

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 10658-2010

BETWEEN:

SOLICITORS REGULATION AUTHORITY

Applicant

and

LINDSEY BIDGWAY

Respondent

Before:

Mrs K Todner (in the chair)

Mr E Nally

Mr S Howe

Date of Hearing: 18th May 2011

Appearances

Ian Ryan, solicitor of Finers Stephens Innocent LLP, 179 Great Portland Street, London, W1W 5LS for the Applicant.

Lindsey Bidgway did not appear and was not represented.

JUDGMENT

Allegations

1. The allegation against the Respondent was that she:
 - 1.1. Having been involved in a legal practice but not being a solicitor, had, in the opinion of the Solicitors Regulation Authority (“SRA”) occasioned or been party to, with or without the connivance of a solicitor, an act or default in relation to a legal practice which involved conduct on her part of such a nature that in the opinion of the SRA it would be undesirable for her to be involved in a legal practice. In particular, she used a signed client account cheque for her own purposes.

Dishonesty was alleged in respect of the use of the signed client account cheque to pay for the Respondent’s ILEX fees.

The Applicant sought an order pursuant to Section 43(2) of the Solicitors Act 1974 (as amended) that:

- (i) no solicitor shall employ or remunerate, in connection with his practice as a solicitor;
- (ii) no employee of a solicitor shall employ or remunerate, in connection with the solicitor’s practice;
- (iii) no recognised body shall employ or remunerate;
- (iv) no manager or employee of a recognised body shall employ or remunerate in connection with the business of that body.

Lindsay Bidgway except in accordance with Law Society permission.
and that

- (v) no recognised body or manager or employee of such a body shall, except in accordance with Law Society permission, permit Lindsey Bidgway to be a manager of the body;

and

- (vi) no recognised body or manager or employee of such a body shall, except in accordance with Law Society permission, permit Lindsey Bidgway to have an interest in the body.

Documents

2. The Tribunal reviewed all the documents submitted by the Applicant and the Respondent, which included:

Applicant:

- Application for a Section 43 (2) Order dated 10 November 2010.
- Rule 5 Statement dated 10 November 2010 with exhibits.
- Notice pursuant to the Civil Evidence Act dated 4 April 2010 with attached bundle of documents.

- Statement of costs dated 17 May 2011 with attachments.
- The original cheque, exam application form and the firm's post book for the relevant period.

Respondent:

- Letter from the Respondent to Mr Ryan dated 1 May 2011 with attachments.
- Email from Mark Pritchard of Finers Stephens Innocent to the Respondent dated 17 May 2011 with the Respondent's reply of the same date.

Preliminary Matter

3. The Respondent did not appear and was not represented. Mr Ryan informed the Tribunal that he had written to the Respondent two weeks previously enquiring whether she had asked any witnesses to attend the hearing and in an email of 10 May 2011 she had responded indicating that she did not plan to attend the hearing because of work commitments. Her response to the allegation was set out in a fax dated 8 December 2010. In all the circumstances Mr Ryan sought leave of the Tribunal to proceed with his application in the Respondent's absence. In support of his application Mr Ryan relied on the provisions of the Solicitors (Disciplinary Proceedings) Rules 2007. In respect of the evidence upon which he intended to rely, Mr Ryan referred to Rule 14(1) which provided that the Tribunal might in its discretion, in respect of a whole case or of any particular fact or facts, proceed and act upon evidence given by statement. The statements upon which he intended to rely had been filed and served in accordance with Rule 14(2) on the Respondent under cover of a notice dated 4 April 2011 and she had not responded under Rule 14(3) requiring the attendance of any of those individuals. Accordingly under Rule 14(4) Mr Ryan invited the Tribunal to accept the statements in question in evidence. The witness statements were those of John David Erasmus, dated 5 November 2010; Wyn Thomas dated 4 November 2010; Linda James dated 4 November 2010; Gareth Williams dated 4 November 2010 and Margaret Williams dated 4 November 2010. The Applicant would also rely on a report prepared by Mr Michael Handy, Forensic Examiner of handwriting and questioned documents, dated 15 November 2010 but Mr Handy would also be called as a witness. Mr Ryan also reminded the Tribunal under Rule 21(2) that the Tribunal might dispense with any requirements of the Rules in respect of notices, statements, witnesses, service or time in any case which appeared to the Tribunal to be just so to do. In this connection Mr Ryan had not arranged for the attendance of his witnesses apart from Mr Handy as they were all in Wales. If the Tribunal did require to hear them then he would have to seek an adjournment to arrange their attendance. He therefore asked the Tribunal's approval to proceed on witness statements and the evidence of Mr Handy.
4. Mr Ryan also pointed out that in the Rule 5 Statement the Respondent had been described as a legal clerk. He felt that he should point out to the Tribunal that it would be more accurate to describe her as a receptionist/typist. However Mr Ryan submitted that this did not in any way interfere with the jurisdiction that the Tribunal had in this matter under Section 43 (2) of the Solicitors Act 1974 as amended because the Tribunal had jurisdiction over any employee of a solicitor.

