

From: Peter Smith [REDACTED]
Sent: 15 August 2016 16:30
To: ruja@onecoin.eu
Cc: Nigel Tait; Claire Gill
Subject: Advice on Coin Telegraph / Victoria Vaughan [CR-PCR1.FID113720]
Attachments: ONECOIN_ pdf letter to Victoria Vaughan, Coin Telegraph - 1.8.16.pdf

Dear Ruja,

We are emailing in respect of your and OneCoin Limited's potential claims against Coin Telegraph.

In summary we recommend:

- OneCoin Ltd issues a claim form against Ms Victoria Vaughan [VV] for libel and malicious falsehood in respect of the article which was first published on 27 May 2015, and additionally claims for libel and malicious falsehood in relation to four other more recent articles published by Coin Telegraph (identified in our letter of 1 August, attached).
- In relation to the first article published on 27 May 2015, that you claim for breach of your data protection rights. It is also open to you personally (in addition to the company) to bring a claim for libel and malicious falsehood in relation to this article, and the other article in which you are named ("OneCoin: A voice from inside hints to Underground Bulgarian Society").
- Joining you as a claimant ought to make the claims easier (see below).
- We instruct Counsel to draft Particulars of Claim (see costs advice below).

The primary objective of bringing proceedings is to seek to persuade VV, who has so far refused, to agree to amend or remove the offending articles from the website of Coin Telegraph. The articles that continue to be published are, we understand, causing significant reputational damage. We do not expect that further correspondence on its own will achieve your goals. However, you recognise that bringing proceedings might in itself attract media attention.

We understand that OneCoin Limited is the correct corporate entity to be the claimant. Please confirm that this is correct. To take the claim forward and as part of our own KYC requirements, we need the company's registration documents or a copy of its latest accounts.

Time Limit

You are technically out of time within which to bring claims for libel and malicious falsehood in relation to the first article published on 27 May 2015 and a limitation defence may be fatal to that claim. However, at the court's discretion it is possible in certain circumstances to extend the limitation period within which a claim must be brought, and there are various arguments we can raise. We think a court is more likely to allow the claim to proceed if there are also claims arising from later articles which in essence make similar allegations.

VV has not yet taken the limitation point in correspondence. The fact you are already technically out of time to bring a claim in relation to the first article (which is the most serious) means that if proceedings are going to be brought, a claim form should be issued, we recommend, this week.

The law with regard to defamatory publications and their time limits has recently been changed so that the date of publication for articles which are still online is set as the day it was first published. The effect of this change has not yet been tested in the courts and VV may find it too expensive to litigate over this point, which should be to your advantage.

Security for Costs

VV may try and seek security for costs against the company if she has a suspicion that the claimant company is not able to pay her costs if ordered to do so. It may not be in the company's interest for it to have to produce evidence about its financial position in court, in which case, if VV takes the point, we would expect to recommend that you agree to an order for security for costs (i.e. pay money into court which will be used to pay the Defendant's costs if she gets a costs order in her favour).

If VV obtains security for costs, it is likely the court would order OneCoin to deposit several hundreds of thousands of pounds with the court, or give some other form of security e.g. a bank guarantee.

Serious Harm

In a claim for libel, the claimant has to show that the article has caused or is likely to cause serious harm to reputation, and, in the case of the company, a likelihood of serious financial loss. The requirement to prove serious financial loss is a new one and virtually untested in the courts. The hurdle is higher for corporate claimants. If the issue is raised, we would seek to rely on an inferential case; i.e. that the articles are so serious it is obvious they will deter people from investing in OneCoin. With regard to proving serious harm to reputation, the courts have thus far allowed a claimant to succeed based on the inference that a highly defamatory article which is circulated widely will cause serious harm. However, the Defendant may seek proof of, for example, a downturn in business. Again, it may not be in the company's interest to have to go into its financial position in open court. As individual claimants do not have to show a likelihood of serious financial loss, there would be a benefit to you suing in your personal capacity if that is something you are willing to do.

