

IN THE MATTER OF STEPHEN THOMAS BAILEY and
RESPONDENT 2 - NAME REDACTED, solicitors

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr. J N Barnecutt (in the chair)
Mr. A N Spooner
Mr. J Jackson

Date of Hearing: 9th January 2003

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 (“OSS”) by Peter Harland Cadman, solicitor and partner in the firm of Russell-Cooke of 8 Bedford Row, London, WC1R 4BX on 11th June 2002 that Thomas Bailey of Mansfield, Nottinghamshire, NG19 solicitor and that *RESPONDENT 2* of Chesterfield, Derbyshire, S41 solicitor 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 fit.

At the opening of the hearing the Applicant indicated that he wished to withdraw allegations (a), (b) and (c) against *RESPONDENT 2* and wished to make a separate and new allegation against *RESPONDENT 2*, with which course of action *RESPONDENT 2* agreed. Mr Bailey had no objection. The Tribunal consented. The allegations set out below are in the new agreed and amended form.

The allegations were that the Respondents had been guilty of conduct unbecoming a solicitor in each of the following particulars, namely:-

Against *RESPONDENT 2*

- (1) He had failed to take adequate steps to protect the funds of the Respondents' practice.

Against Stephen Thomas Bailey

- (a) That he had drawn money out of client account other than as permitted by Rule 22 of the Solicitors Accounts Rules 1998;
- (b) That contrary to Rule 15 he had failed to pay funds received from clients in respect of undisbursed liabilities into client account;
- (c) That he had utilised clients' funds for his own purposes;
- (d) That he had prepared bills of accounts and transferred funds in circumstances where he knew or ought to have known that the amounts involved were unjustified;
- (e) That he had been responsible for unreasonable delay in the conduct of professional business;
- (f) That he had failed to pay professional disbursements promptly or at all.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London, EC4M 7NS on 9th January 2003 when Peter Harland Cadman, solicitor and partner in the firm of Russell-Cooke of 8 Bedford Row, London, WC1R 4BX appeared as the Applicant, Mr Bailey appeared in person and *RESPONDENT 2* was represented by Andrew Lockley, solicitor and partner in the firm of Irwin Mitchell of St Peter's House, Hartshead, Sheffield, S1 2EL.

The evidence before the Tribunal included the admission of *RESPONDENT 2* as to allegation (1). Mr Bailey admitted all allegations save that he did not admit the extent of the overcharging alleged in allegation (d). Mr Brumwell, Mr Shelley and Mr Bailey gave oral evidence. At the hearing Mr Bailey filed a document containing his own calculations relating to charges, his affidavit (which had been dispatched to the Tribunal prior to the hearing but had not arrived) and a bundle of references was handed up in support of *RESPONDENT 2*.

At the conclusion of the hearing the Tribunal made the following orders:-

The Tribunal order that the Respondent Stephen Thomas Bailey of Mansfield, Nottinghamshire, NG19 solicitor be struck off the Roll of Solicitors and they further order that he do pay the costs of and incidental to the application and enquiry. The Tribunal summarily fix the total inclusive costs at £13,500 inclusive. The Respondent is to pay the costs draftsman's costs of £1,850 and 85% of the balance of £11,650.

The Tribunal order that the Respondent *RESPONDENT 2* of Chesterfield, Derbyshire, S41 solicitor do pay a fine of £4,000, such penalty to be forfeit to Her Majesty the Queen, and they further order that he do pay the costs of and incidental to the application and enquiry fixed as to 15% of £11,650 inclusive.

For the avoidance of doubt the Tribunal here notes that the Tribunal summarily assessed the costs of and incidental to the hearing at £13,500. They ordered that Mr Bailey should pay the first £1,850 of those costs representing the costs of the costs draftsman, Mr Shelley, and then ordered that the balance of costs should be apportioned between the Respondents, 85% to be paid by Mr Bailey and 15% to be paid by *RESPONDENT 2*.