5. The Tribunal considered Mr Ryan's submission and determined that it was satisfied that notice of the hearing had been served on the Respondent in accordance with the Rules. It was also satisfied that appropriate steps had been taken under Rule 14 to enable it to decide to proceed upon written evidence and that of Mr Handy. Under Rule 16(2) the Tribunal then determined that notwithstanding that the Respondent had failed to attend in person and was not represented it would proceed to hear the application.

Factual Background

5. The Respondent was born in 1988.
6. At all material times, the Respondent was employed as a receptionist/typist at the Blackwood offices of Granville-West Solicitors (the firm), in Blackwood, Wales. The Head Office was in Pontypool, Torfaen, South Wales.
7. On 21 April 2009 a complaint was made to the SRA by MP Solicitors, that the firm was in breach of Rule 23 of the Solicitors Accounts Rules. The SRA wrote to Mr H, the complaints partner, in that respect and he responded by letter dated 28 October 2009. It included:-

“We confirm that this matter concerns a member of staff employed as a typist/receptionist at our Blackwood Office. Following her dismissal she instructed solicitors to pursue an unfair dismissal claim (although this was never lodged). Those solicitors, MP of Cardiff, informed us that the matter had been reported to yourselves and we enclose a copy of their letter dated 21 April 2009.”
8. The firm's Blackwood office was managed by LJ, a Legal Executive with four years' post-qualification experience, and supervised by a partner, WT, who was a signatory on both the office and client account mandates. Mrs LJ was a signatory on the firm's office account bank mandate, but not on the client account mandate.
9. The office also employed a full-time cashier, GW and a part-time receptionist, MW. GW was the custodian of the office safe keys.
10. The Blackwood office's client account was with Barclays bank, Blackwood branch.
11. In January 2009 the firm's practice for issuing client cheques was that a partner (usually Mr WT) would attend and sign cheques as and when they were required. On Friday 23 January 2009, as he was not available the following Monday, Mr WT signed two blank client account cheques which he handed to the cashier.
12. On Monday 26 January 2009, LJ attended the office at around 9am to open up. She received a call from GW informing her that he would not be coming into the office that day as he was unwell. At around the same time, the Respondent arrived at work.
13. Mrs LJ had an appointment away from the office at 11am that morning and therefore asked Mr GW whether his mother Mrs MW would be willing to provide cover for him. She had also asked that Mrs MW bring the keys to the safe into the office with her.

14. Mrs MW arrived at the office at approximately 11am and stayed until the end of the day as set out in Mrs LJ's statement. Mrs LJ returned to the office at around 2pm and stayed for the rest of the day.
15. Mrs LJ confirmed that she wrote two cheques from client account on 26 January 2009 (numbers 701973 and 701974), which she recalls were signed by WT later in the day. She did not notice that the two previous cheque stubs had been removed from the cheque book.
16. On 5 March 2009, following a routine reconciliation of the firm's client account, GW contacted Mrs LJ to inform her that a client account cheque (number 701971) in the sum of £244.00 had been paid from the firm's account but that there was no record of this cheque on the firm's computerised accounting systems. Furthermore, upon inspection of the cheque book two stubs for cheques 701971 and 701972 had been removed from the book.
17. The same day Barclays Bank provided a faxed copy of cheque 701971 which was dated 26 January 2009 and was made payable to ILEX.
18. On 6 March 2009, JE a partner in the firm attended the Blackwood office with WT and discussed the matter with staff. It had been agreed within the firm that Mr JE would investigate the matter as Mr WT had signed the cheque in question. It became apparent that the Respondent had been one of two people in the office on 26 January 2009 and that the Respondent was the only person who was present at the office that had been studying with ILEX. Mr JE recorded his findings in an attendance note which included:

“LJ also confirmed that she had previously [sic] informed LB that while the firm had agreed to pay her fees for her course and her examination, they had not agreed to pay resit fees...”
19. The Respondent attended a meeting with Mr JE and Mr WT during which she was shown the faxed copy of the cheque and given an opportunity to explain how a cheque, apparently written out in her handwriting, had been paid from the firm's client account to ILEX. The Respondent denied that the handwriting was hers. She was suspended from employment pending further investigation.
20. On 9 March 2009, Mr JE and Mr WT held a disciplinary meeting with the Respondent during which she was informed that the cheque for £244.00 had been attached to her examination entry form and used to pay for resit fees and summer exams with ILEX. In the circumstances, the Respondent's employment was terminated with immediate effect. Mr JE had also recorded the disciplinary meeting in an attendance note which included:

“LB was reminded that we had not agreed to pay her resit fees and she had specifically been told that the firm would not meet these fees. She said this was not the case and that she had spoken to LJ who had initially told her that when she failed her first exam the fee would not be paid and when she failed on the second occasion she paid her own fees but LJ had recently informed her that the firm would be responsible for paying her re-sit fees on this occasion...”

