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

SECOND WITNESS STATEMENT OF DANIEL MARC NEIDLE

I, **DANIEL MARC NEIDLE**, of TAX POLICY ASSOCIATES LTD at 118 PALL MALL, LONDON, ENGLAND, SW1Y 5EA, **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. Subsequent to my first witness statement I have been made aware that the only relevant evidence that I can give relates to the impact on me of the headings and wording set out below in the Respondent's email to me on 16 July at 18:54 ("the Email") (**Exhibit DN1**).

3. The Email was headed "Confidential" and "Without Prejudice" and included:

   "*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.*"

4. The purpose of the Email was to notify me of a libel claim relating to a tweet I had published earlier in the day which included "*Turns out Zahawi was lying*". Prior to the Email I had exchanged twitter messages with the Respondent (**Exhibit DN2**) in which I had made clear

that anything that he wished to say should be put in writing and that I would not accept without prejudice correspondence.

5. When I read the Email for the first time, I did not notice (or process) the heading at the top. Then I read it again. I could not believe that the headings had been added. I felt that there was no legal basis, and that to do so when I had expressly said that I would not accept "*without prejudice*" correspondence was outrageous. I am aware that lawyers often use templates, and libel lawyers may have templates which say "*confidential*", however the more I read the Email, the more I felt that this was a deliberate action to use those labels to silence me.

6. To be clear, by adding the word "*Confidential*" in the context of the Email it was my understanding that this meant the intention was that its contents were bound by the duty of confidence and that I could therefore not tell anyone about it.

7. By adding the phrase "*Without Prejudice*" in the context of the email it was my understanding that this meant the Email was bound by the without prejudice doctrine and therefore could not be shown to a court and conventionally would not normally be published.

8. It is my view, many people who would have received the Email would have been scared, intimidated and emotional. The Email did give me some concern (for the financial reasons I discuss further below). However I was not scared, intimidated or emotional. I strongly suspected that the labelling and wording were incorrect for four reasons:

    a. The Email did not contain any confidential information,

    b. The Email was not sent in circumstances where a duty of confidence could be implied,

    c. The Email was not without prejudice because there was not a dispute and there was not an attempt to settle, and

    d. There is no rule against publishing non-confidential without prejudice correspondence – "without prejudice" is a rule of evidence, not a freestanding rule of confidentiality.

9. I am aware that the Respondent disputes the above reasons. I refer to them only as they were relevant to my thinking at the time.

10. I had concerns about the subject matter of the Email itself because I could potentially have been the subject of libel proceedings, which would have been expensive.

11. Further to this, I was concerned that if I discussed the contents of the Email there would be serious consequences. I considered these consequences could have been either (i) a professional consequence i.e. a report to the SRA, or (ii) financial consequences from a civil claim. Whilst I considered the labels of "*Confidential*" and "*Without Prejudice*" and wording to be incorrect and I was actually able to speak about the Email I was not certain on this and as I did not have legal expertise in this area, it would have therefore have been wrong for me to not take it seriously.

12. The concern that I could not discuss the contents of the Email came from the wording in the Email. If the Email had just contained the labels "*Confidential*" and "*Without Prejudice*" I would have considered it just lazy templating, however, the use of the wording showed to me that it was a serious attempt to stop me talking. Further, the fact the Email was coming from the second most powerful man in the country (the Chancellor of the Exchequer) and because it was coming from a lawyer at a serious law firm meant that I would have to take it very seriously. I do not know how else the wording in the Email could have been interpreted other than as a warning or threat. I should add that if I had received the Email from someone who was not powerful I may have considered it in a different way and I may have discounted it because most people are not in the financial position to be able to pursue highly marginal but expensive litigation, but Mr Zahawi was in a position to spend large amounts of money on such litigation if he wished to. His net worth was reputedly around £100 million.

13. The attempt to stop me sharing the Email was a concern to me because it would prevent me from effectively dealing with the defamation threat. I would normally deal with such a threat by discussing the issues in detail with friends, family and my team, and (assuming I concluded I was correct) publicising the threat so that the person sending it realised that pursuing the matter would be counterproductive. If I was not able to do that then my ability to effectively respond to the defamation threat would be much curtailed. Further, I was concerned as I intended to publish the Email as it would be in the public interest and I would be prevented from doing that if I was to face potential sanctions.

14. No matter how confident I was in my initial assessment, confidentiality was not my area of expertise, and I could not risk a legal fight with a multi-millionaire on the back of what was no more than a hunch.

15. When I received the Email, and notwithstanding the concerns I had, I sought advice from a wide variety of people. This included my usual tax contacts, but also lawyers with expertise in defamation, confidentiality and the without prejudice doctrine. I was confident that our underlying tax analysis was correct, but that did not guarantee prevailing if Mr Zahawi did commence a defamation claim. He had far more resources than I did, and in a worst-case scenario I and my family could face costs and damages of several million pounds. Furthermore, whilst I felt that the "*serious matter*" threat was wrong, indeed improper, I needed to be absolutely sure of this before taking any action that could land me in legal, financial or professional jeopardy (e.g. an SRA complaint). So, whilst the usual TPAL model is that people advise pro bono, I was sufficiently concerned about our position that I instructed counsel (and paid usual rates).

16. On 19 July 2022 I received a letter from the Respondent marked "*Private and confidential*" and "*NOT FOR PUBLICATION*" ("the Letter") (**Exhibit DN3**).

17. I saw the use of the term "*confidential*" as being another improper attempt to assert confidentiality for a document that was not actually confidential. However, the Letter lacked the explicit threat of the previous communication. There was no further reference to it being a "*serious matter*" for me to refer to the Letter.

18. I remained conscious of the risk of a very expensive libel trial, and so spoke extensively to leading tax experts (outside the team that had worked on the original investigation) and others familiar with start-ups. I also had a source who had worked at YouGov at the time.

19. These further discussions, and the weakness of the Letter, led me to the conclusion that Mr Zahawi was bluffing. He had, I concluded, no intention of bringing a libel claim because that would bring into public focus the events he was trying to hide. It would also require detailed disclosure of documents held by him and likely him being subject to cross-examination, both of which events would likely be embarrassing and perhaps even legally perilous for him. It also followed that he would take no action if I published the correspondence.

20. It was our conclusion that Mr Zahawi was bluffing which led me to refuse to back down. If I had thought Mr Zahawi believed in his position and was ready to pursue it then I would have changed course. No matter how confident I was in the correctness of my position, the legal risks would have been too great. I certainly would not have published the Email and Letter.

Statement of truth

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

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

Signed:

Name: DANIEL MARC NEIDLE

26 November
Date: 2024