This statement contains references to privileged information

U82

On behalf of: Respondent
Witness: Ashley Simon Hurst
No. of Witness Statement: First
Exhibit: ASH2
4 November 2024

Case No. 12612-2024

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

WITNESS STATEMENT OF
ASHLEY SIMON HURST

I, ASHLEY SIMON HURST OF ONE LONDON WALL, BARBICAN, LONDON EC2Y 5EB, WILL SAY AS FOLLOWS:

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A. INTRODUCTION

1. I am a solicitor and partner at Osborne Clarke LLP ("**Osborne Clarke**" or the "**firm**") and the Respondent in these proceedings. I make this statement for the purposes of the substantive hearing of this matter before the Solicitors Disciplinary Tribunal. The matters I address in this statement are set out and summarised in its table of contents above.

2. Unless I state otherwise, the facts in this statement are within my knowledge and true. Where the facts are not within my knowledge, they are true to the best of my knowledge and belief, and I identify the source. **This witness statement includes the contents of my confidential and legally privileged communications with my client.** Nothing I say in this statement is intended to and I do not have any authority to waive legal privilege belonging to my client.

3. I refer to:

3.1 the Applicant's Statement in these proceedings dated 28 May 2024 pursuant to Rule 12(2) of the Solicitors (Disciplinary Proceedings) Rules 2019 (the "**Rule 12 Statement**") and its accompanying Exhibit IWB1. I also refer to my Answer in response to the Rule 12 Statement dated 8 August 2024 (the "**Answer**") and its accompanying Exhibit ASH1, and the Applicant's Reply to the Answer dated 9 September 2024 (the "**Reply**"), filed in accordance with the standard directions in the proceedings. I refer to the pages of Exhibit IWB1 and Exhibit ASH1 in the format **[IWB1/X]** and **[ASH1/X]** respectively;

3.2 the witness statement of Dan Neidle dated 18 September 2024, served on behalf of the Applicant. I address parts of Mr Neidle's witness statement during the course of this statement below, but to the extent that I do not specifically address a point from Mr Neidle's statement, that should not be considered as any acceptance from my part of the same; and

3.3 a paginated bundle of documents which is exhibited to this witness statement and marked Exhibit ASH2. The exhibit comprises true copies of the documents referred to in this witness statement. I refer to the pages of Exhibit ASH2 in the format **[ASH2/X]**. In this statement, I adopt terms defined in the Rule 12 Statement.

B. MY ROLE AND EXPERIENCE

4. I qualified as a solicitor on 16 February 2004 and was employed in my early career at what was then Lovells LLP. I then moved to Olswang LLP, where I spent 10 years as a specialist media litigator. I became a partner at Olswang LLP in 2012 and then moved to Osborne Clarke LLP as a partner in May 2016. I currently lead the Media and Information Law Disputes team (consisting of 4 Partners and 8 Associates with whom I have a very close working relationship) and co-lead the international Cyber and Contentious Data Protection team, which consists of a large number of Partners and Associates across EMEA. I also led the Technology, Media and Communications sector team (in excess of 100 lawyers) for five years and for the last two years I have been a

member of the UK Management Board as Head of Client Strategy. I would not be trusted with these leadership positions if there were doubts about my integrity or ability to lead teams.

5. My practice lies principally in managing board-level crises and resolving disputes related to the internet, cybersecurity, data protection, and reputation. In relation to reputation work, I act for both claimants and media defendants on privacy, defamation and confidentiality issues and have many years of experience in the field. On the claimant side of my practice, the bulk of my work in recent years has been acting for companies, although I occasionally act for individuals. On the defendant side, I act for a number of publishers providing pre-publication and post-publication advice and act for several large companies who are regularly on the receiving end of litigation and threats of litigation from high-net-worth individuals. I am recognised in Chambers and Legal 500 as a leading individual for Crisis Management as well as Defamation, Privacy and Reputation Management. I have worked hard to become recognised and respected as a leader in the field, but this would not have been possible without having worked with and learnt from many highly dedicated and talented lawyers along the way (including those with whom I currently work at Osborne Clarke). Likewise, Osborne Clarke enjoys an excellent reputation for its culture and doing things in the right way, including hard fought litigation.

6. I feel that my experience and perspective of the market has given me a good overall understanding of relevant law and practice. I try to stay up to date by attending and speaking at conferences and by attending and organising regular training sessions within the Media and Information Law team, supported by our dedicated Knowledge team.

7. As a lawyer and partner, I have always taken my regulatory and ethical obligations extremely seriously. I am often advising clients in time sensitive situations, providing advice out of hours and at short notice on critical decisions that often have an ethical dimension. It is therefore important that I have a good understanding of my regulatory obligations and have these at the forefront of my mind in all that I do. I am in regular contact with the excellent compliance team at Osborne Clarke. I believe that I act with honesty, integrity and independence and in a manner that upholds the public trust in the profession. I remain of that view despite the allegations against me in these proceedings.

8. I believe, based on client and industry feedback, that I have a reputation in the media law sphere, including amongst in-house counsel at national newspapers, for adopting a fair and constructive approach on the matters on which I am engaged. I try to resolve disputes in a reasonable and pragmatic way. Numerous in-house counsel at national newspapers have told me and members of my team that they have been impressed by the approach taken by my team in correspondence and over the telephone. I take pride in that approach, which was developed at my previous firm, and has allowed me to develop a practice acting for both claimants and defendants.