In her witness statement LJ stated:

“I qualified as a Legal Executive in 2005 after embarking on the course in 1999. The firm paid for me to do the course with an arrangement that I would have a half day release per week and attend lectures in the evening. The firm would meet the cost of the course unless I failed an exam when the cost of resits would have to be met by myself.

In the same way, the firm agreed to pay for Lindsey Bidgway’s ILEX course. The firm were invoiced directly by Colleg Gwent for the course fees; Lindsey would obtain an application form in respect of exam fees then pass the completed form to the firm’s accounts department for payment.

Lindsey failed her examinations in June 2008. When the results came out she told me this and I explained that the firm would not pay the resits; she paid for the first resit in October 2008.

Lindsey then failed the resits in October 2008. She came to me very upset after her results were published some time in November/December 2008 and told me what had happened. I encouraged her to resit the exams again.

I have always encouraged Lindsey to pursue a career in law by studying to become a legal executive. There has never been a suggestion, however, that the firm would pay for her resits; indeed, that would be a decision to be made at partner level and not one I could make.”

The note also recorded that ILEX had advised the firm that the cheque had been credited to LB’s ILEX account - as to £100 in respect of resit fees - and they were uncertain as to what the remaining £144 had been allocated to but the exam fees were £72 and it appeared that the payment of £144 related to two future exam fees.

21. The Applicant wrote to ILEX which confirmed as follows in a letter dated 28 January 2010.

“We have located the examination entry for Ms Bidgway and I can confirm that cheque number 701971 was attached to the examination entry form and used to pay for the summer 2009 exams of Ms Bidgway. I can also confirm that there was no covering letter attached with the examination entry form.”

22. The Respondent was written to by the SRA for an explanation on 24 November 2009. The Respondent replied by email on 6 December 2009.

Witnesses

23. Mr Michael Handy gave evidence concerning the report which he had prepared following his instruction to determine whether or not the Respondent had completed the non signature writings on the cheque in question. He had been asked to look at the cheque, at an ILEX exam entry form headed “summer 2009” and dated 23 January 2009 signed LK Bidgway and the firm’s post book covering the period 19 January to 10 February. Mr Handy confirmed the contents of his report including that he had been instructed that the entries within the post book were attributed to the Respondent. He had looked at those entries and was satisfied that they had all been

made by the same person. He had also looked at the exam entry form and found no significant differences between it and the post book entries such that he was satisfied that they had been completed by the same person. He had then compared the writing on those two documents to that on the cheque, apart from the signature. Particular examples of similarities were pointed out to the Tribunal. The style of handwriting used was simplistic with no connecting pen strokes and was a “taught” style. It was possible that someone taught in a similar way could have a similar style of writing but the writing was common to all three documents. The witness’s opinion was that it was unlikely that some other person was responsible for the non signature writing on the cheque. The witness had not been able to put his opinion higher than that there was strong evidence to that effect (there being two possible higher points on his scale of assessment). The evidence had not been conclusive because of the simplistic style, the quality of writing on the cheque and its limited amount, but he had been able to carry out a proper comparison.

Findings of Fact and Law

24. **Allegation 1.1. Having been involved in a legal practice but not being a solicitor, had, in the opinion of the Solicitors Regulation Authority (“SRA”) occasioned or been party to, with or without the connivance of a solicitor, an act or default in relation to a legal practice which involved conduct on her part of such a nature that in the opinion of the SRA it would be undesirable for her to be involved in a legal practice. In particular, she used a signed client account cheque for her own purposes.**

Dishonesty was alleged in respect of the use of the signed client account cheque to pay for the Respondent’s ILEX fees.

