SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 10637-2010

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

SHARON KNOWLSON First Respondent

and

[RESPONDENT 2] Second Respondent

Before:

Mr J P Davies (in the chair)
Mr A H B Holmes
Mrs L McMahon-Hathway

Date of Hearing: 24th March 2011

Appearances

Geoffrey Hudson, solicitor (Penningtons Solicitors LLP of Abacus House, 33 Gutter Lane, London, EC2V 8AR) for the Applicant.

The First Respondent did not appear and was not represented.

The Second Respondent appeared in person.

JUDGMENT

Allegations

1. The Applicant applied for an Order under Section 43 of the Solicitors Act 1974 (as amended) directing that as from a date to be specified in such order:

1.1 No solicitor shall employ or remunerate, in connection with his practice as a solicitor;

1.2 No employee of a solicitor shall employ or remunerate in connection with the solicitor's practice;

1.3 No recognised body shall employ or remunerate;

1.4 No manager or employee of a recognised body shall employ or remunerate in connection with the business of that body;

Either Respondent, except in accordance with Law Society permission.

1.5 No recognised body or manager or employee of such body shall, except in accordance with Law Society permission, permit either of the Respondents to be a manager of the body;

1.6 No recognised body or manager or employee of such body shall, except in accordance with Law Society permission, permit either of the Respondents to have an interest in the body or that such other order may be made as the Tribunal should think right.

2. The allegations made against the Respondents were that:

2.1 They each entered incorrect data within their employer's computer system without the knowledge or authority of their employers, thereby falsifying records which resulted in each of them potentially receiving a bonus, or greater bonus than that which she might have received had she entered the correct data, and as a result;

2.2 They each occasioned, or were party to, an act or default which involved conduct of such a nature that it would be undesirable for them to be employed or remunerated by a solicitor in connection with a solicitor's practice.

Documents

3. The Tribunal reviewed all the documents submitted by the Applicant and the Respondents, which included:

<u>Applicant</u>

- Application dated 8 October 2010;
- Rule 8 Statement, and exhibit "GRFH1" dated 8 October 2010;
- Opening submissions dated 21 March 2011;
- Schedule of Costs dated 21 March 2011;
- Copy correspondence between Mr Hudson and the First Respondent - various dates.

Respondents

- No documents other than those included in the items listed above.

Preliminary Matters (1)

4. In the absence of the First Respondent, the Tribunal considered whether the matter should proceed in her absence.

5. Mr Hudson produced to the Tribunal copies of correspondence passing between himself and the First Respondent. Mr Hudson wrote to the First Respondent on 25 October 2010 referring to the proceedings and giving a notice under the Civil Evidence Act. The Tribunal was also referred to a pre-listing form returned to the Tribunal on 8 November 2010 by the First Respondent indicating that she would not attend the pre-listing day, set for 3 December 2010. The Tribunal was referred to a letter from Mr Hudson to the First Respondent dated 16 November 2010 concerning possible listing of the matter and giving an estimate of the costs the Applicant would seek in the proceedings. The Tribunal was shown an email from the First Respondent to Mr Hudson dated 24 November 2010 in which it was stated, amongst other things, "Please note I will not be attending the hearing". Notice of the hearing date having been given by the Tribunal, Mr Hudson wrote to the First Respondent again on 21 March 2011 enclosing a copy of his opening submissions and an updated Schedule of Costs.

6. The Tribunal was satisfied that the First Respondent had received notice of the proceedings, had expressed an intention not to attend, and that it was appropriate in the circumstances to proceed with the hearing.

Preliminary Matter (2)

7. The Chairman explained to the Second Respondent the effect of the Civil Evidence Act notice with which she had been served in October 2010. The Second Respondent confirmed that she did not dispute the contents of the documents appended to the Rule 8 Statement.

Preliminary Matter (3)

8. The Chair explained to the Second Respondent that the nature of the Order sought by the Applicant was a regulatory, rather than disciplinary Order. The Tribunal did not have power to discipline an unadmitted clerk, but could make Orders about the regulation of those working in solicitors' practices. It was explained that if an Order were to be made under Section 43 of the Solicitors Act, it would not mean that the Respondents would be unable to work in a solicitor's practice, but it would mean that they would need permission from the SRA to do so. The Second Respondent confirmed that she understood the nature of the Order being sought.

Factual Background

9. The First Respondent was born in 1985. She is not a solicitor. Between 1 May 2005 and 11 May 2009 she was employed by TLT LLP solicitors ("the Firm"), latterly as a case handler within their Lender Sales Team.

10. The Second Respondent was born in 1980. She is not a solicitor. Between 8 May 2006 and 15 May 2009 she was employed by TLT LLP solicitors ("the firm"), from about November 2008 being employed within the Lender Sales Team.

