**BEFORE THE SOLICITORS DISCIPLINARY TRIBUNAL**

**IN THE MATTER OF THE SOLICITORS ACT 1974 (as amended)**

**B E T W E E N:**

**SOLICITORS REGULATION AUTHORITY LIMITED**

**Applicant**

**and**

**CLAIRE FRANCES GILL**

**Respondent**

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**RESPONDENT'S SKELETON ARGUMENT**
**(in support of her application for summary dismissal of the proceedings)**
**Hearing on 11 – 12 December 2025**

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*Suggested pre-reading, preferably in this order (all bundle references are to the Summary Dismissal Application Bundle):*

- *Application notice (**E1**); Amended grounds for summary dismissal (**E15**)*
- *Carter-Ruck's letter dated 26 Apil 2017 to Ms McAdam (the McAdam Letter) (**X779**)*
- *Rule 12 statement (**A4**); Respondent's Answer (**B1**); Reply (**C1**)*
- *Opinion of Adrienne Page KC dated 4 April **(X1195)***
- *The parties' skeleton arguments*

## Section A: Introduction and summary

1. The respondent, Claire Frances Gill, applies for summary dismissal of the allegation on the grounds that it does not raise any proper issue of professional misconduct and has no real prospect of success.

2. The SRA's case, when properly analysed, can be seen as a doomed attempt to reintroduce the concept of a "duty of due diligence" – a duty which it has already had to abandon when presented with an Opinion of the late Timothy Dutton KC, CBE. The SRA would have to establish a radical new regulatory liability on the part of defamation solicitors: that whenever a solicitor is aware that the issue of litigation, or even the threat of litigation, on behalf of the client is motivated by the client's desire to send a message that the allegations facing the client are untrue, he must decline to act further unless and



I42

until he has been provided with evidence that would satisfy him that the allegations against the client are untrue. The legal and practical effect would be that the solicitor could not act on the basis of his client's instructions that the allegations are untrue, but would have to conduct inquiries (or "due diligence" as the SRA has termed it) to satisfy himself that the client's claim for defamation will succeed. That would involve setting himself up as judge of his own client's case, or a pre-trial screen, an idea that runs contrary to fundamental principles of law that govern the constitutional role of lawyers in the legal system.

3. Ms Gill was admitted as a solicitor in 1996. She has been a partner at Carter-Ruck since 2000, practising defamation law. The SRA has in its possession references of the highest quality speaking to her honesty, integrity and standing in the profession.[1]

4. Ms Gill and her firm were notified of the SRA's investigation into them on 18 May 2020 (**X1016-19**). On 23 May 2023, over three years later, the late Dr Sam Jones, a senior investigation officer at the SRA, sent a memorandum to senior colleagues recommending that the investigation of Ms Gill's conduct in relation to the OneCoin retainer be closed without further action.[2]

5. Following the intervention of senior colleagues and, it would appear, mounting political pressure to be seen to be taking action against so-called SLAPPs[3], on 23 May 2025 – over five years after the investigation into Ms Gill's conduct commenced, but without even interviewing Ms Gill – the SRA commenced these proceedings. The sole allegation is that on or around 26 April 2017, Ms Gill "sent or arranged to be sent correspondence to Jennifer McAdam which contained an improper threat of litigation" ("the McAdam Letter") for the reasons alleged in paragraphs 131–143 of the Rule 12 statement (**A43-46**), and further explained in Blake Morgan's letter dated 10 July 2025 (**M4-M5**). Notwithstanding the diffuse Rule 12 statement, the SRA now says that it puts its case "on a narrow factual basis" (SRA skeleton/paragraph 3). The essence of that case is that the threat of litigation contained in the McAdam Letter was improper

[1] See the character references of Adrienne Page KC (**X227-229**) and Desmond Browne KC (**X230-233**).
[2] In successfully resisting Ms Gill's application for disclosure of the memorandum, the SRA said that it would not deny the inference that Dr Jones recommended that the investigation be closed (see SRA's Response to disclosure application at paragraph 28.2 (**E43**)).
[3] See comments by Paul Philip in evidence before the Communications and Digital Committee on 24 January 2023 (**676**); announcement of the Department of Culture, Media and Sport dated 11 September 2023 **(J1627-1631)**; further comments by Paul Philip before the Committee on 7 May 2024 (J**16-30**); letter by the SRA to Baroness Stowell of Beeston dated 3 March 2025 (**E46-48**) (document will be added to bundle after filing of this skeleton argument.

because the litigation intimated against her would have been, to Ms Gill's knowledge, for the sole or dominant purpose of sending a false PR message and, therefore, an abuse of the court's process. In the event, the hypothetical "false PR Message" was never sent, as Ms Gill advised against proceedings being brought.

