

**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

**STATEMENT PURSUANT TO RULE 12 (2) OF THE SOLICITORS (DISCIPLINARY
PROCEEDINGS) RULES 2019**

I, Ian Brook, am employed by Capsticks LLP, of 1 St George's Road, London, SW19 4DR. I make this Statement on behalf of the Applicant, the Solicitors Regulation Authority Limited ("the SRA").

The Allegations

1. The Allegations against the Respondent, Ashley Hurst, made by the SRA, are that, whilst working as a solicitor at Osborne Clarke LLP ("the Firm"), he:

1.1. On or around 16 July 2022, sent an e-mail to Dan Neidle that improperly attempted to restrict Mr Neidle's right to publish that e-mail and/or discuss its contents,

and in doing so breached any or all of Paragraphs 1.2, 1.4 and 2.4 of the SRA Code of Conduct for Solicitors, RELs and RFLs 2019 ("the Code") and Principles 2 and 5 of the SRA Principles 2019 ("the Principles")

The facts and matters in support of this Allegation are set out in paragraphs 7 to 63 below.

- 1.2. On or around 19 July 2022, sent a letter to Dan Neidle that improperly attempted to restrict Mr Neidle's right to publish that letter and/or discuss its contents,

and in doing so breached any or all of Paragraphs 1.2, 1.4 and 2.4 of the Code and Principles 2 and 5 of the Principles.

The facts and matters in support of this Allegation are set out in paragraphs 7 to 44 and 64 to 67 below.

Appendices and Documents

2. I attach to this Statement the following appendices:
Appendix 1: Relevant Rules and Regulations
3. I also attach to this Statement a bundle of documents, marked **Exhibit IWB/1**, to which I refer in this Statement. Unless otherwise stated, the page references in this Statement relate to the documents contained in that bundle.
4. The bundle **Exhibit IWB/1** is divided into the following sections:

Section A – Notice and Evidence Schedule
Section B - Representations to the Osborne Clarke LLP and Ashley Hurst Notice
Section C - Referral Decision
Section D – Other evidence

Background Summary

5. The Respondent is a solicitor (SRA ID: 316588), who was admitted to the Roll on 16 February 2004 (DoB: 18 June 1978). At the time of these Allegations, the Respondent was working at the Firm (SRA ID: 619990).

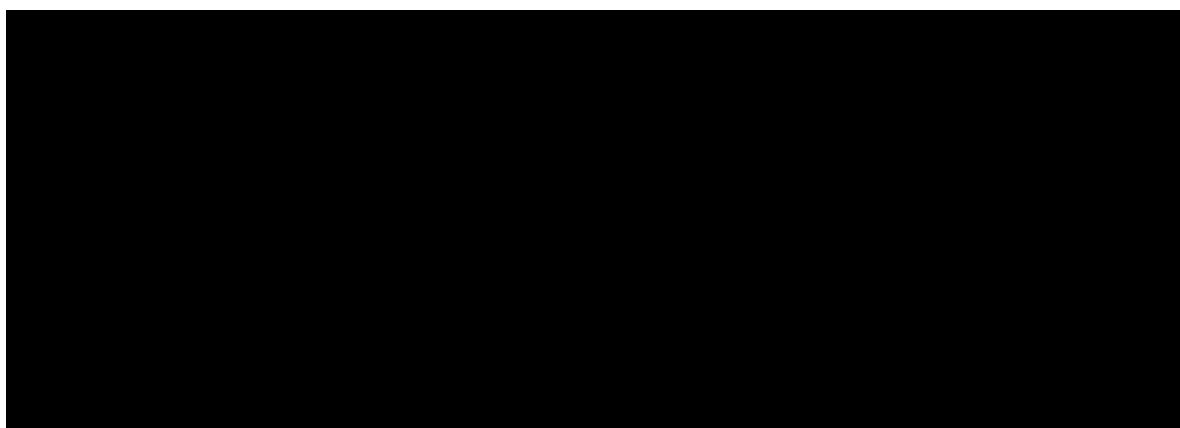
6. The Respondent continues to work for the Firm, and holds a current Practising Certificate, which is free from conditions.