C. MY UNDERSTANDING OF CUSTOM AND PRACTICE IN MEDIA COMPLAINTS

9. Before setting out the factual circumstances relevant to this matter and my explanation of why I acted in the way that I did, I set out my understanding of some relevant aspects of custom and practice in media complaints as at the relevant time in July 2022 (most of which remains my current understanding). I understand that my state of mind in this respect is considered to be relevant to way in which I drafted the relevant correspondence in July 2022.

10. Over the years I have acted on very many reputation and other media complaints both for potential and actual claimants and potential and actual defendants. The underlying legal cause of action in relation to these complaints can be in defamation, privacy, harassment, data protection or other causes of action and very often combinations of these. In addition, there may be the potential for complaints through regulatory channels rather than (or in addition to) the courts.

11. The nature of the complaints can vary enormously including:

11.1 as regards potential claimants:

- 11.1.1 where the potential claimant is well known, perhaps a public figure;
- 11.1.2 where the potential claimant is a corporate; and
- 11.1.3 where the potential claimant is an individual who is not well known;

11.2 as regards potential defendants:

- 11.2.1 complaints against national or local newspapers in relation to matters published;
- 11.2.2 complaints against broadcasters in relation to matters broadcast;
- 11.2.3 complaints relating to private correspondence; and
- 11.2.4 complaints both against identifiable or anonymous individuals in relation to material published online;

11.3 complaints where the claimant is seeking:

- 11.3.1 to prevent the circulation or continued circulation of the material question; or
- 11.3.2 vindication and/or damages in respect of material which has already been published; and

11.4 complaints:

- 11.4.1 which relate only to matters within the United Kingdom; and
- 11.4.2 where some aspect such as the location of the potential claimant or defendant or the subject matter occurred or the matter was published abroad.

12. All of these factors (as well as the inherent variability of the approach adopted by different clients) can lead to a very significant differences in legal and strategic approach.

13. A relatively common factor in reputation management issues is urgency. Frequently I have been instructed at short notice in relation to the proposed imminent publication of material – both for potential claimants and media defendants. It is common for media organisations only to contact

individuals who are the subject of intended reporting at a very late stage in the process, shortly before the proposed story is to be published. This leads to working very quickly, ascertaining the facts and the broader circumstances as best one can in the time available and taking the appropriate action, often at inconvenient times such as over the weekend. Few if any media publications will hold back reporting of material pending any prolonged period of work undertaken by the lawyers. Working in such circumstances is often extremely challenging in relation to both claimant and defendant work.

The demarcation of practitioners

14. In my experience, the area of media law is significantly – albeit not entirely – demarcated between those who tend to act for potential claimants and those who act for defendants. There are solicitor firms who tend to act for potential claimants such as Carter-Ruck and Schillings and those who tend to act for potential defendants such as RPC and Simons Muirhead. In that context, my practice is more balanced than some in that, as set out above, I act for both potential claimants and defendants (including media defendants).

15. Most large media organisations and all national newspapers have inhouse lawyers experienced in dealing with media complaints. While inhouse lawyers do move from time to time between publications, I am not aware of inhouse lawyers commonly becoming claimant lawyers. Accordingly, I think it is fair to say that inhouse lawyers at newspapers and other media organisations often have a one-sided perspective and limited experience of acting for companies and individuals against activist bloggers. That said, in my experience there is a general understanding among experienced inhouse lawyers that publishers make mistakes; that many complaints are entirely legitimate; and that being able to seek to influence or rectify inaccurate reporting is important to the healthy functioning of society and freedom of expression.

Custom and practice generally

16. Given the huge variety of media complaints described above, I believe it is difficult to describe any standard custom and practice in respect of media complaints generally and defamation complaints specifically. However, I have set out below my understanding of certain customs and practices as at July 2022 that are relevant to these proceedings.

Confidentiality

17. In my experience, the use of the label "private and confidential" is common in early pre-action correspondence in defamation cases. I have also seen the labels used on "pre-action protocol letters" (often referred to as "letters of claim" or "letters before action"), which are the first formal step in litigation proceedings, although less so than earlier stage correspondence.

18. I am aware that Gatley on Libel and Slander, jointly edited by HHJ Richard Parkes KC, proposes the use of labels to prevent publication of letters before action. At section 26-007, it reads: "…*if*

there is a risk that [a letter] may be published, it should be headed "Private and confidential - Not for publication".[43]", with footnote 43 including the following explanation: "*…Heading a letter as suggested will not necessarily put off the recipient from taking this course of action, but a responsible solicitor would certainly advise his client that it would be inadvisable (as a potential breach of confidence, or as aggravating the situation and possibly the damages)*".

19. There are number of reasons why a potential defamation claimant may wish to keep early solicitors' correspondence confidential. Firstly, the correspondence may contain sensitive private or confidential information which the potential claimant may not wish to be published. Secondly, even if the initial correspondence does not contain such information, it may be envisaged that in any ongoing defamation dispute it will be necessary to disclose such information and it may be desirable to seek to establish a confidential channel of correspondence from the outset. Thirdly, publication of either the contents of the correspondence, or even the fact of it or any potential claim to which it relates, may lead to the republication of the allegations complained of and elicit unfair and uninformed criticism of the potential claimant.