In view of the fact that the hearing did not conclude until the evening of the 9th January 2003 the Orders were in fact filed with the Law Society on the following day, namely 10th January 2003. The Orders were pronounced at the conclusion of the hearing but the written Orders were posted to the parties on 10th January 2003.

The agreed facts before the Tribunal were as follows:-

1. Mr Bailey, born in 1946, was admitted to the Roll in 1970.
2. *RESPONDENT 2*, born in 1949, was admitted as a solicitor in 1975.
3. At all material times the Respondents had carried on practice in partnership under the style of O'Connors at 30 St Johns Street, Mansfield, Nottinghamshire. On 14th November 2001 the Adjudication Panel of The Law Society resolved to intervene in the Respondents' practice.
4. Upon due notice to the Respondents, the Forensic Investigation Unit (FIU) of the OSS carried out an inspection of the books of account of their firm. This resulted in a memorandum dated 2nd November 2001 and a final report dated 31st January 2002, both of which were before the Tribunal.
5. Both the memorandum and the final report identified probate files where transfers had been made from client account to office account in circumstances where no bill of costs had been properly delivered. On twelve matters a total of £70,217.75 had thus been the subject of improper transfers. That is to say the transfers had been made in breach of the Solicitors Account Rules because they had been made without any bill or written intimation of costs being made to the clients or, where appropriate, to beneficiaries. It was accepted by the Applicant that it was not alleged that the Respondents' firm was not due to be paid a proportion of that money, rather the formalities had not been observed. These transfers occurred on client matters, of which Mr Bailey had conduct.
6. Thirty cheques totalling £4,016.79 that should have been paid into client account on behalf of various clients of the practice had not been so banked. Due to the amount of the delay twelve of those cheques had become out of date.
7. Among the files inspected by the FIU and elsewhere there were examples of unreasonable delay in the conduct of professional business, in particular:-
 - (a) Inland Revenue's self assessment statements of account had not been dealt with causing penalties to be imposed on clients.

- (b) Liabilities for planning permission, funeral expenses and debt collection remained outstanding and had not been given attention.
- (c) Land Registry fees had not been paid, as a result of which property titles had not been registered.

Mr Bailey had conduct of the relevant client matters.

- 8. The sum of £950 had been received by the firm specifically to pay outstanding counsel's fees. That sum had been paid into office account when counsel's fees remained unpaid. This related to a client matter of which Mr Bailey had conduct.

The evidence before the Tribunal in connection with the partly disputed allegation (d)

- 9. The report of the officer from the FIU, confirmed in the FIU officer's oral evidence (Mr Brumwell), revealed the following.
- 10. The firm's books of account were not in compliance with the Solicitors Accounts Rules.
- 11. A list of liabilities to clients at 31st August 2001 was produced for inspection. The items on the list were in agreement with the balances in the clients' ledger and the list totalled £359,964.90. Additional liabilities which were not shown by the books totalling £70,217.75 existed at 31st August 2001 causing a cash shortage in client account in that sum.
- 12. At interview Mr Bailey agreed with the FIU officer that in seven probate matters he had raised interim bills which were "not wholly justified" and totalled £52,110.25. He also agreed that the bills had not been delivered to the clients. He did not agree that transfers from client to office bank account in respect of these interim bills represented a cash shortage as a substantial part of the interim bills were properly due for costs. Subsequently three further probate matters were brought to the attention of the FIU officer where undelivered bills totalled £18,107.50 increasing the cash shortage to £70,217.75.

The estate of MO Deceased - £16,233.24

- 13. *RESPONDENT 2* was the executor but Mr Bailey acted in the probate matter of MO who died on 15th October 1999. A grant of probate was obtained on 22nd December 1999. The net estate was valued at less than £200,000.
- 14. After the payment of pecuniary legacies the remainder of the estate was left equally to Ms T and The Guide Dogs for the Blind Association.
- 15. During the period of the administration of the estate the following interim bills were raised and settled by transfer from client to office bank account as follows:

<u>Date</u>	<u>Bill Number</u>	<u>Amount</u>
3.11.1999	11014	352.50
7.1.2000	11077	2,606.99
21.1	11098	1,175.00
10.2	11120	587.50
16.2	10939	47.00
2.3	11147	587.50
16.3	11162	587.50
6.4	11180	587.50
27.4	11202	352.50
1.6	11244	293.75
7.7	11292	587.50
25.7	11316	235.00
31.7	11324	419.25
3.8	11334	293.75
14.8	11356	587.50
30.8	11376	293.75
14.9	11395	235.00
28.9	11415	293.75
12.10	11437	293.75
19.10	11448	293.75
27.10	11459	1,175.00
9.11	11482	1,175.00
30.11	11501	470.00
8.1.2001	11538	293.75
24.1	11555	587.50
1.2	11575	352.50
7.2	11597	235.00
14.2	11602	352.50
1.3	11615	587.50
17.5	11720	293.75

£16,233.24

16. Mr Bailey accepted that no bills or written intimation of costs had been delivered.

The estate of LK Deceased - £940.00

17. *RESPONDENT 2* was one of the executors. Mr Bailey had conduct of the matter. The estate accounts were approved and agreed by the executors on 27th August 1997. Thereafter a cheque which had been drawn in favour of the funeral directors was stopped on 16th October 1997. The distribution of the estate was not adjusted nor was a further cheque issued to replace the original cheque. Thereafter bills of costs were raised and settled from client bank account as follows:-

9th March 1999	£587.50
29th July 1999	235.00
25th May 2001	117.50
	£940.00

The estate of AME Deceased - £14,229.75

18. Mr Bailey acted for the executors of the estate AME who died on 13th December 1999. In the period 12th May 2000 to 8th August 2001 the firm collected on behalf of the estate amounts totalling £21,108.32. During that period thirty interim bills were raised amounting to £14,229.75 (including VAT and disbursements). Top copies of the interim bills were on the client matter file addressed to “c/o O’Connors”. No client care letter or written intimation of costs was found on the file.
19. During the inspection the FIU officer considered that in all the probate matters he had examined the frequent interim bills indicated that the costs taken could have been excessive. Six client matter files were passed to a costs draftsman, Mr Shelley, who was also asked to give an opinion as to the level of costs that could reasonably be taken. Mr Shelley produced interim and final reports which were before the Tribunal and gave oral evidence. Mr Shelley’s views can be summarised as follows:-

<u>Matter</u>	<u>Net Value of estate</u>	<u>Costs taken net of VAT</u>	<u>Reasonable costs figure per costs draftsman</u>	<u>Excess</u>	<u>% lift</u>
L Deceased	Under £200,000	8,950.00	1,260.00	7,690.00	610%
W Deceased	Under £180,000	1,750.00	420.00	1,330.00	317%
S Deceased	Under £200,000	3,200.00	840.00	2,360.00	280%
K Deceased	Under £180,000	1,200.00	420.00	780.00	186%
O Deceased	Under £200,000	5,000.00	2,100.00	2,900.00	138%
LO Deceased	Under £70,000	4,100.00	1,750.00	2,350.00	134%

20. The costs draftsman’s conclusions were as follows:-

“There is clear evidence of overcharging on every file. In the most serious case the sum overcharged is £7,000 or 700% of reasonable costs.

There are numerous breaches of the Society’s costs information code together with a complete failure to deliver bills.

The standard of the work could reasonably have given rise to some compensatory reduction in costs.

There is no evidence that any calculations have been carried out before costs were charged on any of these files.

There is an extremely unusual pattern of frequent and repeated billing which is particularly unexpected in view of the conspicuous absence of any substantial work to justify further costs.”