The facts and the matters relied upon in support of the Allegations

Relevant background

7. In July 2022, various news outlets were running stories in relation to the tax affairs of the then Chancellor of the Exchequer, and a candidate in the Conservative Party leadership campaign, the Rt. Hon Nadhim Zahawi MP (“Mr Zahawi”).
8. Dan Neidle is a former tax solicitor and partner at Clifford Chance, who now runs Tax Policy Associates, a ‘not for profit’ company which, according to its website, has, “...*the aim of improving tax and legal policy, and public understanding of tax.*” Mr Neidle has published a range of articles on his website and is also active on the social media platform X (formerly known as Twitter) **[paragraph 2 on page 6 of IWB/1]**.
9. On 10 July 2022, Mr Neidle published an article on Tax Policy Associates website which commented on Mr Zahawi’s tax affairs and the various reports from other media outlets **[pages 20 – 33 of IWB/1]**. The article was headed, “*Did Nadhim Zahawi use an offshore trust to avoid almost £4m of capital gains tax?*”

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11. On 16 July 2022, in a long thread posted on what was then Twitter, Mr Neidle made the following comment:

“On Wednesday, Nadhim Zahawi said that his founder shares in YouGov ended up with a Gibraltar company because it had provided capital. I went

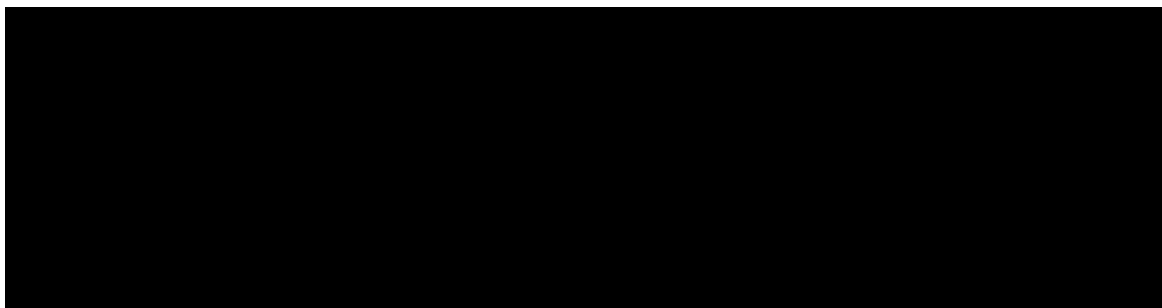
through all the filings and concluded that either I was missing something, or Zahawi was lying.

Turns out Zahawi was lying. An update:” [page 41 of IWB/1].

12. On 22 July 2022, Mr Neidle posted two further articles on the Tax Policy Associates website; one entitled *“The Chancellor’s secret libel letters”* [pages 75 – 80 of IWB/1] and one entitled *“WITHOUT PREJUDICE Why publish “without prejudice” and “confidential” correspondence?”* [pages 111 – 121 of IWB/1] Both articles referred to contact that Mr Neidle had received from the Firm, acting on behalf of Mr Zahawi, following the 16 July 2022 post on Twitter.
13. On 25 July 2022, Mr Neidle wrote to the SRA in relation to his experiences with the Firm [pages 122 – 123 of IWB/1]. In that letter, Mr Neidle made clear that he did not wish, *“...to make a complaint about Osborne Clarke or the individual solicitors involved in the correspondence...”* [page 124 of IWB/1]; instead, Mr Neidle simply wanted to alert the SRA to the practice of attaching labels such as “without prejudice” and “confidential” to correspondence, and to, *“...threaten (unspecified) serious consequences if it is published or disclosed to third parties...”* [page 122 of IWB/1]. Mr Neidle invited the SRA to consider:
 - 13.1. Updating its SLAPP (Strategic Lawsuits against Public Participation) guidance specifically to refer to the practice of attempting to prevent the publication or mention of correspondence asserting potential libel claims; and
 - 13.2. That the SRA provide guidance which cautions about the misuse of the labels “confidential” and “without prejudice.”

Correspondence in issue

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20. At 17:04, the Respondent sent a direct message on Twitter to Mr Neidle, asking if Mr Neidle would give him a telephone call **[page 75 of IWB/1]**. Mr Neidle's reply to this stated: *"Please send me anything you have to say in writing"* **[page 79 of IWB/1]**.

¹ It is understood by the Applicant that this was reference to Peter Kellner the journalist, and former president of YouGov.

21. The Respondent's subsequent messages to Mr Neidle stated: *"Trying to avoid that. We can speak WP if you like. Just want to give you a heads up"*, followed by, *"If you don't want to speak, could you let me know the best email address to contact you on?"* [page 897 of IWB/1].

22. An e-mail address was provided, but Mr Neidle stated that he did not accept "without prejudice" letters [page 897 of IWB/1].