20. I also consider that in certain circumstances there is a solid legal basis for asserting that pre-action solicitors' correspondence is confidential. The law of confidentiality is relatively complex with a number of grey areas but it is clear that there is no requirement for there to be a pre-existing relationship between the sender and recipient to establish an obligation in confidentiality and/or for private correspondence to be confidential. That broadly I believe explains the widespread use of the term "Confidential" on legal and other commercial correspondence.

21. In addition, I understand (as I did in July 2022) that a claim in confidentiality can be defeated where there is a sufficient public interest in the disclosure of the information in question. Having worked on many privacy and confidentiality cases where a public interest defence was raised, I am aware that the arguments for and against such a defence arising were almost always complex and one could rarely, if ever, say that such a defence was bound to succeed – or indeed fail.

22. I recognise that where it could be shown that an individual, such as a politician, had made an illegitimate defamation complaint, for example in respect of an allegation which they knew to be entirely true, a public interest in disclosing the fact of the complaint might arise. However, before these proceedings, it had never been suggested to me – and I was aware of no legal authority which supported the proposition – that any significant public interest arose in respect of an individual making a legitimate defamation complaint. Indeed, I consider that there are good reasons in public policy to allow such complaints to proceed in confidence until such time as they legitimately enter the public domain.

23. I also understand that whether an obligation in confidentiality arises may depend on the custom and practice in a particular situation. However, as I explain further below, I was not aware of any practice in the media which would in any way call into question the ostensible confidentiality of

pre-action defamation correspondence. Until these proceedings, it had also never been suggested to me that such a practice may exist and that for this reason, the propriety of labelling such correspondence "Confidential" was in any way questionable.

24. I recognise that the landscape and view on the use of such labels has recently been brought into greater focus, in particular, with a public debate on Strategic Lawsuits against Public Participation ("**SLAPPs**"). I understand the debate primarily to be focussed on the substance of defamation complaints – in other words those might be considered to be illegitimate as they are groundless and designed only to stifle public interest reporting. Part of the debate has also considered the use of labels, which has been criticised as part of that picture. But, despite there being a greater focus on the use of labels to ensure that they do not mislead and are applied correctly, they continue to be regularly applied to correspondence.

25. I am also aware of the Updated Warning Notice issued by the SRA in May 2024 (and the Warning Notice issued prior to that in November 2022) and its guidance on the use of such labels. I have close regard to this guidance in my practice and my team has had training in relation to it. The Updated Warning Notice acknowledges that "*[w]e accept that there will be legitimate reasons for labelling correspondence and that this is a long-established practice in the legal profession*". This expressly acknowledges that there are legitimate circumstances for the labelling of correspondence.

Not for publication

26. In my experience another very common label used on defamation correspondence is "not for publication" (or "not for broadcast" in relation to television). That term is very well understood by inhouse media lawyers in particular and is designed to indicate to the recipient that the intention of the sender is that the letter will not be published. The intended effect and reasons for it largely overlap with the intended effect and reasons for contending that a letter is confidential save that as a matter of impression they are words which seek to engage with good journalistic practice rather than asserting a legal right.

Without prejudice

27. In my experience it is very common in defamation complaints for solicitors acting for both claimants and defendants to libel claims to seek to enter into without prejudice discussions, often before the full nature of the dispute has crystalised. In fact, in my experience, inhouse media lawyers sometimes like to move to without prejudice discussions very quickly, often before a formal complaint has been made in writing. This is particularly so when they realise that a mistake of fact has been made and the pragmatic solution is to start talking about a correction as soon as possible.

28. For example, I very recently acted for a client in relation to an advert published in a very well-known national newspaper which had the potential to cause substantial damage to a company's reputation. The matter was very urgent because the matter had already gone to print and so I called the senior solicitor at the newspaper to give advance notice of a complaint that we were about to send. The solicitor was grateful for the heads up and having received our letter (which was not a formal "letter before action"), and sent me an email marked "Without Prejudice" asking for a without prejudice call to discuss the matter (see **[ASH2/34-35]**). The without prejudice email did not contain any concession; it simply was an invitation to create a without prejudice channel of communication. We then had a without prejudice telephone call and an exchange of without prejudice correspondence (alongside some open correspondence) in order to resolve the matter quickly and pragmatically the same day.

29. The above example of concurrent open and without prejudice correspondence before any formal letter of claim is very common amongst the media law community. In recent years, I, and members of my team, have had many communications with inhouse media lawyers on a without prejudice, confidential or "not for publication" basis at the very outset of a dispute. Setting up such channels can allow the lawyers on both sides to have an open and pragmatic discussion about resolving the dispute quickly without the parties become entrenched in legal arguments or making matters worse with threats of litigation or further publication. My understanding is that this practice is very common with other firms acting on libel matters too.