In relation to all of the above issues, whether or not they prove to be an obstacle to the case progressing depends on VV raising the point and her resources to mount legal challenges. The cost of resolving any of these issues at a preliminary hearing would be significant (in excess of £50,000); these costs, and indeed the costs of defending an action (see below) will act as a significant disincentive to VV, unless she can find representation on a "no win no fee" basis.

Disclosure

In civil proceedings in England, once each side has served their statements of case (the claim and Particulars, Defence and Reply), the parties are required to give to the other disclosure of all documents relevant to the issues in the claim. If VV defended the claim on the basis that OneCoin is a Ponzi scheme (she would be obliged to give proper particulars in her Defence to support this allegation) OneCoin might have to give a significant and intrusive amount of disclosure. At this point, OneCoin could decide to abandon its claim, and pay VV's costs, or to pay for the disclosure process to take place.

Other Legal issues

It would appear from the pre-action correspondence that VV stands by her allegations. In a claim for libel, she has to prove the truth of her allegations, or else rely on one of the other substantive defences, of publication in the public interest, or honest opinion. In a claim for malicious falsehood, the burden is on the claimant to prove the article is false and malicious. If the case is pursued and substantively defended, we will need more information and documentation from you relevant to the allegations made.

Data protection

The article of 27 May 2015 contains reference to you and your personal data, and we have included a data protection complaint in our pre-action correspondence. We would recommend that this claim is added to the claim, not least because it is not subject to the limitation difficulties and it is more straightforward.

However, if you do not personally wish to be a party to the claim, we would exclude any claim for data protection breaches.

Party/parties to be sued

We recommend you bring the claim against VV personally. Enquiries conducted to date about the corporate entity have led only to a company based in the US, but it is not confirmed that this entity (Coin Telegraph LLC) is indeed the corporate entity responsible for the website. It will not be possible to enforce a libel judgment granted in this jurisdiction in the US. Additionally, suing a US entity would make the claim vulnerable to a jurisdiction challenge.

According to Squakr (Prime Strategies) VV seems to be based either in London or Riga, Latvia.

Costs

The court fee to issue a claim form, if we limit your claim for damages to £50,000, together with an injunction will be £3,028. The costs of a claim for unlimited damages would be £10,528.

As to our costs, the costs of preparing the Claim Form will be minimal; around £1000. The next step would be to instruct Counsel to prepare formal Particulars of Claim; we estimate those costs including Counsel's fees to be between £5,000 - £10,000.

However, it is difficult to estimate the costs that will be associated with service of proceedings, as we do not yet know if VV would nominate solicitors in this jurisdiction to accept service or whether we have to incur costs of inquiry agents in finding her and an address for service.

Similarly, as we do not yet know what defences VV may raise to the claim, it is not possible to give you a firm estimate of the likely costs of pursuing the claim. What we can say is that if a claim of this nature is pursued all the way to trial (most cases settle well before that) the costs are rarely less than £300,000. We will give you estimates of each stage as the case progresses.

Liability for Defendant's costs

Once the claim form is issued, you are potentially liable for the VV's costs, but we expect those to be minimal before service of the claim.

Litigation in this country operates on the basis that the "loser pays"; if the claim is not successful or the action is discontinued, then you would be liable for a contribution to your opponent's costs, just as she would be liable to pay a contribution towards your costs if you were successful (however she may not have the means to pay and we may not be able to enforce a judgment against her). If VV instructs lawyers I would expect those to be of the same order as your own costs.

Service of the claim form

The Claim form must be served within 4 months of issue, with the Particulars of Claim.

Issuing the claim form does not commit you to pursuing the claim; we can in the interim continue with our correspondence with VV to see if progress can be made.

Please could you let us know as soon as possible if you are happy for us to proceed.

Kind regards,

Peter Smith
Employed Barrister, Carter-Ruck

Carter-Ruck Solicitors
6 St Andrew Street
London EC4A 3AE
T 020 7353 5005
F 020 7353 5553
DX 333 Chancery Lane
www.carter-ruck.com