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28. The e-mail that was sent to Mr Neidle can be seen at **pages 58 – 59 of IWB/1**. It was sent by the Respondent at 18:54. The e-mail is marked, “*Confidential & Without Prejudice*” and contains the following comments:

“Our client recognises that, as Chancellor and an MP, he is accountable to the public and it is right that he be asked questions relating to the use of offshore companies. He also recognises that you are absolutely entitled to raise the questions that you have done about his tax affairs, especially given your expert status. Until today, you have mainly done so in a balanced and fair way, even if our client does not agree with some of your allegations and assumptions.

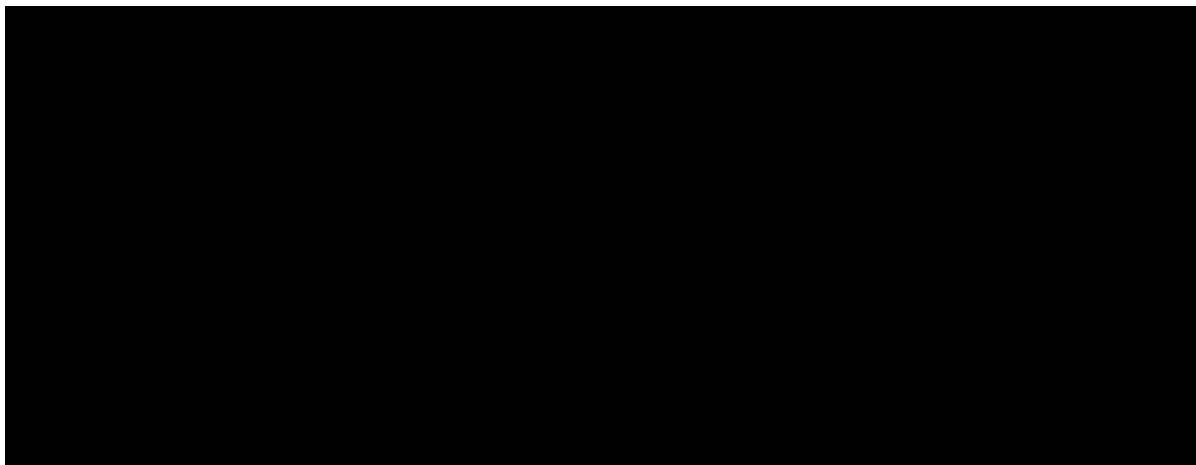
However, our client considers that you have overstepped the mark today by accusing him of lying to the media and the public in explaining the contribution of his father to YouGov...”

“...I have marked this email without prejudice because it is a confidential and genuine attempt to resolve a dispute with you before further damage is caused. Our client wants to give you the opportunity to retract your allegation of lies in relation to our client. That would not of course stop you from raising questions based on facts as you see them.

You have said that you will “not accept” without prejudice correspondence. 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. We recommend that you seek advice from libel lawyer if you have not done already.

Should you not retract your allegation of lies today, we will write to you more fully on an open basis on Monday.

In the meantime, our client reserves all his rights, including to object to other false allegations that you have made.



36. The letter that was sent to Mr Neidle on 19 July can be seen at **pages 61 – 63 of IWB/1**. The letter is headed, “**Private and Confidential**”, as well as being marked, “**NOT FOR PUBLICATION**”. This letter contained the following relevant comments:

“1.3 You have said that you will not accept without prejudice correspondence and therefore we are writing to you on an open, but confidential basis. If your request for open correspondence is motivated by a desire to publish whatever you receive then that would be improper. Please note that this letter is headed as both private and confidential and not for publication. We therefore request that you do not make the letter, the fact of the letter or its contents public.

1.4 Please also do not misrepresent the nature of this letter. It is not a threat to sue for libel. It is a request that you reconsider what you have published and adopt a fair and balanced approach to your investigations...

...1.7 Since accusing our client of dishonesty, you have asked a series of open questions of our client on your Twitter feed and blog. Our client is not going to engage in a point by point response to each of your questions. He has already provided answers to similar questions to various media publications, which have all published articles on the subject – mainly in a balanced way.

1.8 Our client also does not consider that it is appropriate for him to be engaging in argument on personal tax matters over social media. There are more appropriate channels for such discussion, as you are well aware.

