

## **Introduction**

This is the Tribunal's decision on the application for summary dismissal. We have considered the skeleton arguments advanced by both parties, the documentary evidence, and the applicable legal principles.

The issue for the Tribunal is whether the material relied upon by the SRA and as pleaded in the Rule 12 is capable of establishing a case which should proceed to a full hearing.

## **Allegation of Knowledge**

Central to the SRA's case is the assertion that in sending the letter of 26<sup>th</sup> April 2017, the Respondent did so knowing it contained an improper threat of litigation. The allegation is that Ms Gill knew at the time of sending the letter that defamation proceedings would not in fact be pursued. The SRA contends that the purpose of the letter sent to Jennifer McAdam was for the sole and dominant purpose of Reassuring One Life/One Coin members and sending a strong PR message and that such a Message inevitably meant that One Coin was ready and willing to demonstrate to a court that the allegations made against them were untrue.

## **Context at the Relevant Time**

The Tribunal must assess the Respondent's conduct by reference to what was known in April 2017, and not by reference to subsequent events. While it is now known that One Coin was a fraudulent enterprise, that was not apparent at the relevant time.

What was known was that a criminal investigation had commenced and that adverse publicity was increasing. Such circumstances do not prevent a company or individual from seeking to protect their reputation, including by threatening or commencing defamation proceedings.

## **The Respondent's Advice and Conduct**

The contemporaneous correspondence demonstrates that the Respondent's advice was measured, professional and conscientious. She was asking questions of her client, which would need to have been

answered in order for litigation to be taken further. But that was not the case at the time the Letter Before Action was sent.

The contemporaneous documents also show that the Respondent was acting on explicit client instructions and had no reason at that time to disbelieve them. Suspicion is not equivalent to knowledge, and a solicitor is not required to reject client instructions absent evidence that they are false. This absence of evidence is significant and undermines the foundation of the case.

We reject the suggestion that her communications disclose any improper motive or abandonment of professional judgment. Mr Price sought to present a situation where Ms Gill had held firm against a litigation strategy whilst pressure was mounting on her, but then succumbed and lost her moral compass. We find in fact that circumstances had altered: there were serious allegations of criminal activity being pursued by Mr Bjerck and which were being repeated by Ms McAdam which Ms Gill's client was seeking to dispel. That is not surprising.

It was only after the letter was sent that counsel's advice was received, which itself still raised the possibility of whether the client would be providing any further information, so it is not right to say that at the time the letter before action was sent that Ms Gill knew that such information would not be forthcoming. Indeed, as soon as this advice was received the Respondent recommended that litigation should not be pursued. That advice is consistent with responsible professional conduct.

### **The Letter Before Action**

The letter itself is a moderate and entirely standard Letter Before Action of the kind commonly used in potential defamation proceedings. It expressly acknowledges the ongoing criminal investigation and states that it is not intended to stifle legitimate debate.

There is nothing in its tone or content which could properly be characterised as misleading or improper

## **Publicity and Oral Evidence**

We accept that the Respondent was operating in an environment of escalating publicity, including allegations of criminal funding which the letter sought to address. While we acknowledge and respect the efforts of those who ultimately exposed the fraud, those matters do not alter the assessment of the Respondent's conduct at the time.

Given the clarity of the documentary evidence, we do not consider that hearing oral evidence from the Respondent would assist the Tribunal.

## **Conclusion**

We have considered whether the sending of the letter amounted to an abuse of the court's process or was motivated by any improper purpose. We find that it did not. The letter was sent in pursuit of a legitimate attempt to protect the client's reputation and was neither abusive nor improperly motivated. It would be wholly inappropriate to hold a solicitor responsible for a client's later-discovered fraud where the solicitor was unaware of it and was acting in good faith on instructions. The oral evidence of the respondent is not needed when the contemporaneous documents evidencing her advice and the actions taken are clear.

Taking these matters together, we are satisfied that this case is based on hindsight rather than evidence of professional misconduct. Even assuming the Applicant's case at its highest, it does not meet the threshold required to proceed. Having reviewed all of the evidence, we are unable to identify any material capable of supporting the allegation made in the Rule 12 statement.

Accordingly, it would not be in the interests of justice or proportionality for this matter to proceed further. The evidential foundation is plainly insufficient.

Therefore, whilst it may be unusual for such an application to be made there are circumstances when it is wholly appropriate. This is one of those cases. The application for summary dismissal is therefore granted, and the proceedings are dismissed.

**ALK**