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Carter-Ruck

11 April 2025

Your ref:
Our ref: [redacted]/**966646**/48241481

Your contact:
[redacted]

By Email Only:
[redacted]

Dear Carter-Ruck

Disciplinary Proceedings in the Solicitors Disciplinary Tribunal

Thank you for your letter dated 7 April 2025.

The Representations enclosed with your letter have been carefully considered by our client, our firm and leading counsel.

Our client does not consider the ADM's Decision to be materially flawed for the reasons summarised below. The Rule 12 Statement that will be filed will refer to the Representations and Ms Gill will be free to make representations to the Tribunal on any points of law or evidence within it, should the Tribunal choose to certify it. We will therefore continue to prepare for issue of the case before the Tribunal in the usual way.

The gravamen of our client's Application to the Tribunal, as reflected in the Decision, is the "reassurance/strong PR message" purpose in the threatened claim against Ms McAdam. The evidence points to this being the sole or dominant purpose in the threatened claim. We refer to Ms Gill's email of 20 April 2017 at 13:49:

"The goal of legal action is to reassure members and to send a strong PR message. The risks associated with legal action are too great but for this overwhelming benefit in being able to publicise the fact of bringing action, and the view is that even if we have to drop the claim later we have to be seen to start it."

Our client is satisfied that this purpose, of itself, renders the threatened claim to be abusive and engages the relevant conduct principles.

Abuse of process cases are fact specific. None of the authorities cited in the Representations are relevant to the particular facts of the present case. In any event, these proceedings will consider whether your client breached her professional obligations. It is not necessary for the SRA to demonstrate that the claim, if filed, would also have been struck out as an abuse of process.

The contemplated reassurance/strong PR message from legal action was that OneCoin was ready and willing to demonstrate to a court that the allegations made by Ms McAdam were untrue and its business was legitimate.

The true position as at 26 April 2017 is evident from the 20 April email and related communications. A claim could not have been pursued beyond the initial stages because OneCoin had repeatedly failed to provide Ms Gill with the fundamental information and/or documentation to address the truth of the allegations made by Ms McAdam and numerous others.

Knowledge of the true position would not have provided any reassurance to members or anyone else. It would have had the opposite effect. It would have caused serious concern and suggested that the allegations made against OneCoin were substantially true.

The success of the reassurance/strong PR message would depend on people drawing a false conclusion from OneCoin commencing legal action.

Ms Gill must have known this at the relevant time.

Without prejudice to the generality of this, the strategy advocated in Ms Gill's email of 20 April was running in tandem with the equivalent strategy in Norway. The following is stated in Per Danielsen's email to Ms Ignatova of 20 April 2017 at 10:32 (prompting Ms Gill's email of 13:49):

"Norwegian defamation and slander law was recently changed, and so has the case procedure through the courts.

This offers a new opportunity for maneuvering.

The first instance for compensation claims now is the Conciliation Council, a kind of a layman's court (excluding the alternative of an injunction, of course, which is not advisable for the time being). It is now mandatory to start here if both partie do not have legal council, which Mr. Bjercke has not if we take him by surprise. We know how to handle that.

Starting a case before the bargaining court has no final legal consequence and normal procedure is that you can control whatever you want - let the case die out there or continue at will before the city court with flying colors, if you prefer.

We therefore suggest we start a law suit against Mr. Bjercke before the bargaining court.

In the media we may then state truthfully that legal proceedings now have started against him. The general public does not understand the difference between the city court and the bargaining court. A law suit is a law suit. The bargaining court is also a court in any respect, and the media is normally first of all interested in the law suit news, not procedural details."

Ms Gill's email of 13:49 described this suggestion as "*very sensible, if you say it carries less risk but in PR terms ought to achieve the same effect*".

The same approach is evident from Ms Gill's subsequent recommendation to bring a *Norwich Pharmacal* application ("NPA") against Ms McAdam, as set out in her letter of 22 May 2017. The sole justification advanced was: "*Taking this step does not carry the same risks as proceedings for libel but enables us to say we are taking legal action against her.*"

An NPA would not involve any determination of the truth of the allegations made by Ms McAdam. This is, in contrast, to a defamation claim. An NPA is a purely procedural application to obtain documents from a person or party that has become mixed up in wrong-doing through no fault of their own. It would not involve any commitment to make a subsequent defamation claim. It is clear that Ms Gill was advising that a NPA would have the same PR benefit as a libel claim without having to address the truth of the allegation. Implicit in this is the recognition that saying: "*we are taking legal action against her*" will be widely (mis)understood as bringing a libel claim against Ms McAdam, thereby demonstrating a resolve on the part of OneCoin to demonstrate to a court that her allegations were untrue.

The "reassurance/strong PR message" was to be made in circumstances where Ms Gill must have known that there was a strong possibility that OneCoin was fraudulent and that, if this was the case, the message was likely to perpetuate the fraud. The circumstances gave rise to a heightened obligation on Ms Gill to avoid advising in favour of, or being party to, an abusive and/or misleading litigation strategy.

In relation to the assertion that the attachment to the 10 March 2017 e-mail was not included in the Bundle that was before the ADM, those pages can be found at p.859 – 862 (B502 – B505) in the Bundle that was considered by the ADM.

We will respond separately in relation to (i) your query about contact with third parties; and (ii) the request for disclosure of the initial recommendation.

Yours faithfully,

Capsticks Solicitors LLP