to afford the public maximum protection against the improper and unauthorised use of their money and to assure them of that protection. Further, he had said that solicitors were, accordingly, under a heavy obligation, quite distinct from their duty to act honestly, to ensure observance of the rules.

71. The Tribunal considered that transferring monies from clients' accounts to the firm's office account without sending bills constituted an unacceptable risk to the public and in the circumstances the appropriate penalty was that the First Respondent be struck off the Roll of Solicitors and it so Ordered.

Decision as to Costs

72. The Tribunal considered that all the allegations had been properly brought and having assessed the costs as claimed, fixed the Applicant's costs in the sum of £30,000.

73. Having considered the information provided as to the Respondents' financial circumstances, the Tribunal considered that their individual situations could be clearly distinguished from that detailed in the D'Souza case. Given the relative culpability of the Respondents, the Tribunal considered that costs should be apportioned; 90% to be paid by the First Respondent and 10% by the Second Respondent and it so Ordered.

The Orders of the Tribunal

74. The Tribunal Ordered that the Respondent, John Howard Caswall Fry of 15 Lake Avenue, Bromley, Kent BR1 4EN, solicitor, be Struck Off the Roll of Solicitors and it further Ordered that he do pay a contribution towards the costs of and incidental to this application and enquiry fixed in the sum of £27,000.00.

75. The Tribunal Ordered that the Respondent, [RESPONDENT 2] of Wimbledon, London SW19, solicitor, do pay a fine of £2,500.00, such penalty to be forfeit to Her Majesty the Queen, and it further Orders that he do pay a contribution towards the costs of and incidental to this application and enquiry fixed in the sum of £3,000.00.

Dated this 16th day of September 2010
On behalf of the Tribunal

D Green
Chairman