6. The SRA's case is fatally flawed in law. It conflicts with fundamental principles of law and professional conduct. No amount of evidence can save it. There are no issues of fact that require determination at a full hearing.

   a. The facts alleged in the Rule 12 statement provide no arguable basis in law for a finding that Ms Gill would have been knowingly lending her assistance to any abuse of process by her client if proceedings had been commenced. When writing the McAdam Letter, Ms Gill was entitled to proceed on the basis of her instructions from OneCoin that the allegations against them were untrue, that the claim (if brought) would have been an honest one and that, therefore, the PR motivation in commencing proceedings would have been an honest one. In so far as the client's claim, and its PR motivation, would have been dishonest, Ms Gill would not have been professionally responsible for her client's abuse of process.

   b. Neither the content of the McAdam Letter nor the facts alleged in the Rule 12 statement are capable of supporting the SRA's case that the threatened litigation would have conveyed the alleged false PR Message, let alone that Ms Gill knew that it would.

   c. The SRA's case based on the false "Message" is a tortuous and logically flawed lawyer's construct that re-writes the McAdam Letter to say something which it does not say, and drives a coach and horses through the clear and fundamental principles underpinning the constitutional role of lawyers, including that a lawyer (i) is entitled to act on his client's instructions, unless he *knows* them to be false, (ii) is not required to investigate the truth of his client's instructions, save to the extent instructed to do so, or to satisfy himself that the client is "ready and willing to demonstrate to a court that the allegations made about them are untrue" (the so-called "Message") and (iii) does not vouch for his client's case and is not to be identified with him.

   d. The SRA cannot therefore, on the facts alleged, establish misconduct, let alone serious, culpable and reprehensible conduct such as to engage Principles 2 and 6

and Outcome 11.1. Its case amounts to an unlawful attempt to punish Ms Gill because OneCoin turned out to be a fraud. Ms Gill cannot be held professionally responsible for the fact that, on the case alleged in the Rule 12 statement, OneCoin was seeking to abuse the legal process. If the SRA wishes to introduce new standards and rules for solicitors conducting defamation cases or any other civil litigation, then it may only do so in accordance with the statutory process in the Legal Services Act 2007. It is not open to the SRA in these proceedings to subvert the careful balance that the law has struck between the rights of potential claimants to be legally advised and represented and to have access the courts, the duties of lawyers to enable that to happen, and the interests of potential defendants.

7. The lamentable background to these proceedings – the SRA's gross delay in completing its investigation, the overruling of the senior investigation officer's recommendation that the investigation be closed without any action, and the SRA's radical change of course against the backdrop of political pressure to be seen to be doing more about SLAPPs – underscores the importance of examining at this stage whether the SRA's case is sound in law.

**Section B: Summary dismissal – the Tribunal's jurisdiction**

8. It is common ground that the Tribunal has jurisdiction summarily to dismiss an application to the Tribunal after it has been certified. The jurisdiction is inherent in Rules 6 and 4 of The Solicitors (Disciplinary Proceedings) Rules 2019.

9. In *Law Society v Adcock* [2006] EWHC 3212 (Admin); [2007] 1 WLR 1096, the Divisional Court held at [30] – [32] (**J355**) to the effect that pursuant to the predecessor to Rule 6(1), the Tribunal has jurisdiction to dismiss a case on a summary basis after it has been certified, and before a full hearing at which witness evidence may be adduced, and that this will be appropriate if the allegations of misconduct in Rule 12 cannot be made out even if witness evidence is adduced. The jurisdiction is a salutary one. A solicitor ought not to be put through the anxiety, expense and delay entailed by a full hearing, with witness evidence, of allegations that are bound to fail as a matter of law. The point has particular force in proceedings such as these which have inexcusably taken five years to come before the Tribunal.