30. The purpose and effect of making communications without prejudice is that the communications and the negotiations are inadmissible in any subsequent legal proceedings. That is usually desirable from both sides' perspective since it allows a candour in the communications without either the substance of the communications or the mere fact that each of the parties were prepared to contemplate such discussions being referred to in proceedings. If the practice was that the confidentiality of such discussions was not respected (or that without prejudice correspondence could be published without consequence), such discussions would be conducted very differently and, in my view, would not be as effective as they are resolving libel disputes early.

31. I have always proceeded on the understanding that without prejudice communications are confidential. That is because if the communications are inadmissible in any subsequent proceedings, it is difficult to see how that inadmissibility could be maintained if the communications are in the public domain. For these reasons, I am extremely careful in how I refer to without prejudice correspondence, including the mere fact of it, and generally find that other leading litigation firms are too.

Communicating defamation letters to "others"

32. I understand that the Applicant contends that there is a widespread practice of recipients of defamation letters communicating them to "others". To the extent that this means that within a

media organisation there is a degree of internal communication of defamation letters, I agree. I have acted, and continue to act, for media organisations and I recognise, for example, that an individual journalist in receipt of a defamation letter may well circulate it to their editor and/or to inhouse lawyers. It may also be communicated to external lawyers to obtain advice. However, I am not aware of any more widespread communication of such letters, especially letters that are expressed to be confidential and/or without prejudice. There may be different practices within different media organisations. To the extent that there is a consistent practice with letters communicated more broadly than this, I am not aware that this has ever been publicly stated and it was (and is) not known to me.

33. To the extent that the Applicant is referring to the publication of pre-action correspondence to the world, in my experience it is very rare that any media organisation will publish the contents of any defamation letter or refer to the existence of a pre-action letter (with the notable exception of Private Eye). As regards the publication by the media organisation of the mere fact of a defamation complaint or claim, this too in my experience is rare. I can remember very few occasions where the media have referred publicly to the existence of pre-action legal correspondence, whether that correspondence is expressed to be confidential or otherwise.

34. In particular, I had never heard it be said that claimant lawyers in this area should be mindful of a practice on the part of defendants of the dissemination of defamation letters which is so widespread that it could affect the potential confidentiality of the letters.

Politicians

35. The Applicant contends that defamation claims brought by *"very senior politicians are highly unusual"*. I do not know what the Applicant means by *"very senior politicians"* in this regard. I am aware that it was not uncommon for politicians to bring libel claims. When I was at my previous firm Olswang, I worked with Geraldine Proudler, a partner at the firm and top-ranked media litigation lawyer, who was particularly well known for successfully defending The Guardian newspaper in separate libel claims brought in the 1990s by then Conservative MPs, Jonathan Aitken and Neil Hamilton. I have subsequently been aware of libel claims brought, for example, by Lord McAlpine, the former Treasurer of the Conservative Party against Sally Bercow, the wife of the then Speaker of the House of Commons; and Tory MPs, Tim Yeo and Andrew Mitchell. In 2017, Nadhim Zahawi, at the time MP for Stratford-upon-Avon, was awarded £200,000 libel damages against Press TV in relation to false allegations relating to the funding of terrorism **[ASH2/3-4]**. I am also aware from conversations with other libel lawyers that many more examples exist of politicians engaging in pre-action correspondence in order to prevent or correct inaccurate reporting.

36. Politicians, like all high profile individuals, need to consider very carefully before embarking upon any defamation complaint or claim. The consequences of failed libel actions can be severe

for politicians. But I am not aware of any general view that senior politicians should never bring defamation complaints. I considered in July 2022 (and remain of the view) that it was open to any politician as with any other person to bring a defamation claim and that it may be appropriate to do so if the allegations in question were especially serious and/or connected with the individual's public position.

Wealthy claimants

37. The Applicant also contends that when wealthy claimants bring defamation complaints, it is particularly common for letters "*to state (on an open basis) that the claimant will not seek any damages if the defendant promptly retracts*" and that "*there is an expectation is that they should seek to avoid bringing a defamation claim unless strictly necessary and they do not need the money*".

38. It is certainly true in my experience that one relatively common approach in defamation matters is for the potential claimant's solicitor to state in open correspondence that they will not seek damages if the defendant promptly retracts. That is true across all types of claimants, but I do not recognise it particularly as a feature when the potential claimant is wealthy. In my experience, the main driver of whether the claimant is prepared to waive damages (and costs recovery) is speed; the greater the need for a quick retraction or correction, the more likely the claimant is to waive damages and costs. Indeed, claimants that cannot afford the costs of a libel action going to trial are even more incentivised than wealthy claimants to waive damages and costs.

39. However, there is certainly not a universal approach to waiver of damages and costs. One reason, in my experience, why potential claimants may insist on seeking a sum in damages is that such as sum is recognised to represent vindication to the potential claimant and something they can point to underline to third parties the falsity of the allegations in question. A payment in damages may also have a deterrent effect which may be desirable. [redacted] The reporting of this case in the Daily Mail includes a quote from Mr Zahawi as to why vindication was important **[ASH2/3-4]**.