21. Mr Bailey had not pursued his initial request for a sight of the six files reviewed by the costs draftsman. He said that the files did not constitute a complete record of the work which he had undertaken. They did not contain, for example, time spent records or attendance notes. He had from memory made his own calculations, notes of which were placed before the Tribunal. Mr Bailey’s calculations indicated his belief that the possible level of overcharging in each of the six files was as follows (described as “% lift” by the costs draftsman):

L Deceased	110%
W Deceased	11%
S Deceased	22%
K Deceased	11%
O Deceased	8%
LO Deceased	8%

22. In each case Mr Bailey had included a “value” element.
23. Mr Shelley explained that he had followed the standard Law Society practice of charging letters and telephone calls at one-tenth of an hour. The hourly rate engaged by him had been £140 as the rate usually allowed on summary assessment for work done by solicitors in the same area as that in which the Respondents’ practice was situated. That was on the basis that the solicitor dealing with the work had more than eight years’ post qualification experience. He considered that to be a fair average rate for assessing the solicitor’s charges. He pointed out that it would not be unreasonable for a solicitor to charge out his own work at a higher rate but most of the work on the six files was routine probate work which Mr Shelley would not expect to see charged out at a senior solicitor rate.
24. Mr Shelley said there was a Law Society formula permitting the solicitor to charge a percentage of the value of the estate as an additional mark up, but not all solicitors do so. There was no evidence on the files that Mr Bailey had calculated a value element in any of the matters examined. For reference purposes, Mr Shelley had calculated the value element which under the Law Society formula the solicitor would have been entitled to charge in each case. He confirmed that he had not taken that figure into account in his assessment of the extent to which matters had been overcharged.
25. In each of the cases the maximum value element was identified by Mr Shelley.
26. In each of the six cases Mr Shelley identified an unusual pattern of billing. In connection with L Deceased, the position was as follows.

“Only two bills each of £100 plus VAT were raised in the first eight months.

On 19th December 2000 Nationwide Building Society paid £11,368 to the estate on receipt of the grant of probate.

The following day £1,000 was charged bringing the total costs charged to about the maximum amount which would have been reasonable in September 2001.

Two bills totalling £1,000 were charged in January 2001.

Three bills totalling £1,650 were charged in February 2001.

Two bills totalling £3,000 were charged in March 2001.

One bill totalling £750 was charged in April 2001.

Three bills totalling £1,050 were charged in May 2001.

The total deducted since that payment was £8,450 plus £1,478 VAT totalling £9,928.

The costs charged to date had accounted for most of the estate's liquid assets.

The sale of the deceased's property was completed on 10th August 2001.

The next bill charged to the estate was deducted on 10th September 2001."

27. In the matter of S Deceased, four bills totalling £2,500 were raised in quick succession between 23rd March and 12th April 2001. Three further bills totalling £750 were raised in quick succession between 13th June and 6th July 2001.
28. In the matter of K Deceased, three probate bills totalling £1,200 were raised at weekly intervals between 23rd August and 7th September 2001. The conveyancing bill on the sale of the residence was raised on 22nd August 2001.
29. In the matter of O Deceased, eleven bills, their amounts between £500 and £200, and totalling £3,950, were raised at approximately monthly intervals between 10th February 2001 and 12th October 2001. Although there was some activity on the file throughout this period, no single bill would have been justified by the file record of work done since the date of the last bill.
30. Mr Bailey accepted that there might have been an element of overcharging on each of the files but the overcharging was not as great as that alleged.
31. With regard to the unusual pattern of billing, Mr Bailey did not distinguish between raising three small bills against an estate in one month and one large bill representing the total of the three smaller bills. He said he had raised the bills when monies were due from the estate. He did, of course, accept that the bills had not been delivered.