10. Rule 12 requires that an application to the Tribunal be supported by a statement setting out the allegations and the facts and matters supporting the application and each allegation within it. It is well-established that the SRA is confined to the case advanced in the Rule 12 statement, and that allegations of misconduct must be clearly particularised so that a respondent solicitor knows the case that he or she has to meet.[4]

11. Ms Gill does not accept that the SRA's account of the facts set out in the Rule 12 statement is fair, accurate and materially complete. However, since the Tribunal is being invited to dismiss the case summarily, it should proceed, for the purposes of this application only, on the basis that the facts alleged in the Rule 12 statement are true, save as regards the alleged false "Message" and Ms Gill's alleged knowledge of it, which are misconceived in law.

12. The Rule 12 statement is accompanied by a bundle of documents, HWP/1, running to 1,283 pages (see the index at **A50 – 59**). The SRA relies on the documents in HWP/1 as evidence as to the truth of their contents.[5] It will be necessary to make only limited reference to those documents at the hearing. They include an Opinion of Adrienne Page KC, one of the most eminent and senior defamation silks at the Bar, on matters of law and practice that Ms Gill submitted to the SRA before these proceedings were commenced (**X1195**). It ought to be uncontroversial. The SRA can scarcely object to the contents of an Opinion that it has put in evidence and relies on. In any event, the points made by Ms Page are supported by *Defamation Law, Procedure & Practice* (4th ed., 2009), co-authored by the SRA's leading counsel, David Price KC.

**Section C: Relevant professional principles**

13. The following fundamental legal and professional principles concerning a lawyer's duties, none of which are controversial, provide the starting point for consideration of the sustainability in law of the SRA's case. The Tribunal is invited to read the fuller description of them in paragraphs 72 to 80 of the Answer (**B29-35**).

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[4] *Richards v Law Society* [2009] EWHC 2087 (Admin) at [30] ("the purpose of a Rule 4(2) statement is to inform the solicitor fairly and in advance of the case he has to meet") (**J600**) and *Thaker v SRA* [2011] EWHC 660 (Admin), at [64] ("It is the duty of the draftsman (not the reader) of a pleading or a Rule 4 statement to analyse the supporting evidence and to distil the relevant facts, discarding all irrelevancies") (**J1366**).

[5] See Capsticks' letter dated 16 June 2025 (**M1-M3**) serving a notice pursuant to Rule 28(6) and a notice under Rule 29 and the Civil Evidence Act 1995 that the SRA will rely on the matters set out in, and in the documents exhibited to, the Rule 12 statement at the hearing. See also section 2 of the Civil Evidence Act 1995.

14. First, a solicitor is entitled, indeed bound, to put forward his client's factual case based on the client's instructions, even though he may doubt or disbelieve his client's case, unless he positively knows that his client is not telling the truth (which will rarely if ever be the case, unless the client tells the lawyer that he is lying). It is not the lawyer's role to act as judge of the client's case. If the client's instructions as to the facts support a case that the solicitors consider to be properly arguable in law, then he is entitled (indeed bound) to advance that case in correspondence and in court proceedings, if instructed to do so, whatever beliefs he may have formed about its prospects of success.[6] The lawyer putting forward the client's case on instructions does not vouch or represent to the court or any third party that his client is telling the truth, and must not be identified with the client.[7] Moreover, he owes no duty to the opposing party in litigation in relation to the conduct of proceedings. This means that he owes no duty to protect the opposing party from exposure even to the expense of a hopeless claim – whatever his views as to the merits of that claim.[8]

15. Secondly and relatedly, a solicitor is not required to investigate the truth of his client's instructions, or to obtain evidence to support them, before writing a letter before action or commencing proceedings, save to the extent he is instructed to do so.[9] The misconceived case, advanced as allegation one in the SRA Notice of 8 February 2024 recommending referral to the Tribunal, that Ms Gill was required to conduct "due diligence" to satisfy herself that her instructions were true, was rightly rejected by the SRA's authorised decision maker (paragraph 20 **X1155**).

16. The principles summarised above apply to the law and practice of defamation no less than they apply in any other area of legal practice. The right to reputation is a fundamental legal right, inherent in Article 8 of the European Convention on Human Rights, which the law recognises merits protection (and is of equal standing with the

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[6] *El Haddad v Al Rostamani* [2024] EWHC 448 (Ch) at [41] – [44] (**J804-805**), *Medcalf v Mardell* [2002] UKHL 27; [2003] 1 AC 120 at [51] – [53] (**J1010-1011**). The same principle is found in the BSB Code of Conduct at gC6 (**J1554-1555**).