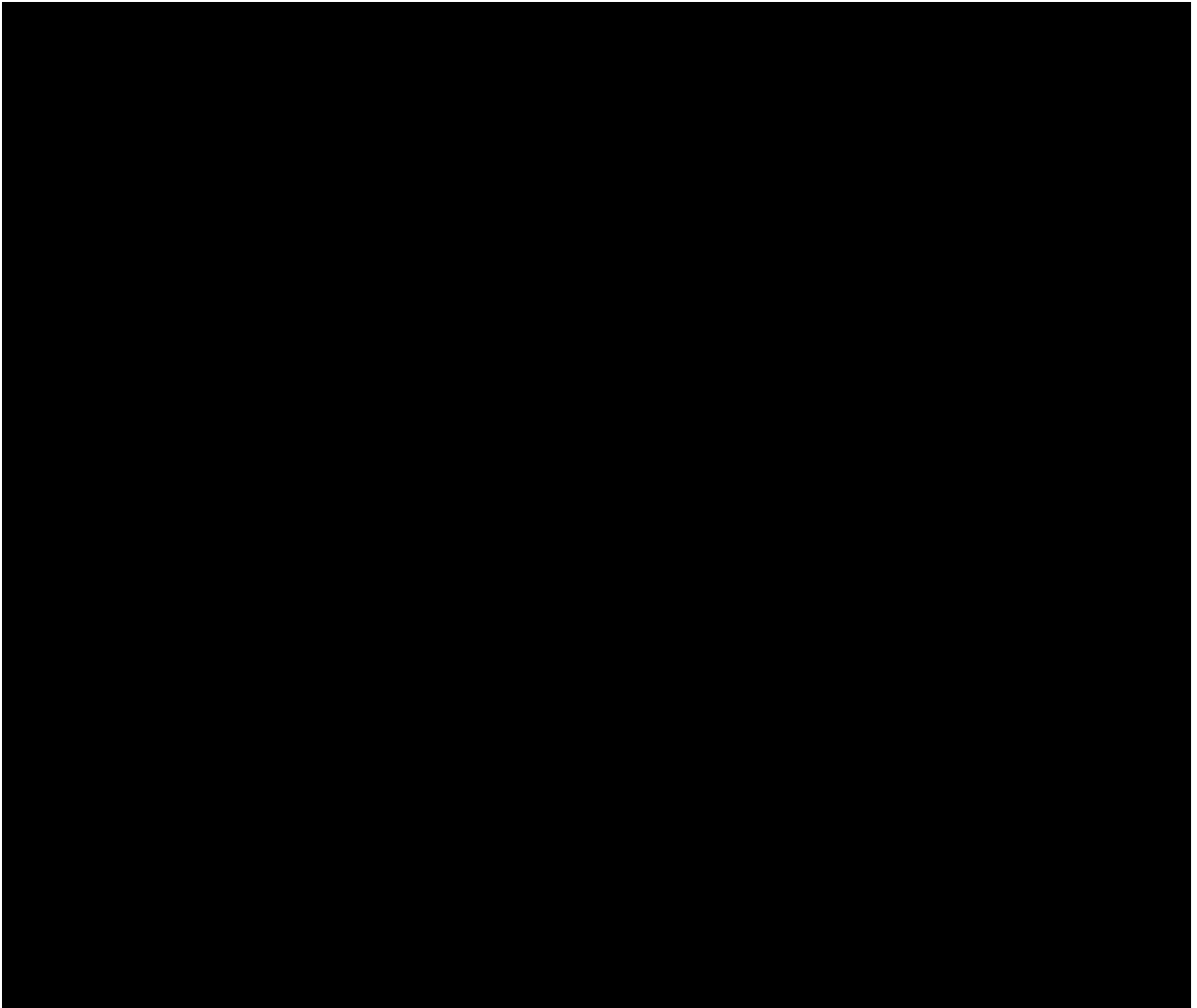
- 1.9 *Please therefore refer to what our client has said publicly and the comments attributed to our client's spokesperson in the mainstream media. You will note that none of the media has accused our client of dishonesty in the way that you have...*"
- ...3.1 *Our client is not asking for a response to this letter. He does not want to get involved in a debate about semantics and historical tax matters when he has an important job to do. Should there be any serious questions to be asked about our client's taxes, HMRC will no doubt ask them and our client will respond accordingly.*
- 3.2 *However, our client does ask that you reconsider the false allegation of dishonesty that you have published and whether you have sufficient information to justify this. You are clearly an accomplished tax lawyer and your opinions are respected, as well as being followed by journalists and members of the public. It is therefore all the more important that you apply balance to what you publish and ensure that you can verify statements of fact that you assert.*
- 3.3 *Going forwards, if you have questions to put to our client, please put them to our client's press officer in advance of publication such that our client has a reasonable opportunity to respond.*
- 3.4 *Our client reserves his rights in relation to what you have published to date...*" [pages 61 – 63 of IWB/1].