11. From about November 2008 to May 2009 the First and Second Respondents were the sole members of a team responsible for preparing Home Information Packs ("HIPs") for potential property buyers on behalf of clients of the firm. Other similar teams worked within the firm. Prior to the Second Respondent joining the First Respondent's team, that role had been undertaken by another employee. The team was managed by a non-solicitor employee of the firm.

12. The firm had in place service standards to ensure that HIPs were completed before properties were sold. The firm operated a Lender Sales Bonus Scheme whereby their employees would be eligible for quarterly bonuses if they completed transactions within certain target times. The relevant target for the Respondents' team was:

> "To request the Energy Performance Certificate ("EPC") within one working day of the file being opened".

The bonus document provided:

> "£100 bonus will be achieved by averaging 98% compliance across all service standards for the month (reduced to 95% for the first quarter)"
>
> "Bonuses will be paid on a team by team basis. Achievement of the bonus will be calculated on a monthly basis but paid quarterly. Bonuses will be paid in accordance with the percentage achieved for all service standards in each month".

13. Between about July 2008 and April 2009 the First Respondent entered incorrect dates onto the firm's computer system in respect of the receipt date of EPCs. Ten such matters were exemplified in the Rule 8 Statement. As a result of entering those incorrect dates onto the firm's computer system, there was the potential for the First Respondent to have received a larger bonus than the bonus she might have received if she had entered the correct dates onto the firm's computer system. Between about November 2008 and April 2009 the Second Respondent entered incorrect dates onto the firm's computer system in respect of the receipt date of EPCs. Thirteen such matters were exemplified in the Rule 8 statement. As a result of entering those incorrect dates onto the firm's computer system there was the potential for the Second Respondent in due course to have received a larger bonus than the bonus she might have received if she had entered the correct dates onto the firm's computer system.

14. At a meeting on 27 April 2009 between the First Respondent and her employers the First Respondent admitted that she had entered on the firm's computer dates of receipt of EPCs which were incorrect. At a disciplinary hearing on 11 May 2009 the First Respondent made the following further admissions:

14.1 That she had been making incorrect entries for approximately one year;

14.2 That she supposed that, by doing so, her bonus had been affected;

14.3 That she thought it had only been she and the Second Respondent who had done so;

14.4 That she must have had a conversation with the Second Respondent regarding making incorrect entries.

15. Following the disciplinary hearing on 11 May 2009 the firm terminated the First Respondent's employment by reason of gross misconduct.

16. By an email dated 15 February 2010 from the First Respondent to the SRA the First Respondent:

16.1 Agreed that she incorrectly input dates into the system, which resulted in her receiving a higher bonus than she might have received if the dates had been correct;

16.2 Accepted that this was wrong, that there was no excuse for what she had done and that it was unacceptable;

16.3 Denied encouraging the Second Respondent to input incorrect dates.

17. On 28 May 2010 an Adjudicator decided to refer the First Respondent's conduct to the Tribunal for the consideration of the making of an Order pursuant to Section 43(2) of the Solicitors Act 1974 (as amended).

18. At a disciplinary hearing on 15 May 2009, the Second Respondent told her employers:

18.1 She was aware that EPC receipt dates were logged incorrectly;

18.2 She had always been told to log them this way;

18.3 She did not know it was really wrong until they had "got really busy";

18.4 She did not know that there would be a benefit to her in logging dates incorrectly;

18.5 She had not considered the bonus;

18.6 She had been taught to log the dates incorrectly but knew it was wrong.

19. Following a disciplinary hearing on 15 May 2009 the firm terminated the Second Respondent's employment by reason of gross misconduct.

20. In a letter from the Second Respondent to the SRA dated 8 February 2010 the Second Respondent:

20.1 Accepted that what she had done was wrong;

20.2 Did not agree that she had intentionally falsified the computer records so that she would receive a bonus;

20.3 Said that she had been mistrained, misled and pressurised by more experienced colleagues.

21. In a letter from the Second Respondent to the SRA dated 8 May 2010 the Second Respondent:

21.1 Said that while she had entered incorrect dates onto the system, she did this because this was how she had been trained by a previous team member;

21.2 She should have queried it more at the time but had been led to believe by more experienced and trusted colleagues that it was insignificant to do so;

21.3 If a supervisor had checked her work when she had learned the process, none of this would have happened;

21.4 She did not enter dates incorrectly in order to receive a bonus;

21.5 She did not act dishonestly as she had openly discussed with her supervisor the incorrect logging.

22. On 28 May 2010 an Adjudicator decided to refer the Second Respondent's conduct to the Tribunal for the consideration of the making of an Order pursuant to Section 43(2) of the Solicitors Act 1974 (as amended).