[7] *El Haddad* at [41] – [44] (**J804-805**). *Law Society of Scotland v Scottish Legal Complaints Commission* [2010] CSIH 79; 2011 SC 94 at [27] ("In no sense could the solicitor, in these circumstances, be said to warrant, or be personally responsible for, the accuracy of what he was told") (**J947**).

[8] *Tolstoy-Miloslavsky v Aldington* [1997] 1 WLR 736, 746C (there is an "absence of any duty to protect the opposing party in the litigation from exposure to the expense of a hopeless claim") (**J1490**).

[9] *El Haddad* at [43] ("a lawyer does not owe the court or another party to the case any duty to investigate the facts, or to ascertain the truth, before advancing the factual case on behalf of their client.") (**J805**), *Law Society of Scotland* at [27]; ("Nor could it be said that he had any duty to carry out any independent check or checks as to whether the information he received was true") (**J947**).

right to freedom of expression).[10] The principles are of particular importance in this case because, as stated below (paragraph 19), the SRA does not allege that Ms Gill knew that her instructions that the defamatory allegations were false were themselves false, or that she had insufficient instructions to write the McAdam Letter. Nor does it allege that, as at 26 April 2017, Ms Gill would have had insufficient instructions to issue proceedings against Ms McAdam, if instructed to do so. The sole basis of the SRA's elaborate, convoluted, criticism of the McAdam Letter concerns the purpose for which it is alleged any proceedings against Ms McAdam would have been brought.

17. As to that, thirdly, there is nothing inherently improper or abusive in bringing a defamation claim for the purposes of public relations. A claimant's motive for bringing a claim is generally irrelevant. Since the law of defamation is concerned with protecting and restoring reputation that has been damaged by defamatory imputations, defamation claims are often motivated by public relations and in the case of corporate libel claims are almost always bound to be.[11] As is well known, if defamatory statements are not challenged the inference may be drawn that they are true. The SRA's leading counsel puts the point thus at paragraph 37-05 of his book: "a good PR advisor can be an essential part of the team. The practice of defamation can sometimes resemble PR crisis management. Although media lawyers tend to pick up certain PR skills, it is generally no substitute for expert advice."

18. Finally, only conduct that is serious, culpable and reprehensible may engage Principles 2 and 6 and Outcome 11.1.[12] These rules are reserved for the most serious breaches of the rules that govern the profession.[13]

**Section D: The relevant facts alleged in the Rule 12 statement**

19. The section entitled "The facts and matters relied on in support of the Allegations [sic[14]]", paragraphs 7 to 127, spans 39 pages (**A5 – 43)**. It does not seek to relate the diffuse factual narrative to the sole allegation that it is said to support. This regrettably

[10] *Pfeiffer v Austria* (2009) 48 EHRR 8 at [35] (**J1072-1073**), *In Re S (A Child)* [2005] 1 AC 593 at [17] (**J877**).
[11] For the reasons explained by Lord Bingham in *Jameel v Wall Street Journal* [2007] 1 AC 359 at [26] (**J901**). See also paragraph 17 and 19.2 of the Opinion of Adrienne Page KC (**X1199 – 1200**).
[12] *SRA v Leigh Day* [2018] EWHC 2726 (Admin) at [156] – [158] (**J1339-1340**); *SRA v Dentons UK & Middle East LLP* [2025] EWHC 535 (Admin) at [72] (**J1306**) (endorsing concession that seriousness is inherent in Principle 6).
[13] As to Principles 2 and 6, see *Wingate v Evans* [2018] EWCA Civ 366; [2018] 1 WLR 3969 at [98] – [105] (**J1541-1542**).
[14] There is only one allegation. See paragraph 1 of the Rule 12 statement.

obscures the essential facts that are alleged to give rise to misconduct. The following points are noted regarding the SRA's factual case at this stage:

a. The SRA says that it is now known, in 2025, that OneCoin was a fraud, and that Dr Ignatova and her associates were defrauding investors (paragraph 12 **A6**). But it does not allege that that was known during the material period. Nor, therefore, does the SRA allege that Ms Gill knew that OneCoin was a fraud and that investors were being defrauded. The SRA puts its case no higher than that Ms Gill was aware of a "strong possibility" that OneCoin was fraudulent (paragraph 136 **A44**). It therefore necessarily accepts that she believed that OneCoin might not be a fraud.