40. As regards whether there is an expectation that wealthy claimants should avoid bringing a defamation claim unless it is strictly necessary, in my experience, no person wants to bring a defamation claim if it can sensibly be avoided; it is a costly, time-consuming and stressful process. However, I have never heard it suggested until these proceedings that there is a particular expectation that wealthy claimants should avoid bringing such claims or that wealthy claimants are not just entitled to bring such claims as anyone else. As for whether wealthy claimants *"need the money"*, in my experience for claimants in defamation actions, as stated above, the principal reason for seeking a sum of damages is as vindication and to be able to demonstrate to third parties the falsity of the allegations. That is as true for wealthy claimants as for anyone else. It is also

true that it is not uncommon in my experience for wealthy claimants to donate a sum of damages received in a defamation complaint to charity.

41. I hope that the above explanation of my understanding of the relevant custom and practice in defamation matters in July 2022 is helpful context to the factual narrative of events that follows below.

D. THE INSTRUCTION FROM MR NADHIM ZAHAWI

42. This section of my statement contains a relatively detailed summary of what I consider to be the circumstances of my instruction by Mr Zahawi and my engagement with Mr Neidle. Whilst some of this background is not directly relevant to the Applicant's case against me, I am providing this information by way of context as to my state of mind and intention in relation to the relevant correspondence. It should not be taken as a response to Mr Neidle's allegations against Mr Zahawi.

43. [redacted]

44. Mr Zahawi is a prominent businessman and now a former Member of Parliament having been the elected Conservative MP for Stratford-on-Avon from 2010 to 2024. [redacted] Mr Zahawi was the Chancellor of the Exchequer and in fact [redacted] announced his candidacy in the July 2022 Conservative Party leader election. Before his entry into politics, Mr Zahawi was a co-founder of YouGov, a market research and data analytics firm which grew to be successful and was later floated on the London Stock Exchange in 2005. My previous firm had acted for YouGov but I had never met nor acted for Mr Zahawi.

45. I had some concerns about the high profile and political nature of the matter and so sought clearance from Osborne Clarke's Ethics Committee to act for Mr Zahawi. Having obtained that clearance, I cleared conflicts checks [redacted] I had by this stage established that some of the hostile media coverage related to Mr Zahawi's personal tax arrangements. [redacted]

46. [redacted]

[redacted]

47. Over the course of a few days, questions were raised by The Sunday Times, The Observer, The Independent, The Daily Mail, The Sun on Sunday, The Mail on Sunday, and The Guardian. There were multiple rounds of questions and we were often dealing with enquiries from several media outlets simultaneously with very short deadlines. Whilst I had some support from a Senior Associate in my team, I was at this stage carrying out the lion's share of the work on the matter. The pace and complexity of the matter was such that it was difficult for two senior lawyers to stay on top of the matter at the same time. [redacted] Given the nature of the client, I also considered that it was important for the matter to be Partner-led. It therefore proved quite difficult to delegate work on the matter.

48. [redacted]

49. Whilst over the course of my career I have acted for many high profile clients in some very challenging situations, I was acutely conscious that I was acting for the sitting Chancellor of the Exchequer during his bid to become Prime Minister. As noted above, I was therefore extremely engaged on the matter to the exclusion of most of my other work at the time.

The initial work

50. [redacted]

51. In particular, since the announcement of Mr Zahawi's candidacy for leadership of the Conservative Party (and Prime Minister), Mr Zahawi's team were facing a stream of requests from prominent media outlets for comments on proposed stories concerning his tax affairs, with deadlines of later that afternoon in advance of the Sunday papers.

52. On that first day we were approached by The Sunday Times and The Observer with requests for comment on the suggestion that Mr Zahawi held an interest in YouGov through shares in a company based in Gibraltar called Balshore Investments Limited ("**Balshore**").

53. [redacted] a statement was given to The Observer, The Independent, The Sunday Times, The Sun on Sunday, and The Mail on Sunday which confirmed that Mr Zahawi had properly declared his financial interests and that he had and had never had an interest in Balshore, nor did he consider that he was a beneficiary under any trust in relation to Balshore **[ASH1/11-12]**. Many of these outlets ran stories overnight which nonetheless maintained the suggestion that Mr Zahawi held an interest in YouGov through Balshore, and that he had been under investigation by HMRC.

Balshore Investments Limited

54. [redacted]

55. [redacted]

56. [redacted]

57. [redacted]

58. [redacted]

59. [redacted]

60. [redacted]

61. [redacted]

62. [redacted]

Engagement with the media

63. Given the intensifying media interest, including as a result of Mr Neidle's blog post on 10 July 2022, [redacted]

64. [redacted]

65. [redacted]

66. [redacted]

67. [redacted]

68. [redacted]

[redacted]

69. [redacted]

70. [redacted]

71. [redacted]

72. [redacted]

73. [redacted]

[redacted] Letters to The Guardian, The Times and The Mail were all sent that day **[ASH1/134-139]**. These were all marked "Private and Confidential". I got no pushback from any recipient as regards this labelling and the contents of the letters – as well as the facts of them being sent – were all kept confidential by the respective media organisations.

74. On that day, 13 July 2024, Mr Zahawi was also eliminated from the contest for leadership of the Conservative Party after failing to secure the support of 30 MPs required to reach the next round.

75. On Friday, 15 July 2022, we received further enquiries from The Times, The Sunday Times and The Independent. One of the enquiries was as follows:

> "*A source close to YouGov has said it was well-known Mr Zahawi's family ran Balshore Investments, it was a 'family trust' and he stood to benefit from it. Would Mr Zahawi like to comment on this?*" **[ASH1/70]**.

