

ADVICE

1. By letter dated 21st December 2014, I was asked to act on behalf of the Professional Conduct Committee and prosecute the above matter before the Tribunal.
2. The papers relate to the charging and subsequent conviction of XX for cheating the public revenue. There were nine counts in respect of which was convicted. It is unclear from the papers precisely the years in respect of which this occurred but they appear to have fallen between 2012/2013 and 2014. These dates appear in a File Report but do not necessarily tally with an earlier paragraph in the Note which refers to the failure to submit of tax returns for the years 2010/2011 to 2011/2012. This will doubtless be clarified on receipt of the Indictment, (referred to below) or similar documentation. In the charge I have used the wider range to avoid difficulty.
3. Having read the correspondence, the only issue would appear to relate to mitigation. In his letter of 6th December 2014 XX is keen to ensure that the matter is not concluded prior to consideration of the quantity of material, in particular medical reports especially that of his treating psychologist.
4. It follows that the papers in this case should include those documents and XX should be asked to provide them accordingly.
5. The only other matter upon which the Tribunal might require assistance relates to the amount defrauded. I have no details of this although the Statement of Conviction includes a Confiscation Order for £60,000. Whilst I can realistically assume that the fraud was for a sum equal to or greater than that that it would be helpful if the particulars of the indictment could be found for some other document that might indicate the extent of the monies defrauded and included in the bundle).
6. In addition to that referred to at paragraph 5 above:
 - a. XX email to John of 28 September 2014

- b. John's responses of 5 October 2014.
- c. PCC's letter of 25 October 2014:
- d. PCC's letter of 17 November 2014.
- e. PCC's letter of 30 November 2014.
- f. XX email of 2 December 2014
- g. PCC's e-mail response of 3 December 2014.
- h. XX's email of 6 December 2014
- i. Certificate of Conviction.
- j. PCC's letter of 20 December 2014 advising of referral to Disciplinary Tribunal.

7. Subject to those limited observations this would appear to be a straight-forward prosecution.

8. If I can be of further assistance please do not hesitate to contact. For reference; my contact details are :

Telephone:

Email:

11TH JANUARY 2006

Gray's Inn London

ADVICE ON EVIDENCE AND CHARGE

1. Introduction

1.2 I am counsel instructed to prosecute this matter in which the PCC have until 1St February 2006 to serve the charge sheet and directions to be sought.

1.3 I have drafted two charges relating to allegations of breaches of paragraphs 301(a) and 905(d) (see attached).

1.4 I have approved the proposed directions hearing that were sent with my, instructions, however the name of the 'defendant requires amending it presently relates to Mr...

2. The Allegations

2.1 The Bar Council of Malaysia informed those who instruct me that S ("S "), who was called to the Bar by Lincoln's Inn on 27th November 1984, was struck off the Roll of Advocates and Solicitors of the High Court of Malaya by order of the Disciplinary Board on 16th March 2005.

2.2 Enclosed within the correspondence was a copy of the relevant order and the Disciplinary Committee Report.

2.3 From consideration of the same the following picture emerges:

- a) S represented a plaintiff in a civil action, arising out of a traffic accident, in which consent judgment was entered on 27th December 1996 and the defendants were ordered to pay compensation and costs totaling RM46,460.
- b) hereafter, despite repeated telephone calls and correspondence, S failed to transfer any of the monies to the plaintiff.
- c) He reported the matter to the Malaysian Bar Council on 14th July 1997 and lodged an official complaint on 28th October 1997
- d) The Malaysian Bar Council wrote to S requesting information about the complaint on 26th May and 10th September 1998: no response was received.

- e) The Investigating Tribunal wrote to S on 24th October 2002 advising him of the option to provide a written explanation before the complaint was investigated: no response was received.
- f) By letter dated 16th February 2004 S was advised that, disciplinary hearing would be held on 3rd March 2004, however he wrote to the Chairman advising the tribunal that he would be unable to attend but that the facts were self-explanatory.
- g) Thereafter the tribunal found the allegations proved and struck him off the record.

2.4 The allegations made against S and his failure to answer them in any way formed an unanswerable case of dishonesty against him in Malaysia that should prove to be the same here, but there are certain additional matters that require consideration before a complete picture can be presented.

3. Further Evidence

3.2 Those who instruct me wrote to S on the following dates; 15th July, 5th and 24th August, 12th and 29th September, 15th November, and 1st December. There has been no response to any of this correspondence, however, each piece was sent to the address of his firm, Messrs LH. Wong and S in Johor Bharu.

3.3 The report of the Malaysian tribunal makes it clear that S ceased to practise in MY 1999, no doubt severing his connection with the firm. This information needs to be confirmed and efforts should be put in train to find an alternative registered address in order that those who instruct me can satisfy themselves, and the Disciplinary Tribunal thereafter, that all steps to inform S of the complaint have been undertaken.

3.4 Does anyone know if the funds were ever actually transferred pursuant to the consent judgment? It is apparent from the report of the tribunal that, in the absence of any counterclaim by S, they proceeded on the assumption that the funds had indeed been transferred to him.

3.5 In order to present a complete picture to the Disciplinary Tribunal enquiries should be undertaken to clarify this position. To that end either the Bar Council of Malaya or the solicitors acting for the defendants in the original civil action should be contacted to provide confirmation of the relevant transfers.

3.6 I am missing the following items of correspondence from my papers:

- a) The Investigating Tribunal's letter of 16th February 2004.
- b) S reply to the same dated 3m March 2004.

3.7 Whilst the former simply completes the picture, the latter is essential since this provides the only response from S to these allegations and may establish at which address he can be contacted.

3.8 I note that the tribunal found that S was guilty of offences pursuant to sections 94(3)(c) and (h) of the Legal Profession Act: please could copies of the same be provided.

4. Conclusion

3.9 I anticipate that this is a matter that should prove relatively straight forward given the evidence already on the face of the papers and the lack of cooperation that S has shown thus far.

3.10 I have drafted the appropriate charges and seek no substantial amendment of the proposed directions.

3.11 Please could copies of the same, along with a paginated bundle of the evidence be forwarded to the Disciplinary Tribunal.

3.12 If I can be of any further assistance please do not hesitate to contact me.

22nd January 2006

Temple EC4Y 7BH