32. Mr Bailey was at the material time subject to a great deal of stress and resultant mental ill-health.

The Tribunal's Findings of Fact

33. The Tribunal find the facts set out above under the heading "the Agreed Facts" to be facts established in this case.
34. With regard to the matters set out under the heading "the evidence as to the disputed facts", the Tribunal finds as a fact that Mr Bailey intentionally overcharged his clients. The Tribunal recognises the stress to which Mr Bailey had been subjected and his mental ill-health. Nevertheless it confirms its conclusion that Mr Bailey did overcharge his clients.
35. In reaching this conclusion the Tribunal accepted in full the evidence of Mr Shelley, the costs draftsman. The Tribunal recognised that the degree of excess charging could be argued. Mr Shelley had in his report and in his oral evidence explained in detail how he had arrived at his conclusions. He had examined the files and had used an acceptable basis of calculation. Mr Bailey had produced figures prepared by guesswork relying only upon his memory and without making any reference to the relevant files.
36. The Tribunal has noted in particular the matter referred to in paragraph 18. above where thirty interim bills were drawn and transfers of money made from client to office account from November 1999 to May 1999, the transfers totalling a figure in the order of £16,000. In another case four bills had been drawn and transfers made in the space of only eight days. There was no apparent reason why so many bills had been submitted. Mr Bailey had not put forward any explanation or possible reason, indeed he appeared not to consider that this billing pattern was particularly unusual.
37. Not only had there been this unusual billing pattern and large sums of money taken from client account, no client care letters appeared on the file. The Tribunal finds that no client care letters were sent. Clients had not in that way been notified of the firm's billing procedures nor given any indication of quantum. The files contained no time records which would help to justify bills.
38. There had been a complete failure to notify clients or residuary beneficiaries in estates of the firm's charges either in advance of making those charges, or by way of delivery of a bill or written intimation of costs.

The Tribunal's findings in relation to the allegations

39. The Tribunal find all of the allegations to have been substantiated. One allegation was substantiated against *RESPONDENT 2*. All of the allegations (a) to (f) were substantiated against Mr Bailey, indeed he admitted all of the allegations. With regard to his dispute as to the extent of overcharging alleged in allegation (d), the Tribunal, in view of its findings of fact, find that allegation substantiated on the basis that Mr Bailey had transferred funds from client to office account in a number of

probate matters, of which he had conduct, where he knew or ought to have known the amounts so transferred were unjustified.

Mr Bailey's mitigation

40. It was and had always been accepted by Mr Bailey that the transfers from client account contrary to Rule 22 of the Solicitors Accounts Rules 1998 were made by him without reference to and without the knowledge of *RESPONDENT 2*. That applied also to the failure to pay into client account thirty cheques totalling £4,016.79. Throughout the matter Mr Bailey had accepted his responsibility in this respect.
41. *RESPONDENT 2* had lodged an affidavit with the Tribunal: Mr Bailey agreed about the financial position of the firm and in particular about the disparity between their respective drawings set out therein. He did, however, take issue with *RESPONDENT 2*'s affidavit in regard to his reduced involvement in the firm from 1994 onwards. *RESPONDENT 2* was an experienced and competent conveyancer but he restricted his work almost exclusively to domestic conveyancing, a little commercial conveyancing and a little probate. He felt unable to tackle any work outside these spheres and to support the firm financially in any way except undertaking relatively modest amounts of this type of work.
42. *RESPONDENT 2* had begun to work part-time as a solicitor for Newark and Sherwood District Council, the money earned by this work being billed by the firm, adding a little to his profit costs. Mr Bailey did not recall and did not accept that *RESPONDENT 2*'s reduced involvement was connected with his poor health as he asserted.
43. Over the period from 1994 onwards Mr Bailey was in many respects working as a sole practitioner. He was producing the lion's share of the profit costs (long before the breaches which gave rise to these proceedings) often in a proportion of two to one or more. Mr Bailey undertook all the administration of the firm. He took no more than the odd day or two's holiday a year. *RESPONDENT 2* was accustomed, in Mr Bailey's estimation, to take seven weeks or more holiday a year on average. He watched cricket and rugby for a hobby and pursued his hobby in Australia, New Zealand and South Africa. His travels also took him on numerous occasions to Florida, Boston and other places in the USA.
44. Mr Bailey acknowledged that *RESPONDENT 2* had notified him in good time about these holidays and that a large number of the problems arose from his failure to object or to point out the damage which was being done to a small two-partner firm by *RESPONDENT 2*'s absences. Mr Bailey accepted that *RESPONDENT 2* would have raised no objection to Mr Bailey taking proper holidays.
45. The work pressures led to the deterioration of Mr Bailey's health from 1998 onwards.
46. Mr Bailey had previously worked as a twenty-four hour Duty Solicitor and continued to run a small criminal practice. He also started to undertake probate work. His workload including matrimonial, accident, debt recovery, civil disputes and licensing. He was often asked by *RESPONDENT 2* to see his clients during his absences for

health and holiday reasons. *RESPONDENT 2* never offered to see Mr Bailey's clients.