b. The SRA does not allege that Ms Gill did not have instructions to support the case advanced in the McAdam Letter to the effect that OneCoin was not a criminal enterprise. She plainly did. The McAdam Letter (X779) on which the SRA relies is evidence that she did. Nor does it allege that she knew her instructions were untrue. She plainly did not. The SRA's case must, therefore, be assessed on the basis that Ms Gill did have such instructions, and that she was entitled, indeed bound, to put forward her client's case, based on her instructions, fearlessly in the client's interests in accordance with the principles stated above (paragraphs 14 and 15 above).

c. The McAdam Letter was notably moderate in content and tone. It went no further than routine letters of complaint of this kind.[15] It did not vouch for the truth of the client's case ("*we are instructed that…*"). The relief sought fell short of that which is commonly sought in complaints brought in respect of widely-published libels, in particular in that no public retraction of the allegations or compensation was sought.

d. Ms Gill's advice, at the time of the McAdam Letter, was that the PR advantage of being seen to challenge the defamatory statements outweighed the risks of litigation, as set out in her email of 20 April 2017 on which the SRA's case is founded (Rule 12/paragraph 101 **A33**).

e. When she sent the McAdam Letter, Ms Gill was expecting to receive evidence that would enable OneCoin to rebut the blockchain allegations (Rule 12/paragraph 69 **A21** and 77 **A23** and **X711**). The SRA does not allege that OneCoin's inability to refute Ms McAdam's allegations was already clear when Ms Gill sent the McAdam

[15] See eg precedent letter of claim in relevant (12th) edition of *Gatley on Libel and Slander* at Appendix 1, A1.1 (**J1625-1626**).

Letter. On the SRA's case, the inadequacy of that evidence only became apparent on 9 May 2017, some two weeks after the McAdam Letter was sent (Rule 12/paragraphs 119 – 122 **A40-41**).

f. Only two days later, having taken Counsel's advice, Ms Gill advised OneCoin against bringing a claim against Ms McAdam in light of the risks of litigation (Rule 12/ paragraph **127 A42-43**).

g. The Rule 12 statement fails to record that Ms Gill did not correspond further with Ms McAdam, who did not reply to the letter of 26 April 2017, and that no claim was brought against her for defamation or for *Norwich Pharmacal* relief.

**Section E: Submission as to why the SRA's case must fail in law**

20. The question whether the Rule 12 statement discloses a case in law must be assessed by reference to (1) that facts alleged against Ms Gill, (2) what is not in dispute/not alleged, and (3) the relevant professional principles.

*Submission 1: On the facts that Ms Gill is alleged to have known when she sent the McAdam Letter, she would not have been professionally responsible for any abuse of process of her client*

21. The regulatory obligations to act with integrity and to maintain public trust must comprise identifiable standards; the Tribunal does not have carte blanche to decide for itself what these obligations means (see *Beckwith v SRA* [2020] EWHC 3231 (Admin) at [33] and [43] (**J635-636**)). The SRA has selected abuse of process (or "abuse of the litigation process" as it is alternatively described in Rule 12/paragraph 137 **A44**) as the relevant legal standard on which its case depends (see Rule 12/paragraph 137 – 138 **A44-45**, Reply paragraphs 10 – 12 (**C4-5**) and SRA skeleton/paragraphs 4 11, 16 – 25). As the SRA accepts (see e.g. Rule 12/paragraph 135 **A44** and SRA skeleton/paragraph 11), Ms Gill would only have had professional responsibility for any abuse of process committed by OneCoin if, when she sent the McAdam Letter, she *knew* that the intimated proceedings would involve such abuse (see e.g. the citation from *Ridehalgh* at SRA skeleton/paragraph 4). This follows from the fact that solicitors are entitled, in fact bound, to put forward their client's factual case even though they may doubt its truth, unless they positively know that it is untrue (see paragraph 14 above).