Witnesses

23. None.

Findings of Fact and Law

24. The Tribunal found that both Respondents had, for a period, input incorrect data into their employers' computer system. Both Respondents had known that the dates they entered for receipt of EPCs were incorrect.

25. The Tribunal noted, and accepted, that at the relevant time the firm had provided to its clients a service which included the preparation of HIPs. By the time the hearing took place, HIPs were no longer required as part of the process of selling a domestic property, but they had been required at the material time. The Tribunal noted that a HIP contained a number of pieces of information, including EPCs and various searches.

26. The Tribunal heard from the Second Respondent that EPCs would be received into a central inbox on which the date of receipt would be shown. The Respondents' supervisor had access to that central inbox and would forward EPCs to the Respondents as required. The Second Respondent told the Tribunal that the team were discouraged from producing "interim HIPs", ie they needed to wait until all of the necessary documents were received before making up the HIP.

27. The Tribunal distinguished between the conduct of the Respondents. The First Respondent had worked in the relevant team, with another employee, for about a year before the incorrect logging was noted by the firm. The Second Respondent had been engaged in the relevant team for a much shorter period and had been trained by the First Respondent and another, and had accepted that it was appropriate to enter the date of EPC dates in the way which she did.

28. The First Respondent had admitted that she had been aware that by entering incorrect data she may receive a bonus she would not otherwise receive, or would receive a higher bonus than might otherwise be the case. The Second Respondent told the Tribunal, as she had previously told her employer and the SRA, that she had not carried out the incorrect data entry with a view to gaining a bonus.

29. The Tribunal noted that both Respondents had stated to the employer and to the SRA that the supervisor had been aware of the incorrect entries. The Tribunal was concerned that the bonus system as set up by the firm had been set up in such a way that it could be exploited unless properly supervised.

30. What both Respondents had done was wrong, but the degree of culpability was different, in the Tribunal's view.

31. The underlying facts having been admitted by both Respondents, the Tribunal found that both had entered incorrect data into the employer's computer system without the knowledge/authority of their employers, thereby falsifying records which resulted in each of them potentially receiving a bonus, or greater bonus than that which she might have received had she entered the correct data.

Previous Disciplinary Matters

32. None.

Mitigation

33. The Tribunal considered the First Respondent's mitigation as set out in her correspondence with the SRA and what she had told her employers at the time of the disciplinary investigation. The Tribunal noted in particular that the First Respondent had suggested that incorrect data entry was something done by other employees of the firm, including those in other teams, and that she had been treated differently to most of the others. The First Respondent had also suggested that the team's supervisor had been aware of the position but the practice had not been dealt with.

34. The Tribunal heard mitigation from the Second Respondent. It noted that although she worked for the firm from May 2006 she had been working as an office assistant

and was only transferred to the HIPs team in May 2008, but was not promoted to the role which involved data inputting until November 2008. The Tribunal noted that the Second Respondent had brought up with the supervisor the issue of incorrect data entry. She had been concerned because the volume of work had built up but no additional staff were allocated to the team because it appeared they were doing well enough to earn bonuses. The Second Respondent told the Tribunal that a different team had had more staff allocated because they had fallen behind with their work. The Second Respondent suggested that it had not been in the interests of the team to be overworked. Again, the Second Respondent had explained that the team's supervisor had been aware of the widespread incorrect logging of information but had done nothing about it.

35. On behalf of both Respondents it was noted that a deduction had been made from their final salary when they had each been dismissed, to reflect a bonus payment of £400 that each of them had received early in 2009. However, it was not possible for the Applicant to prove that either Respondent had received any bonus to which they were not entitled as a result of the incorrect data entry. The case had been put simply on the basis that there was the potential to receive a bonus to which they would not otherwise be entitled, or a higher bonus. The Tribunal was told that the firm had not been able to produce evidence that either Respondent had in fact been overpaid. However, both had previously accepted that it was appropriate for the deduction of £400 to be made from their final salaries.

Sanction

36. This was an application by the SRA under Section 43(2) of the Solicitors Act 1974 against two Respondents, neither of whom were admitted solicitors. The application was made on 8 October 2010 and the Applicant relied on the Rule 8 Statement of the same date.

37. For the purposes of recording the Tribunal's decision it was important to note the requirements of Section 43(2) of the Solicitors Act 1974. It was noted in particular that Section 43 does not give the Tribunal disciplinary powers but rather deals with regulation, in particular the control of the employment of unadmitted clerks within solicitors' practices.