47. Mr Bailey was required to undertake numerous administrative and staff matters including, for example, appointing staff, seeing representatives and doing the banking when the part-time cashier was not at work.
48. The Tribunal was invited to give due weight to the written psychiatric evidence placed before it. Mr Bailey had suffered mental ill-health brought about by the extreme pressures of work to which he had been subject. Mr Bailey was separated from his wife, although they remained on good terms.

The submissions of *RESPONDENT 2*

49. *RESPONDENT 2* accepted responsibility for the matters alleged against Mr Bailey on the basis that he was a partner in the firm and he admitted the allegation made against him. Mr Bailey had accepted full sole responsibility for all of the matters before the Tribunal.
50. There was in the firm an unusual arrangement. With Mr Bailey's agreement, *RESPONDENT 2* started to work in April 1999 for two days a week at Newark and Sherwood District Council. From 1981 to February 1999 his monthly drawings from the practice had been £375 making a total drawn from the practice of £4,500 per annum. By early 1999 *RESPONDENT 2* decided that this should be increased and he agreed with Mr Bailey that the monthly figure should be raised to £500, making his total drawings £6,000 per annum. *RESPONDENT 2* did however need more income than that and that was one of the reasons why he took the two day a week job at the Council. Effectively the Council employed the firm and a bill was delivered each month for the hours worked by *RESPONDENT 2* at the rate of £15 per hour.
51. The firm made only modest profits. *RESPONDENT 2*'s drawings were rather smaller than those of Mr Bailey. For the year ending 31st March 2001 and thereafter Mr Bailey's share of the profits was to be two-thirds and *RESPONDENT 2*'s one third. *RESPONDENT 2* agreed to this because he was a single person without any dependants. Mr Bailey had a wife and dependent children. *RESPONDENT 2* had private income and he decided that he did not need the profits from the firm as much as Mr Bailey did. Because *RESPONDENT 2* did not draw all that he was entitled to, his partnership current account was substantially in credit whilst that of Mr Bailey was substantially in debit.
52. *RESPONDENT 2* asserted that he had not had the benefit of Mr Bailey's wrongful transfers to office account in view of the relationship of the income from the Council work to his actual drawings.
53. *RESPONDENT 2* had met all of the liabilities of the firm since the intervention due to Mr Bailey's impecuniosity.
54. *RESPONDENT 2* had been surprised and concerned to learn about Mr Bailey's breaches. He made his own investigations and drew three further probate matters to

the attention of the FIU officer. *RESPONDENT 2* then served a notice on Mr Bailey to sever the partnership.

55. The Law Society had accepted *RESPONDENT 2*'s explanations and assurances and had granted him a practising certificate free of any restrictions or conditions.
56. Until 1994 *RESPONDENT 2* had been managing partner of the firm. However, in that year he contracted diabetes and had to reduce the level of his involvement in the firm. Thereafter Mr Bailey had free rein to run the firm as he pleased. That became even more so when in April 1998 the probate manager retired and was not replaced.
57. Although *RESPONDENT 2* was executor for some of the estates which were the subject matter of the OSS investigation, he took no part in the administration of the estates other than to swear the executors' oath or to carry out other duties which could only be fulfilled by executors.
58. *RESPONDENT 2* had no knowledge of the work being done by Mr Bailey but at the same time he also had no reason to suspect him. Mr Bailey was able to sign client account cheques as a sole signatory.