22. If the SRA cannot, on the facts alleged in the Rule 12 statement, establish that Ms Gill knew when she sent the McAdam Letter that the threatened proceedings would be an abuse of process, then the proceedings must fail and ought to be dismissed now. The

essential question for the purposes of this summary dismissal application is therefore this: On the facts that Ms Gill is alleged to have known when she sent the McAdam Letter (in particular that there was a "strong possibility" that the allegations against OneCoin were true but she did not know that they were true, see Rule 12/paragraph 136 **A44**), could she have known that the proceedings intimated against Ms McAdam would be an abuse of process if they were brought?

23. The answer is clearly "no". The law as to abuse of process is stated in two well-known Court of Appeal decisions: a claimant is "not entitled to use litigious procedures for purposes for which they were not intended, as by issuing or pursuing proceedings for reasons unconnected with success in the litigation or pursuing a case known to be dishonest" (Sir Thomas Bingham MR in *Ridehalgh v Horsefield* [1994] Ch 205 (at 234D-F) (**J1248**)); or to "lend his assistance to a litigant if he is satisfied that the initiation or further prosecution of a claim is *mala fide* or for an ulterior purpose or, to put it more broadly, if the proceedings would be, or have become, an abuse of the process of the court or unjustifiably oppressive" (Sir John Donaldson MR in *Orchard v South Eastern Electricity Board* [1987] QB 565(at 572E-F) (**J1029**)). The SRA does not allege that Ms Gill pursued or threatened to pursue a case known to her to be dishonest or *mala fide*. Nor could it, because it accepts that whatever the client may have known, she did not know that the allegations were untrue. Its case is directed at an improper purpose – "the use of the litigation for reasons that are not connected to resolving genuine disputes or advancing legal rights" (*SRA Guidance* quoted in the Rule 12 Statement at paragraph 137 **A44-45**).

24. As to that type of abuse, within the context of defamation litigation, the Court of Appeal has laid down clear principles, and a strict test, for such a species of abuse of process (on which the SRA's confirms the SRA's case is based, see paragraphs SRA skeleton/paragraphs 16 – 25). An action is only an abuse if the Court's processes are being used to achieve something not properly available to the claimant in the course of properly conducted proceedings. There are two distinct categories of such abuse: (i) the achievement of a collateral advantage beyond the proper scope of the action; and (ii) the conduct of the proceedings themselves not so as to vindicate a right but rather in a manner designed to cause the defendant problems of expense, harassment, commercial prejudice or the like beyond those ordinarily encountered in the course of properly conducted litigation. Only in the most clear and obvious case is it appropriate upon

preliminary application to strike out proceedings as an abuse of process so as to prevent a plaintiff from bringing an apparently proper cause of action to trial. See *Broxton v McClelland (No. 1)* [1995] EMLR 485, 497-498 (CA) (**J666-667**), citing *Goldsmith v Sperrings* [1977] 1 WLR 478, (CA) (**J835-866**). The test to be applied is an objective one.[16]

25. The SRA's case is founded on the proposed litigation being for a collateral advantage beyond the proper scope of litigation, i.e. category (i) above (see SRA skeleton/paragraphs 16 - 25). On the facts alleged in the Rule 12 statement, Ms Gill could not have known of a "collateral advantage beyond the proper scope of the action" when she sent the McAdam Letter. The SRA says, at Reply/paragraph 9 (**C4**) that its case depends on the distinction between honest PR (acceptable) and dishonest PR (unacceptable). However, given that Ms Gill was entitled to proceed on the basis that her instructions were true, she was also entitled to proceed on the basis that any PR message implied by the commencement of proceedings would be an honest message. Since she is not alleged to have known that OneCoin was a fraud, in accordance with the principles summarised in paragraphs 14 and 15 above, she would not have been professionally responsible for any dishonest claim brought by OneCoin against Ms McAdam or for any dishonest "message" arising from its mere issuance. On any view, on the facts known to Ms Gill on 26 April 2017, the proposed proceedings would not be a "most clear and obvious case" of abuse. No evidence is capable of overcoming this legal flaw in the SRA's case.