76. [redacted]

77. [redacted]

78. [redacted] I read an article in The Times that morning suggesting that Mr Zahawi may have avoided millions in tax. [redacted]

[redacted]

79. [redacted] See **[ASH2/19]** for a tweet from Mr Kellner's.

The HMRC investigation

80. At the same time that the media were accusing Mr Zahawi of holding an interest in YouGov through Balshore, it was also being alleged that he was under investigation by HMRC. [redacted]

81. On 10 July 2022, in addition to the queries surrounding Balshore, media outlets were asking for comment on whether or not HMRC were investigating Mr Zahawi as a result of the YouGov holding structure. [redacted]

82. [redacted]

83. [redacted]

[redacted]

84. [redacted]

Dan Neidle

85. Following the initial weekend of media coverage, I became aware of Dan Neidle. He was being cited as a source and quoted by some of the mainstream media. I looked him up online and became aware of his Tax Policy Associates ("**TPA**") website and blog, and his Twitter feed. It became apparent to me that he was likely a key source of information to the media and the most likely source of the detailed pre-publication questions coming from the media.

86. Mr Neidle is a former tax solicitor and partner at Clifford Chance LLP. He is an experienced and sophisticated tax lawyer and public commentator on a wide range of issues. Following his departure from Clifford Chance in 2022, he founded TPA which according to its website is a "*not-for-profit, founded to improve tax and legal policy, and public understanding of tax*" **[ASH1/283]**. Mr Neidle is active on social media platforms including X (formerly known as Twitter) and LinkedIn **[ASH1/281]**.

87. The relevant articles and tweets published by Mr Neidle are set out in the Rule 12 Statement but by way of brief summary:

87.1.1 on 10 July 2022, Mr Neidle published an article on the TPA website, which suggested that Mr Zahawi had used an offshore trust to avoid capital gains tax **[IWB1/20-33]**; and

87.1.2 on 16 July 2022, Mr Neidle posted a series of 15 consecutive tweets alleging that Mr Zahawi had lied to the media as to why his founder shares in YouGov were held via Balshore and not in his own name in order to conceal tax avoidance (the "**Tweets**") **[IWB1/41-55]**. The first of the Tweets read:

> "*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...*" **[IWB1/41]**.

88. [redacted]

The sending of the Email and the Letter

89. [redacted]

89.1 [redacted]

89.2 [redacted]

89.3 [redacted]

89.4 [redacted]

90. [redacted]

[redacted]

91. [redacted]

92. [redacted] I did so on an open basis but offered Mr Neidle the opportunity to speak on a without prejudice basis if he preferred. [redacted] However, Mr Neidle replied that he would only consider what I had to say in writing. He then followed up with a further message to say that he would *"not accept"* without prejudice correspondence **[IWB1/897]**.

93. [redacted]

94. [redacted]

95. [redacted]

[redacted] As I note above, I consider sending an email marked "without prejudice" to the defendant side inviting a conversation with a view to settling the matter to be very common practice.

96. I sent Mr Neidle an email marked "*Without Prejudice & Confidential*" at 18:53pm that evening (the "**Email**") **[IWB1/58-59]**. The Email asked that Mr Neidle retract his "*allegation of lies*" against Mr Zahawi, and confirmed that we would write more fully on an open basis should he decline to do so. [redacted]

97. Mr Neidle quickly responded to the Email stating that he was "*not interested in engaging in without prejudice correspondence*" and asked that I send him an open letter instead **[ASH1/153]**. [redacted]

98. On the morning of Tuesday, 19 July 2022, I received a follow up email from Mr Neidle in which he stated that Mr Zahawi "*has done nothing to correct [his] understanding of events on an open basis*" and so was "*publishing a list of outstanding questions*" **[IWB1/60]** [redacted]

99. [redacted]

[redacted] Such letters are often sent as a warning and as precursor to more formal correspondence or a letter before action later down the line. [redacted]

100. [redacted] my firm sent an open letter to Mr Neidle on Tuesday, 19 July 2022 (the "**Letter**") **[IWB1/61-63]**. The Letter was marked "*Private and Confidential*" and "*NOT FOR PUBLICATION*". The Letter did not ask for a response but requested that Mr Neidle "*reconsider*" his allegations of dishonesty **[IWB1/63]**. [redacted]

101. On 22 July 2022, Mr Neidle published two articles on the TPA website which contained the Email and the Letter **[IWB1/75-121]**. [redacted]

102. In August and September, things went quiet. [redacted]

[redacted]

103. Subsequent to that, I engaged in further correspondence with Mr Neidle in respect of the Tweets and Allegation until approximately January 2023, and Mr Zahawi's position on his tax affairs, as well as my and the firm's conduct in sending the Email and Letter and the factual assertions contained within them **[ASH1/226-237]**. [redacted]

E. THE APPLICANT'S INVESTIGATION AND REFERRAL TO THE SOLICITORS DISCIPLINARY TRIBUNAL

104. On 25 July 2022, Mr Neidle wrote to the Applicant to draw its attention to the above matter, in particular to the correspondence between myself and Mr Neidle **[IWB1/122-124]**.