- 24.1 It was submitted on behalf of the Applicant that it had been established by the statement of LJ that the Respondent and Mrs MW had been the only people in the office for most of the day in question. Mr W, Mrs MW and the partner WT had confirmed in their statements that they had not written the cheque in question. The Tribunal had before it the strong evidence of Mr Handy that the handwriting on the cheque was the same as that on the exam application form and that in the post book. It was submitted that it was inconceivable that any of the other three individuals would have completed a client account cheque or that anyone other than the Respondent would have completed the ILEX exam application. Mr Ryan reminded the Tribunal that the onus was on him to establish to the Tribunal’s satisfaction that both limbs of the test for dishonesty as set out in the case of Twinsectra Ltd v Yardley and Others [2002] UKHL 12 had been satisfied. Mr Ryan submitted that in the circumstances established by the witness statements it was inconceivable that there was any other explanation other than that the Respondent had taken and written the cheque and that she had done so dishonestly. He therefore asked the Tribunal to make the order sought under Section 43(2) in order to protect the public.
- 24.2 The Respondent had not appeared but in a fax sent on 8 December 2010 after she had received notices sent following the Rule 5 Statement the Respondent had indicated that she did not agree with the contents of the Rule 5 Statement and that she had believed Mrs LJ when Mrs LJ had told her that her fees for ILEX resits would be paid. She indicated that she, the Respondent, had had nothing to do with writing cheques. She made other points which were largely repeated in a letter to Mr Ryan’s

firm dated 1 May 2011. Inter alia in the letter the Respondent had made allegations of bullying against Mrs LJ. She also stated that:

“In June 208 (sic) I undertook my final exam with ILEX to complete my level 3 studies. I failed this exam. I was advised that although the firm did not normally pay for exam resits, as this was the 2nd time I had failed the exam they would pay for the fee. When the form came from ILEX for my course fees and exam re-sit, I filled out the form and put it on to the desk of GW as I always did with these forms for a cheque to be written out.”

She stated that she had told WT and JE that at no point on the day when the cheque was removed had she been left with just MW in the office. She had also asked why would she write a cheque for something that was already being paid for and why it was that the fact the cheque was missing was not noticed on the day. She stated:

“I do not admit to writing the cheque. I am dedicated to my career and would not wish jeopardising the same for the sake of £100...”

She also challenged the nature of the individuals working at the firm by reference to a recent criminal conviction of one of the partners. Finally she said:

“I currently work in an established Licensed Conveyancing Firm where I am a trusted and respected member of staff.”

In her email dated 17 May 2011 the Respondent stated:

“I stand by the fact that I did not write the cheque...”

- 24.3 The Tribunal carefully considered the evidence including the witness statements. It also had the benefit of hearing the handwriting expert Mr Handy. The Tribunal had noted that the Respondent had chosen not to attend the hearing. Based on the evidence including the witness statements the Tribunal found the allegation against the Respondent to have been proved. The act of taking a cheque without permission from the Respondent’s employer was dishonest in terms of the objective test in the case of *Twinsectra*. The Tribunal also found that the Respondent knew that her misconduct constituted dishonesty because she had been told that the firm would not pay resit fees and she knew that taking the cheque was dishonest, thus satisfying the subjective test. The Tribunal therefore found that dishonesty had been made out in respect of the allegation.

Previous Disciplinary Matters

25. None.

Mitigation

26. None.

Sanction

27. There was only one sanction open to the Tribunal and it made an order under Section 43(2).

Costs

28. On behalf of the Applicant Mr Ryan made an application for fixed costs in the total amount of £9,062.23 including VAT and SRA casework costs. The Respondent had set out in an email dated 17 May 2011 that she only earned £1,050.00 per month, had no savings as she was in the process of planning a wedding and was not sure how the Tribunal's decision would affect her job and therefore might have to claim Jobseekers Allowance. She felt that the figure sought was excessive having regard to the amount which she had been accused of taking which she put at £100 [re-sit fees]. The Tribunal considered the costs applied for to be reasonable in all the circumstances but having regard to the Respondent's financial position and the fact that she could expect to lose her job as a result of the finding it determined that while an order for costs fixed in the amount of £9,062.23 was appropriate it would also order that the costs should not be enforced without leave of the Tribunal.

Statement of Full Order

29. The Tribunal Ordered that as from 18th day of May 2011 except in accordance with Law Society permission:-
- (i) no solicitor shall employ or remunerate, in connection with his practice as a solicitor Lindsey Bidgway of 8 Rhys Road, Blackwood, Gwent, NP12 3QP;
 - (ii) no employee of a solicitor shall employ or remunerate, in connection with the solicitor's practice the said Lindsey Bidgway;
 - (iii) no recognised body shall employ or remunerate the said Lindsey Bidgway;
 - (iv) no manager or employee of a recognised body shall employ or remunerate the said Lindsey Bidgway in connection with the business of that body;
 - (v) no recognised body or manager or employee of such a body shall permit the said Lindsey Bidgway to be a manager of the body;
 - (vi) no recognised body or manager or employee of such a body shall permit the said Lindsey Bidgway to have an interest in the body;

And the Tribunal further Ordered that the said Lindsey Bidgway do pay the costs of and incidental to this application and enquiry fixed in the sum of £9,062.23, such costs not to be enforced without leave of the Tribunal.

Dated this 21st day of June 2011
On behalf of the Tribunal

Mrs K Todner
Chairman