26. Lastly, there is an obvious artificiality and unfairness in the SRA's case. No litigation was issued against Ms McAdam, so there was no abuse of the court's process in any event. The SRA has therefore been forced to introduce the concept of a sort of 'inchoate' regulatory offence of embarking on a strategy which would, had it been pursued, have involved an abuse of the court's process. But the known facts simply do not support that description: after the sending of the McAdam letter, the advice of specialist Leading Counsel (then Matthew Nicklin QC, now Mr Justice Nicklin, a High Court Judge and the Presiding Judge in Wales) was obtained and Ms Gill gave entirely proper advice to

[16] *Wallis v Valentine* [2002] EWCA Civ 1034; [2003] EMLR 8 (CA) at [32] (**J1513-1514**), citing *Goldsmith* and *Broxton*.

the client not to issue such a claim, informed by her assessment of the evidence that she had been provided with in the meantime (Rule 12/paragraph 126 **A42**).

*Submission two: The case based on the false "Message" cannot assist the SRA*

27. Since the SRA's case founded on abuse of process must fail in law, the allegation that the McAdam Letter contained an improper threat of litigation must likewise fail in law.

28. It is worth pausing to note that nothing else is alleged to have been improper about the McAdam Letter. In particular, the SRA accepts that Ms Gill was entitled to assert on the basis of her instructions that OneCoin had been defamed, that its reputation had been damaged, and to ask that the defamatory materials be taken down. Given that, on the facts known to her, the contemplated litigation would not have been an abuse of process, she was perfectly entitled to threaten it. Indeed, she was bound to do so, as that was what her clients had instructed (Rule 12/paragraph 106 **A34**).

29. The elaborate edifice of the false PR message must, therefore, also fall with the collapse of the abuse of process allegation with which it is inextricably bound up. The three elements of the false message case are addressed in the Amended Summary Grounds (paragraph 6 **E23-24**), and briefly below.

*[1] The allegation that the commencement of proceedings would have conveyed the "Message" that OneCoin was "ready and willing to demonstrate to a court that the allegations made against them were true (Rule 12/ paragraph 131 **A43**). It is alleged that the "Message", as contemplated by Ms Gill when she sent the McAdam Letter, would have been conveyed by the mere initiation of the proceedings, and nothing else (Blake Morgan Letter **M1**; Reply/[8] **C3**).*

30. The commencement of proceedings does not, as matter of law, convey a message that the client is "*ready and willing to demonstrate to a court that the allegations made against them were true*". Rule 22 of the Civil Procedure Rules requires only that the claimant, or a solicitor on its behalf, certify that the claimant believes that the facts stated in the claim form (and in any particulars of claim that accompany them) are true. There is no requirement under the CPR that a claimant in defamation proceedings be ready and willing to demonstrate to a court that the allegation made against them is untrue. The need for proof arises only at trial, and even then only if the defendant has pleaded the defence of truth (on which he carries the burden of proof).[17] At its highest, the only message that the commencement of proceedings could reasonably convey is one to the effect that the claimant believes the facts stated in the claim are true and that

[17] *Gatley on Libel and Slander* (12th ed) at 11.4 (**J1621-1622**). The law has not changed since this edition.

it is entitled to the relief it seeks. But that would apply in all cases, it would be the client's message, not the solicitor's, and the solicitor would not be responsible for its truth or falsity, unless he *knows* that it is untrue.

*[2] The allegation that "Message" would have been false because a claim could not have been pursued beyond the initial stage because OneCoin had repeatedly failed to provide the fundamental information and/or documentation to address the truth of the allegations made by Ms McAdam and numerous others (Rule 12/paragraph 132* ***A43****).*

31. The allegation of falsity depends on the "Message" being conveyed by the commencement of proceedings. Since the "Message" is misconceived in law, the question of its alleged falsity does not arise. But even if the SRA could prove that the commencement of proceedings would have conveyed the "Message", its case on falsity must fail. Its own pleaded case is that, when Ms Gill sent the McAdam Letter, she was waiting for instructions and information regarding the blockchain (see paragraph 19.e above). Thus, as matter of simple logic on the SRA's pleaded case, to which it must be held, the "Message" could not have been false as at 26 April 2017. Whether it was false when any proceedings were later commenced would depend on what if any further information and evidence the client provided Ms Gill after the letter was sent. It would not be rationally open to a Tribunal, on the SRA's pleaded case, to hold that the Message was false when Ms Gill sent the McAdam Letter.