Aftermath of correspondence

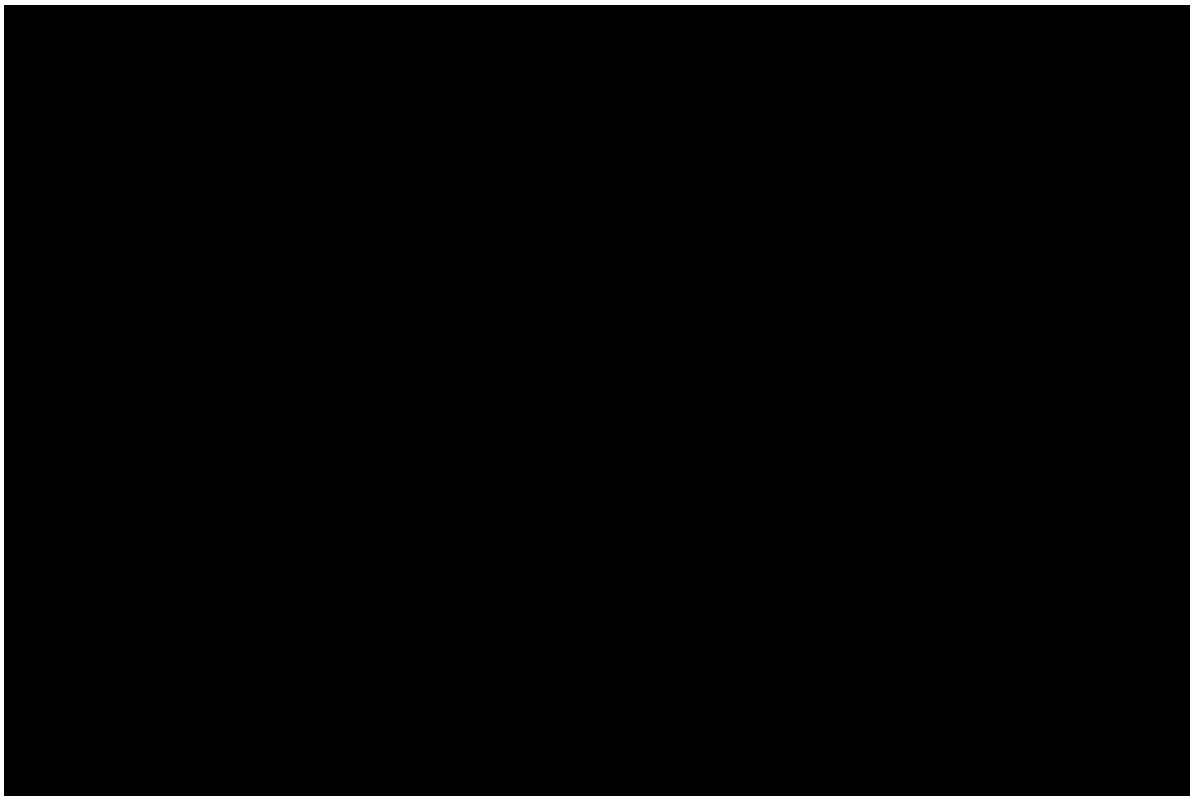
37. As referenced at paragraph 12 above, Mr Neidle posted copies of both the 16 July e-mail and the 19 July letter in his articles that were posted on the Tax Policy Associates website on 22 July 2022.

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Respondent's response to the Notice

43. On 31 January 2024, the Applicant sent a Notice to the Respondent, which recommended referral of his case to the Tribunal **[pages 5 – 16 of IWB/1]**. On 28 March 2024, the Respondent's representatives, CMS Cameron McKenna Nabarro Olswang LLP, provided the following documents:

43.1. A Response to the Notice **[pages 125 – 147 of IWB/1]**;

- 43.2. Instructions to Andrew Caldecott KC, dated 12 March 2024 **[pages 148 – 156 of IWB/1]**;
- 43.3. An Opinion from Andrew Caldecott KC and Ben Gallop, dated 19 March 2024² **[pages 157 – 177 of IWB/1]**; and
- 43.4. An Authorities Bundle **[pages 178 – 864 of IWB/1]**
44. The Response to the Notice contained the following assertions:
- 44.1. That the correspondence in issue was prepared without the luxury of time; the e-mail of the 16 July, in particular, was issued extremely urgently on a Saturday as the Sunday papers were taking their lead from Mr Neidle **[paragraph 1.7 on page 127 of IWB/1]**; and
- 44.2. That both the e-mail and letter were confidential and/or private **[paragraphs 2.31 – 2.47.5 on pages 135 – 139 of IWB/1]**