105. On 22 August 2022, the Applicant confirmed that it had opened an investigation into the conduct of myself and Osborne Clarke regarding the Email and Letter sent on behalf of Mr Zahawi to Mr Neidle.

106. Mr Neidle wrote to the Applicant again on 1 December 2022 to make a formal complaint of mine and Osborne Clarke's conduct **[ASH1/229-235]**.

107. The Applicant confirmed on 31 January 2024 that it was recommending that I be referred to the Solicitors Disciplinary Tribunal ("**SDT**") alleging that I had improperly marked the Email and the Letter with the labels in breach of certain SRA Standards and Regulations **[IWB1/5-19]**.

108. In respect of the Applicant's case, my understanding is that:

108.1 it does not relate to any issue relating to the merits of Mr Zahawi's potential defamation claim against Mr Neidle;

108.2 the case originally centred on the labels that I had applied to the Email and Letter; and

108.3 the Applicant's case is now that the Email contained an *"Implied Threat"* and that the use of the labels was relied on to justify that "threat", and also that even if there was arguably a proper legal basis for the labels set out in the Email, then that still may be a breach of certain SRA Standards and Regulations.

F. MY UNDERSTANDING OF MR ZAHAWI'S DEFAMATION COMPLAINT GENERALLY

109. Against the above background and the case against me as now put by the Applicant, I set out below further explanation of why I drafted the correspondence in the way that I did and, in particular, to address the allegations of misconduct that are made against me.

Establishing the facts

110. [redacted] Moreover, Mr Zahawi was an experienced and respected businessman and was at that time the Chancellor of the Exchequer [redacted]

111. [redacted]

My advice as to Mr Zahawi's claim for libel against Mr Neidle

112. The Rule 12 Statement does not dispute that on the basis of the knowledge available to me, Mr Zahawi had a reasonable claim in defamation against Mr Neidle. However, I note that Mr Neidle (although not the Applicant), in paragraph 46(b) of his witness statement, contends that I advanced a meritless claim on behalf of Mr Zahawi in order to seek to persuade Mr Neidle to retract the Allegation.

113. That is not the case. [redacted]

113.1 [redacted]

113.2 [redacted] Mr Neidle's social media posts and blog were clearly influential and widely followed by the national media. Most of the mainstream media outlets were quoting Mr Neidle and appeared to be relying on his analysis to pose their questions to Mr Zahawi.

113.3 [redacted]

113.4 [redacted]

114. [redacted]

115. As became apparent only later on, Mr Neidle himself accepted that the Allegation may not have been true, [redacted]

Intention to sue

116. The Rule 12 Statement suggests that Mr Zahawi never intended to bring any defamation proceedings against Mr Neidle, notwithstanding the sending of the Email and the Letter. Mr Neidle similarly states at paragraphs 55 and 56 of his witness statement that any suggestion that Mr Zahawi might bring a claim was no more than a *"bluff"*. [redacted]

[redacted] As stated above, I am aware of numerous other politicians in addition to Mr Zahawi himself who have sued for libel in an attempt to clear their name from seriously defamatory allegations.

117. [redacted]

118. [redacted]

119. Ultimately, for any individual (and particularly a Cabinet minister), the decision to commence defamation proceedings is one which requires very careful consideration, given the cost, the commitment of time, the inherent risks and the potential for adverse publicity. However, in my experience, very few defamation claims get as far as issuing proceedings. The vast majority of cases are resolved at the pre-action stage. That is particularly so in today's fast-moving news environment where the priority for the claimant is often damage limitation rather than seeking damages and costs recovery. Likewise, when I act for media publishers in relation to well-argued defamation complaints, the publishers often wish to engage in a sensible dialogue with the claimant at a very early stage to try to resolve matters before costs escalate and further damage is done.

120. [redacted] I understand that no finding has been

made by HMRC or anyone else that Mr Zahawi either deliberately avoided tax or lied in his explanation about the allocation of shares to Balshore.

SLAPPs

121. The Applicant and Mr Neidle have both asserted that the Email and Letter were sent as aggressive attempts improperly to intimidate Mr Neidle into retracting his Allegation and restrict further discussion of Mr Zahawi's tax affairs and that they bore all the hallmarks of a SLAPP. In this regard, at paragraph 3 of the Reply, the Applicant seeks to allege that the Email contained an *"Implicit Threat"*, and, *inter alia*, at paragraph 40 of his witness statement, Mr Neidle states that, in his view, *"... many people who would have received [the Email] would have been scared, intimidated and emotional..."* (although he notes that he was not).

122. [redacted]

123. [redacted]

124. SLAPPs were at the time (and remain) very topical in the legal industry and the legislature. However, the Applicant first published a Warning Notice on SLAPPs on 28 November 2022 (well after the Email and the Letter were sent) and an updated version on 31 May 2024. There was no pre-existing guidance from the Respondent in relation to SLAPPs or the labelling of correspondence.

125. I read the November Warning Notice when it was first published in November 2022 and have followed its progress. The Warning Notice states that SLAPPs constitute an *"abuse"* or *"misuse"* of the legal system as an attempt to *"harass"* or *"intimidate"* the recipient.