*[3] The allegation that Ms Gill knew that the Message would be false (Rule 12/ paragraph 135* ***A44****)*

32. The allegation of knowledge of falsity of any message does not arise because the SRA cannot prove either the Message or its falsity. But even if it could prove both of those elements, Ms Gill cannot, as a matter of simple logic on the SRA's pleaded case, have known, when she sent the McAdam Letter on 26 April 2017, that the Message would be false when the proceedings were commenced. That is because the Message was not false as at 26 April 2017 (see paragraph 31 above), and whether it would be false when any proceedings commenced would depend on what happened after the McAdam Letter was sent. So again, it would not be rationally open to the Tribunal, on the SRA's pleaded case, to hold that Ms Gill knew that the Message was false when she sent the McAdam Letter.

33. It is not open to the SRA to seek to escape these logical flaws in its pleaded case by saying that Ms Gill intended, when she sent the McAdam Letter, to commence litigation

whether or not she received further information and evidence, as is suggested in paragraphs 27 to 33 of the SRA's skeleton argument). Its pleaded case depends on the state of affairs, and Ms Gill's knowledge, as at 26 April 2017 (Rule 12/paragraph 135 **A44**).

*Paragraphs 55 to 61 of the SRA's skeleton argument*

34. The SRA seeks to rely on other materials that are said to illustrate Ms Gill's willingness to engage in misleading PR message. No allegation is made in respect of those materials. They cannot overcome the impossibility of the SRA proving its case based on the false PR "Message" and abuse of process on which it depends.

*Standing back: the SRA's challenge to fundamental principles*

35. The SRA's case is in truth a rehashing of the "due diligence" allegations that it was forced to abandon on being presented with the Opinion of Timothy Dutton CBE, KC to the effect that the SRA was breaching its duties under the Legal Services Act 2007 (see paragraphs 28 to 30 **B15-16** of the Answer and paragraphs 72 to 74 and 78 to 88 of the Opinion **X267-271**). If accepted, it would mean that solicitors acting for claimants could not make threats of litigation without fear of regulatory sanction unless, having investigated the client's case, they were satisfied that the client could prove its case. That is the very thing that they are not professionally required to do. Where truth is in issue in defamation proceedings, it is for the court to resolve that question at the appropriate time. The SRA's case brings it into direct conflict with fundamental principles, including the fundamental right of access to legal advice and the courts (see paragraph 95 of the Answer **B44**). It demands that solicitors do precisely what Sir John Donaldson MR warned against in *Orchard v South Eastern Electricity Board* [1987] QB 565 at 572E (**J1029**): to "*impose a pre-trial screen through which a litigant must pass before he can put his complaint or defence before the court*".

36. For the same reasons, the SRA's case contravenes the constitutional principles that a person should not be penalised except under clear law (*see Bennion, Bailey and Norbury on Statutory Interpretation* at paragraph 26.4 (**J1611**)); that solicitors should be able to ascertain what is demanded of them (see *Patel v SRA* [2012] EWHC 3373 at [13] (**J1042**)); that the law must so far as possible be intelligible, clear and predictable, and that where possible it should be interpreted an applied consistently with the

fundamental principles of the common law. See also paragraph 80.4 and 95 of the Answer (**B35, B44**).

**Section G: Conclusion**

37. Since the allegation and the proceedings are bound to fail as matter of law, it is therefore in the interests of justice and in accordance with the overriding objective of dealing with cases justly and at proportionate cost that the Tribunal summarily dismiss the allegation. Whilst the legal deficiency of the SRA's case provides a sufficient justification for summary dismissal, the following considerations make it a particularly appropriate course in this case.

    a. The process has been marred by deplorable, inordinate delay by the SRA.

    b. The investigation officer recommended that the investigation be closed without further action prior to the involvement of unidentified "senior colleagues".

    c. Pursuit of a legally misconceived allegation following an inordinate period of delay is an unlawful interference with Ms Gill's right to respect for private and family life under article 8 of the European Convention on Human Rights, which the Tribunal is required to respect pursuant to section 6 of the Human Rights Act 1998. It is anticipated that the Tribunal will readily accept that these proceedings are the occasion of acute distress, not least because they lack a proper basis in law.

**JUSTIN RUSHBROOKE KC**
**5RB, Gray's Inn**

**RICHARD COLEMAN KC**
**SAMUEL BURNS**
**Fountain Court Chambers**

**8 December 2025**



I56