Allegations and Breaches of Principles and the Code of Conduct

Allegation 1.1 – The 16 July e-mail

45. Paragraphs 7 to 44 above are repeated. Having been made aware that Dan Neidle had made an accusation that his client, Mr Zahawi, was lying during a period of intense public scrutiny of his tax affairs, the Respondent sought to open a chain of communication with Mr Neidle. After being informed that Mr Neidle was not willing to speak on the telephone, and wanted matters committed to writing, as well as being informed that Mr Neidle was not willing to accept “without prejudice” communication, the Respondent sent an e-mail which:
- 45.1. Was marked “Confidential & Without Prejudice”;
- 45.2. Contained obvious implications that legal action might follow if Mr Neidle did not retract his accusation;
- 45.3. Recommended that Mr Neidle seek advice from a libel lawyer;

² If it is the Respondent’s intention to rely upon this document as expert evidence at any Substantive Hearing, an application will need to be made under Rule 30(1) of the Solicitors (Disciplinary Proceedings) Rules 2019

- 45.4. Contained the assertion that Mr Neidle was not entitled to publish or refer to the e-mail, other than for the purposes of seeking legal advice, and that to do otherwise would be a, “*serious matter*”; and
- 45.5. Contained an indication that a telephone call with the Respondent may, “...*save time and expense on both sides*”, further emphasising that legal proceedings might follow.
46. At the point at which the e-mail was sent, Mr Neidle was reporting/commenting on the scrutiny of Mr Zahawi’s tax affairs that was ongoing through the mainstream media. The fact that Mr Neidle, given his level of tax experience, felt able to make an accusation of lies against Mr Zahawi would have been, and was, a matter of public interest. The fact that Mr Zahawi’s response was to instruct a solicitor at a specialist libel lawyer to send correspondence to Mr Neidle threatening legal action, rather than in his position as a politician and a public figure choosing to issue a statement addressing the accusations or clarifying his earlier remarks, would in turn have been a matter of public interest.
47. Mr Neidle’s request for communication with him to take place in writing and his refusal to accept “without prejudice” correspondence would have alerted the Respondent to the risk, if not the actual fact, that Mr Neidle would seek to comment on or publish any correspondence he was sent. [REDACTED]
[REDACTED].
48. Mr Zahawi was under no obligation to address what he perceived to be a false accusation of lies through correspondence from a lawyer implying that legal action could follow. The decision to address this issue with the sending of the 16 July e-mail was one taken voluntarily by Mr Zahawi, following discussion and correspondence with the Respondent. The simple fact that the-then Chancellor of the Exchequer had made that decision, given the unfolding interest in his tax affairs and his response to questions about them, would in and of itself have been an issue which would have merited public reporting.
49. In the particular circumstances in which the e-mail was sent, and considering that its contents simply referred to matters which were already subject to public scrutiny, it is asserted that the attempt to restrict Mr Neidle’s right to publish it or refer to its contents was inappropriate.

50. The SRA's position is that it is not properly arguable that Mr Neidle was subject to a duty of confidence in relation to all (or any) of the information conveyed by the e-mail. It is common ground that there is nothing confidential in the information relating to Mr Zahawi's tax affairs. Further, the e-mail sought to prevent Mr Neidle even from referring to the fact of Mr Zahawi's threatened defamation claim against him. Even where a communication is properly headed without prejudice (and it is not expressly accepted that the label was correctly used in this case), it is not properly arguable that any duty of confidence arising from this would extend to the fact of the claim.
51. The three elements of a breach of confidence claim remain as stated by Megarry J in *Coco v AN Clark (Engineers) Ltd* [1968] FSR 415, 419: *First, the information itself, in the words of Lord Greene, M.R. in the Saltman case ... must 'have the necessary quality of confidence about it'. Secondly, that information must have been imparted in circumstances importing an obligation of confidence. Thirdly, there must be an unauthorised use of that information to the detriment of the party communicating it.'*
52. It is the SRA's contention that there is no proper basis to submit that the fact of Mr Zahawi's claim had the necessary quality of confidence and/or that it was imparted to Mr Neidle in circumstances importing an obligation of confidence on him. There have since 1968 been developments in the legal principles relating to each of the elements of the claim identified in *Coco* and attempts to apply them to a wide variety of circumstances. However, there is no authority that comes close to supporting the imposition of such a duty on Mr Neidle.
53. The obvious inference as to why an inappropriate attempt was made to restrict Mr Neidle's ability to publish this e-mail or refer to its contents was to try and prevent the simple fact that the-then Chancellor of the Exchequer had instructed such a document to be sent becoming part of the news cycle i.e. to try and prevent the media scrutiny of this decision, and what it said about how Mr Zahawi viewed the accusation of lying, which occurred after Mr Neidle published the documents on 22 July 2022.
54. The attempt to limit or restrict Mr Neidle's ability to comment publicly on the correspondence he had received from a solicitor acting on behalf of the-then Chancellor of the Exchequer involves an oppressive or abusive tactic, the type of which had been condemned by the SRA in its March 2022 Guidance in relation to Conduct in Disputes. That document expressly condoned "*oppressive behaviour and tactics*", which was defined as including:

- 54.1. Making exaggerated claims of adverse consequences including alleging liability for costs that are not legally recoverable;
 - 54.2. Sending excessively legalistic letters with the aim of intimidating particularly unrepresented or lay parties; and
 - 54.3. Sending letters in abusive, intimidating or aggressive tone or language
55. This Guidance simply set out long-established principles in relation to the expected level of conduct on the part of solicitors when acting in disputes; it did not create or impose brand new obligations upon the profession.
56. The 16 July e-mail was clearly worded to try and convey to Mr Neidle that Mr Zahawi was contemplating legal action as a result of the 16 July post on Twitter. As set out above, given the press coverage there had been up to the 16 July (both in relation to Mr Zahawi's tax affairs and Mr Neidle's commentary on those matters), the Respondent knew or ought to have known of the level of press attention that would have been generated by Mr Zahawi's decision to instruct a solicitor to send an e-mail to Mr Neidle in those terms.
57. The improper attempt to limit or restrict Mr Neidle's ability to publish or discuss, not only the contents of this e-mail, but the very fact that such correspondence had been sent to him, represents an oppressive and intimidating approach to legal matters which had been condemned in the March 2022 Guidance.
58. In seeking to convey to Mr Neidle that was prohibited from discussing the e-mail or its contents, the Respondent was seeking to keep from the public domain information that was capable of being of great concern to the British public; that the country's Chancellor of the Exchequer at that time was contemplating or threatening legal action against Mr Neidle, rather than seeking simply to engage with the accusations that Mr Neidle had made against him through a public statement.
59. In seeking improperly to limit or restrict Mr Neidle's ability to comment on this e-mail, the Respondent has sought to take unfair advantage of Mr Neidle. Whilst Mr Neidle may be considered to have a degree of expertise in relation to tax law, the Respondent appears to have been relying on Mr Neidle's apparent lack of knowledge in relation to matters connected with defamation and privacy in trying to further his client's interests;

the attempt to limit Mr Neidle's further public commentary on Mr Zahawi's tax affairs. For those reasons, a breach of Paragraph 1.2 of the Code is alleged.

60. In attempting to limit or restrict Mr Neidle's ability to report on or discuss the e-mail, coupled with the threat that to do otherwise would be a "serious matter", the Respondent has sought to mislead Mr Neidle as to what he was entitled to do with the e-mail and the likely consequences if he did not comply with the Respondent's request. On that basis, a breach of Paragraph 1.4 of the Code is alleged.
61. The attempt to restrict Mr Neidle's handling of the 16 July e-mail, and the threat of serious consequences should he not comply, was not correctly based on legal principles, but instead appears to have been made to try and shield Mr Zahawi and his affairs from further public scrutiny. Whilst such further scrutiny may have been politically embarrassing for Mr Zahawi, at a time when he was attempting to position himself as a candidate in the leadership campaign for the Conservative Party, that did not legitimise the request, which was coupled with an obvious threat, which was made to Mr Neidle. For those reasons, a breach of Paragraph 2.4 of the Code is alleged.
62. The public is entitled to trust and expect that solicitors will act appropriately towards opposing parties in any apparent dispute, and not seek to make inappropriate requests of them which serve only to benefit their client's interests. The inappropriate request made to Mr Neidle was an attempt to prevent public scrutiny of the decision by the then Chancellor the Exchequer to resort to instructing a solicitor to write on his behalf and threaten legal action. Whilst it is not asserted that this threat was necessarily inappropriate, the attempt to prevent publication or discussion that such a threat had been made by a member of the Government was, in the context of this case, inappropriate. Acting in such a manner is conduct that would serve to damage the public's trust and confidence in the profession, and on that basis a breach of Principle 2 is alleged.
63. It is asserted that the Respondent's behaviour in respect of Allegation 1.1 demonstrated a lack of integrity (Principle 5). In *Wingate v Solicitors Regulation Authority v Malins* [2018] EWCA Civ 366, it was said that integrity connotes adherence to the ethical standards of one's own profession. A solicitor acting with integrity (i.e. with moral soundness, rectitude and steady adherence to an ethical code³) would not have sought to mislead Mr Neidle as to what he was entitled to do with the e-mail that

