

**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

ASHLEY SIMON HURST

Respondent

WITNESS STATEMENT OF GILLIAN ELIZABETH PHILLIPS

I, **GILLIAN ELIZABETH PHILLIPS**, of an address known to the SRA, **WILL SAY AS FOLLOWS:**

1. I make this statement on the basis of my knowledge. Where the facts and matters are within my personal knowledge they are true and where they are not within my personal knowledge, they are true to the best of my knowledge, information and belief.
2. I provide this statement at the request of the Solicitors Regulation Authority Limited (“the SRA”) in relation to its investigation concerning Mr Ashley Simon Hurst (the “Respondent”).

Professional Background

3. My professional background is as follows:
 - a. From September 1984 to September 1987, I worked as a Solicitor in Clifford Chance’s litigation department;
 - b. From 1987 to April 1996, I worked as an Assistant Solicitor in the British Broadcasting Corporation’s litigation department;
 - c. From May 1996 to October 1997, I worked as a Legal Adviser / Solicitor for News International Newspapers Limited;

- d. From October 1997 to August 2000, I worked as a Senior Lecturer in Criminal Law, Civil & Criminal Litigation & Employment at the College of Law;
- e. From September 2000 to April 2009, I worked as a Solicitor and the Head of Litigation at the Times Newspapers Limited;
- f. From April 2009 to May 2023, I worked as the Director Editorial of Legal Services at Guardian News and Media Limited (“GNM”); and
- g. My current role is as a Freelance Solicitor and Editorial Legal Consultant.

Defamation practice

- 4. I will use the terms claimant and defendant in relation to a threatened defamation claim.
- 5. On the basis of my lengthy experience of defamation practice, I can say that it is generally understood that a defendant to a threatened defamation claim is at liberty to disclose the fact, as well as the nature of the claim.
- 6. I am not aware of a defendant being subjected to a claim for breach of confidence, whether that be for damages or an injunction, for having disclosed or threatening to disclose a threatened defamation claim or reproducing (i.e. publishing) the letter threatening it.
- 7. Freelance journalists or activists who are defendants often do not have access to legal advice. Individual journalists and editors who are threatened (in addition to any corporate entity) as well as freelancers and activists often disclose a threatened claim to people other than their legal representatives, for example, they might discuss it with other journalists or sources, their family or, in some cases, their MP. If thought to be newsworthy, the fact and nature of the claim might be reported. Very occasionally, the entire letter notifying the claim might be reproduced.
- 8. I am aware of such actions (i.e. a defendant to a threatened defamation claim disclosing or threatening to disclose the threaten claim or reproducing the letter, which includes the claim) sometimes being used to justify a possible claim for aggravated damages, if a

successful claim was brought. But it is generally understood that this is a decision which is for the defendant to make.

9. Occasionally the letter threatening the claim might contain some private or confidential information. If it was recognised that there might be that sort of information contained within a letter, or such information was specifically flagged, media defendants would in my experience normally respect the privacy or confidentiality of this information unless they felt able to identify a public interest reason for disclosing it further.

The use of “*Private & Confidential*”

10. Prior to the first SRA Warning Notice in November 2022 (“the Warning Notice”) it was in my experience fairly common for letters of complaint following publication to be headed “*Private & Confidential*”.
11. The general understanding of the label “*Private & Confidential*” would differ depending on who was receiving the letter. For someone in my position and other editorial legal specialists who would receive a lot of letters of complaints, it would generally have no particular impact or significance. We see this as a unilateral label applied by the claimant’s lawyers. For example, we feel free to refer such letters to our editorial clients and in an appropriate case to discuss them with other lawyers. Our editorial clients feel able to report the fact and nature of a threatened claim, if it was considered editorially newsworthy, whether against them or another publisher, whether or not the letter is headed “*Private & Confidential*”.
12. When such letters are sent directly to journalists rather than to the lawyers, they often find them confusing, in that they are unsure as to the meaning, scoping and effect of such labelling.
13. My work has sometimes involved me speaking to individuals who are not themselves legally represented, such as freelancers. In my experience they can be more impacted by the label “*Private & Confidential*”, which they can find confusing and might consider as warning against disclosure.
14. In my experience and from what I have gathered talking to others who act for media defendants, the use of such restrictive labelling has been far less common since the Warning Notice.

15. I have seen the communications between the Respondent and Daniel Neidle exhibited to my statement as **GEP1**. The Respondent's email of 16 July 2022 includes: "*It is up to you whether you respond to this email but you are not entitled to publish it or refer to it other than for the purposes of seeking legal advice. That would be a serious matter as you know.*"
16. I cannot recall an occasion when a communication notifying or threatening a defamation claim had specific wording seeking to restrict publication or disclosure in its body.

UK Politicians

17. In my experience, in recent years especially since the Defamation Act 2013 and even possibly before the Act, politicians in England and Wales would generally try to resolve potential reputational disputes by means other than litigation. It is rare for very senior current UK politicians such as Nadhim Zahawi was to threaten to sue for defamation; even if there was potentially defamation, even as far as the commercial media are concerned, politicians would often seek to resolve complaints informally. While complaints might be advanced through lawyers, often these would be resolved through the publisher's editor or the Independent Press Standards Organisation (IPSO) or another editorial body (in GNM this might be through its reader's editor) to try to resolve the accuracy of the article. There is a widespread perception that in a democratic society, it is important that people should feel free to critique and criticise government officials without fear of reprisal; that politicians put themselves forward for public scrutiny; and that they should expect to be judged on their actions and activities. Politicians here are often acutely aware that their actions can be seen as setting examples for other, less democratic regimes and may be interpreted – rightly or wrongly – as attempting to stifle public opinion. Even more so where they are senior members of the government, who are perceived to be powerful public figures and have the ability to speak in Parliament (under privilege). In my experience, most senior UK politicians are reluctant to make legal threats. This may depend on the nature of the complaint. In this case, as I understand it, Mr Neidle accused Mr Zahawi of lying. Politicians are often accused of lying. Lying is often seen as an expression of opinion in a political context and there is a general perception that politicians should not use defamation law to prevent expressions of political opinion.

Without prejudice approaches

18. In my experience, it is not uncommon where a claim is threatened, for an approach to be made by a claimant lawyer on a without prejudice basis at the same time as the open claim is made. It is rare for an initial approach to be made only on a without prejudice basis.

19. The email of 16 July does not appear to be making any concessions by reference to the way in which defamation litigation is generally conducted. The fact that Mr Zahawi appeared willing to accept a retraction from Mr Neidle would not have been seen as a sign of weakness by a publisher, but as reflecting the strategic reality of libel threats by senior politicians as explained above.

Statement of truth

20. I am willing to attend the final hearing to give evidence if I am required.

21. I believe that the facts and matters stated in this statement are true.

Signed:

A handwritten signature in black ink that reads "G. Phillips". The signature is written in a cursive, slightly slanted style.

Name: GILLIAN ELIZABETH PHILLIPS

Date: 3 November 2024