38. The application to the Tribunal had been made on the basis that the Respondents' conduct had been such that each of them had occasioned, or were party to an act or default, which involved conduct of such a nature that it would be undesirable for them to be employed or remunerated by a solicitor or in connection with a solicitor's practice, without the permission of the SRA. It was noted that the Tribunal had the power to make such an order but was not obliged to do so. In particular it was noted that the section provides that the Tribunal "may" make an order.

39. The underlying facts of this matter were essentially agreed. The Tribunal had read documents produced by the Applicant, including correspondence and notes of meetings involving the Respondents, which explained the data inputting system and the production of HIPs. The Tribunal noted that to some extent the firm's investigation of the data inputting had been prompted by the Second Respondent. The Tribunal noted that the Second Respondent had raised the issue with her supervisor as

the team was overworked and needed more assistance, but could not receive that assistance as it appeared that the team were meeting their targets.

40. The case against the First and Second Respondents were not the same in all respects. The First Respondent had been employed in this role for some time. In the Rule 8 Statement it was noted that the First Respondent had entered incorrect data between about July 2008 and April 2009, but the First Respondent herself had admitted to entering incorrect data for about a year.

41. In the Rule 8 Statement concerning the Second Respondent it was suggested that her inputting of incorrect data had been only in the period March to April 2009. Again, the Second Respondent had accepted that the period may have been a little longer, but she had been in the relevant team only since November 2008. The Second Respondent had been inputting incorrect data for a significantly shorter period than the First Respondent, who was her senior in the team.

42. A further important distinction the Tribunal wished to make was that the First Respondent accepted that it was part of the ethos of the team to use incorrect dates in order to qualify for bonus payments, ie to gain financially. The Second Respondent, however, had consistently told her employer, the SRA and the Tribunal that she had not been "bonus hunting". The Tribunal noted that it was to the Second Respondent's credit that she had accepted her behaviour had been wrong. It also noted the fact that she had attended the Tribunal in order to explain her position.

43. In the circumstances it was appropriate for a s.43 Order to be made against the First Respondent but the Tribunal did not consider that such an Order was appropriate or proportionate with regard to the Second Respondent. The Order against the First Respondent would not prevent her from being employed within a solicitors practice, although permission for such employment would be required from the SRA. Both Respondents, it was noted, would in any event in future have to explain to potential employers the circumstances of their dismissal from TLT LLP.

Costs

44. The Applicant sought costs against both Respondents and submitted a Schedule of Costs totalling £5,888.47 inclusive of VAT. It was submitted that the application had been brought properly in accordance with the SRA's regulatory duties. Admissions had been made by both Respondents. It was submitted that the costs claimed were properly incurred. Both Respondents had been sent/shown a copy of the Schedule of Costs before the hearing. The costs claimed were in line with an estimate given to both Respondents in about November 2010.

45. The amount of costs claimed was not expressly contested on behalf of either Respondent. The Tribunal noted from the correspondence that the First Respondent had been unemployed for a period of time. It did not have up to date information concerning her financial position. The Second Respondent told the Tribunal that after leaving TLT LLP she had had a baby, who was now 13 months old. The Second Respondent had studied sociology at University and thereafter had worked at a supermarket as a checkout manager. The Second Respondent lives with her husband and child in Bristol.

46. The Tribunal considered that it had not been proportionate to make a s.43 Order against the Second Respondent and so did not consider it appropriate to make an order for costs against her. Accordingly, there would be no Order of any kind against the Second Respondent.

47. So far as the First Respondent was concerned, it had been appropriate to bring the application and she should be responsible for part of the Applicant's costs. However, the costs claimed appeared high, given the comparatively straightforward nature of the claim and the early admissions on the facts of both Respondents. It would be appropriate to order the First Respondent to pay a contribution to costs and the appropriate amount would be £1,000 including VAT.

Statement of Full Order

48. The Tribunal ORDERS that as from 24th day of March 2011 except in accordance with Law Society permission:-
(i) no solicitor shall employ or remunerate, in connection with his practice as a solicitor Sharon Knowlson of 41 Broadleas, Headley Park, Bristol, BS13 7PL
(ii) no employee of a solicitor shall employ or remunerate, in connection with the solicitor's practice the said Sharon Knowlson
(iii) no recognised body shall employ or remunerate the said Sharon Knowlson
(iv) no manager or employee of a recognised body shall employ or remunerate the said Sharon Knowlson in connection with the business of that body;
(v) no recognised body or manager or employee of such a body shall permit the said Sharon Knowlson to be a manager of the body;
(vi) no recognised body or manager or employee of such a body shall permit the said Sharon Knowlson to have an interest in the body;

And the Tribunal further Orders that the said Sharon Knowlson do pay the costs of and incidental to this application and enquiry fixed in the sum of £1,000.00 (inclusive of VAT)

Dated this 12th day of May 2011
On behalf of the Tribunal

J P Davies
Chairman