³ *Hoodless & Anor v Financial Services Authority* [2003] UKFSM FSM007

had been sent to him, would not have threatened that it would be a serious matter if he did not comply with that request, and would not have done so simply to try and save his client from further embarrassment within the ongoing news cycle. The Respondent's actions demonstrate a willingness to prioritise his client's interests over his own professional responsibilities or obligations, and on that basis a breach of Principle 5 is alleged.

Allegation 1.2 – 19 July letter

64. Paragraphs 7 to 44 above are repeated. Following the sending of 16 July e-mail, Mr Neidle replied to say that he was not interested in receiving “without prejudice” correspondence, and invited any further correspondence to be sent on an open basis. Despite this, following Mr Neidle's further publication of articles relating to Mr Zahawi, the 19 July letter was sent which contained the following:
- 64.1. Headings of “Private and Confidential” and “NOT FOR PUBLICATION”;
 - 64.2. A request that the letter, or the fact of the letter, or its contents were not made public, with reference to the headings in support of that request; and
 - 64.3. A request for Mr Neidle to reconsider the “*false allegation of dishonesty*”, with an indication that Mr Zahawi was reserving his rights in relation to what Mr Neidle had published to date.
65. Whilst the tone and tenor of the 19 July letter depict a step back from the position adopted in the 16 July e-mail (e.g. there was the express mention that this was, “...*not a threat to sue for libel*”, and no threat that the failure to comply with the request for how the document was handled could be a “*serious matter*”), the points advanced above in relation to the 16 July e-mail equally apply; the public would have wanted to know that Mr Zahawi was resorting to legal letters in an apparent attempt to limit Mr Neidle's commenting on his tax affairs, and was seeking to keep that fact from public scrutiny.
66. Despite this, and despite the exhortation from Mr Neidle to receive open correspondence, the Respondent still sought to impose a restriction on Mr Neidle's handling of the document.

67. For the reasons set out in relation to Allegation 1.1, it is asserted that this inappropriate request made to Mr Neidle represented a breach of Paragraphs 1.2, 1.4 and 2.4 of the Code, and 2 and 5 of the Principles.

The SRA's Investigation

68. The SRA have taken the following steps to investigate the Allegations which it makes against the Respondent:
- 68.1. The SRA received the letter from Mr Neidle in relation to this incident on 25 July 2022 **[pages 122 – 124 of IWB/1]**;
- 68.2. Thereafter, the SRA sought to investigate this matter, culminating with the service of Notice on 31 January 2024 **[pages 5 – 16 of IWB/1]**;
- 68.3. On 28 March 2024, the Respondent's representatives provided a response to the Notice, along with its accompanying documents **[pages 125 – 864 of IWB/1]**; and
- 68.4. The ADM referred the Respondent's case to the Tribunal on 3 May 2024 **[pages 865 – 870 of IWB/1]**;

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



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Dated this 28 day of May 2024

**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

**APPENDIX 1 TO STATEMENT PURSUANT TO RULE 12 (2) OF THE SOLICITORS
(DISCIPLINARY PROCEEDINGS) RULES 2019**

Relevant Rules and Regulations

SRA Principles 2019

You act:

Principle 2: in a way that upholds public trust and confidence in the solicitors' profession and in legal services provided by authorised persons.

Principle 5: with integrity.

SRA Code of Conduct for Solicitors, RELs and RFLs 2019

Paragraph 1.2: you do not abuse your position by taking unfair advantage of clients or others

Paragraph 1.4: you do not mislead or attempt to mislead your clients, the courts or others, either by your own acts or omissions or allowing or being complicit in the acts or omissions of others (including your client).

Paragraph 2.4: you only make assertions or put forward statements, representations or submissions to the courts or others which are properly arguable.