The Findings of the Tribunal

59. Following its findings of fact the Tribunal concluded that Mr Bailey deliberately overcharged his clients. Whilst the Tribunal was sympathetic to him in recognising that he suffered mental ill-health, there was before the Tribunal no evidence that Mr Bailey did not know that what he was doing was wrong. The Tribunal concluded that Mr Bailey had chosen to transfer money on probate matters when the relevant accounts were in credit when there was no pressing requirement for the monies to be dispatched elsewhere as would, of course, have been the case in the majority of, for example, conveyancing matters.
60. Not only has Mr Bailey been in breach of fundamentally important rules relating to professional conduct, he has not acted with the probity, integrity and trustworthiness required of a solicitor and has failed to exercise a proper stewardship of client monies. The public must be protected from solicitors who conduct themselves in such a manner. Further, such behaviour seriously damages the good reputation of the solicitors' profession.
61. It is of fundamental importance that members of the public can, when instructing a solicitor to act in their affairs, be able to do so without there being in their mind any doubt that a solicitor will handle monies which he holds on his clients' behalf scrupulously correctly. Given the gravity of the matters alleged against Mr Bailey and found to have been substantiated, the Tribunal ordered that he be struck off the Roll of Solicitors.
62. *RESPONDENT 2* is to be given credit for admitting the single allegation made against him. Although that allegation was less grave than those made against Mr Bailey, it must be recognised that *RESPONDENT 2* was an equity partner in the firm, he owed a duty to the firm's clients to ensure that they were treated properly and fairly by his

partner. As a partner in the firm, *RESPONDENT 2* had a personal liability to ensure in particular that a proper stewardship was exercised over clients' money.

63. The Tribunal reject *RESPONDENT 2*'s argument that because his drawings from the firm were matched by income generated by him that he could not be said to have benefited from excess charging or improper transfers of client funds to office account. As a partner in the firm, *RESPONDENT 2* had an interest in the profitability of the firm and the profits which it generated.
64. The Tribunal deprecate the laissez-faire attitude adopted by *RESPONDENT 2* and although he was not directly personally culpable for what had happened, he had been considerably at fault for largely abdicating his responsibilities as a partner. The Tribunal has taken into account the fact that *RESPONDENT 2* has had to shoulder the liabilities of the firm upon its closure. In order to make plain the seriousness with which the Tribunal viewed *RESPONDENT 2*'s shortcomings, it imposed upon him a fine of £4,000.
65. The Tribunal considered submissions made by all parties on the question of costs. It noted that Mr Bailey agreed that he should be responsible for the costs of Mr Shelley, the law costs draftsman, and the costs of the Forensic Investigation Unit officer of the Law Society. It was agreed in principle between the Respondents that they should between them be responsible for the whole of the Applicant's costs in the proportion of 85% to be paid by Mr Bailey and 15% to be paid by *RESPONDENT 2*. The Law Society indicated that the inclusive costs figure would be in the region of £15,500. Although the payment in principle was agreed, the Respondents were not able to agree the quantum.
66. The Tribunal considered it right that the costs should be fixed. The Tribunal accepted that the Applicant's legal costs were entirely reasonable. It further accepted that the costs draftsman's charges were reasonable. The Tribunal considered that the charges of the FIU officer were rather high. The Tribunal considered it in the interests of all of the parties that the matter be finalised at the conclusion of the hearing and considered that ordering a detailed assessment of the costs would serve to increase those costs, delay the payment of them and leave the finalisation of the matter unresolved for an unnecessary further period of time.
67. The Tribunal considered that in all of the circumstances it was right summarily to fix the total inclusive costs at £13,500. It ordered that Mr Bailey should pay the first £1,850 representing the costs draftsman's charges and it ordered that the balance of £11,650 be paid by the Respondents in the proportions 85% by Mr Bailey and 15% by *RESPONDENT 2*. The Tribunal made this order despite the agreement of Mr Bailey to pay the whole of the forensic investigation costs on the basis that although not personally culpable for the subject matter of the allegations before the Tribunal, *RESPONDENT 2* was equally liable with Mr Bailey as a partner in the firm for the proper handling of clients' monies.

DATED this 17th day of February 2003
on behalf of the Tribunal

J N Barnecutt

Chairman