126. I do not believe that the Email or the Letter can be considered as bearing any of the characteristics of a SLAPP by reference to this guidance. [redacted]

127. [redacted] I attempted to call Mr Neidle before committing to writing at all and only resorted to writing when Mr Neidle refused to speak on the telephone.

128. [redacted] I made clear that we were not trying to restrict Mr Neidle's right to scrutinise the tax affairs of Mr Zahawi and that the complaint was limited to the Allegation. I also recommended that Mr Neidle seek advice from a specialist libel lawyer to ensure that there was no inequality of arms.

129. I have spoken to at least two senior in-house newspaper lawyers who have told me that they have read my correspondence online and thought it to be reasonable. Many other lawyers who operate in the area have told me the same. Indeed, Mr Neidle has himself admitted that he was not at all cowed by the Email or Letter, both in his witness statement and in an interview with The Guardian where he described the matter as "*a fun legal litigation game*" **[ASH1/259]**.

130. Paragraph 59 of the Rule 12 Statement further states that I attempted to rely on Mr Neidle's "*apparent lack of knowledge in relation to matters connected with defamation and privacy*" so as to take unfair advantage of him and prevent him from further commenting on Mr Zahawi and his tax affairs. For the reasons given above, I strongly disagree with this contention.

G. MY UNDERSTANDING OF THE EMAIL AND LETTER SPECIFICALLY

The Labels on the Email

131. [redacted] I remain of that view. The reasons for that are as follows:

131.1 [redacted]

131.2 [redacted] In particular, the Email stated.

> "*Our client wants to give you the opportunity to retract your allegation of lies in relation to our client.*"

and concluded:

> "*I am available to discuss if you change your mind on a having a phone call. That could well save time and expense on both sides.*"

131.3 [redacted] accept that I could have made that concession clearer in the Email [redacted]

131.4 Consistent with that, the Email expressly stated:

> "*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*".

131.5 In my experience, as stated above, it is standard practice not to state the full nature of a without prejudice proposal in the first without prejudice communication. [redacted] Prior to sending the Email, I had tried to engage with Mr Neidle by telephone in the hope that the matter could be resolved quickly, quietly and amicably. Had Mr Neidle been willing to discuss over the telephone, [redacted]

131.6 [redacted]

131.7 [redacted]

131.8 [redacted] In this regard, I note that the Updated Warning Notice (though not published at the time of the Email) does recognise "*the confidentiality of communications often encourages parties to share information and resolve disputes on the understanding that the issues will not become public*" **[ASH1/273]**.

131.9 [redacted]

131.10 [redacted]

131.11 [redacted]

131.12 [redacted]

[redacted]

The wording "serious matter"

132. In the Email, I included the following wording:

> "*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*".

133. At paragraph 5 of their Reply, the Applicant states that *"If a solicitor informs a potential defendant that they are not entitled to publish or refer to an email and that to do so would be a serious matter that plainly contains an implicit threat of legal action should they do so."* I do not agree with the Applicant's suggestion that the use of the wording *"serious matter"* contained, as they describe it, an *"implicit threat of legal action"* (or indeed that it was, as they seemingly suggest at paragraph 7 of the Reply, a *"purely tactical"* way of keeping the defamation claim a secret). [redacted] and I do not think that it how it would be typically interpreted. In addition, the Applicant appears to have taken the use of the wording *"serious matter"* entirely out of context, which, as is evident from the preceding sentence, related to the without prejudice nature of the Email and was very particularly written in the context of writing to another solicitor, hence the wording "*as you know*". I remain of the view, [redacted] that it is a serious matter for a solicitor to deliberately publish without prejudice correspondence.

134. [redacted] I have also explained why I consider that without prejudice communications are important in defamation matters, why they should be considered to be confidential, that they are almost invariably treated as being confidential by both sides, and that there is a particular importance for solicitors to respect that confidentiality since that is part of the respect for the litigation process.

135. [redacted] I cannot recall any other occasion previously that a solicitor has failed to respect this confidentiality. [redacted]

136. Mr Neidle appears to have accepted that it is "improper" for a solicitor to publish genuine without prejudice correspondence. In particular, in a blog post dated 22 July 2022 **[ASH2/20-21]**, he

stated as follows when discussing the confidentiality in the Email and explaining to his readers the nature of without prejudice:

> *"In other words, if I'm suing someone for £100m, and offer in a "without prejudice" letter to settle for £1 then, if we later get to court, the defendant can't point to my £1 offer and say it suggests I don't believe in my own case. The court will generally refuse to accept my letter as evidence. It is probably also improper for the defendant's lawyer to publish my letter – it's certainly bad manners."* (with added emphasis).

137. [redacted]

138. If Mr Neidle (having received specialist advice) doubted that the Email was properly sent on an occasion of without prejudice, it was open to him for to have responded to me setting out the reasons for his doubts. Had he done that, I could have explained our position to him. Regrettably, he gave me no opportunity to do that and instead published the correspondence without any prior warning.

139. [redacted]

140. Notably, I did not repeat this wording on the open Letter sent three days later. That is because the Letter was not without prejudice so the specific issues in respect of publication of without prejudice which I considered should cause a solicitor in particular to stop and reflect did not apply.

The Labels on the Letter

141. I applied the labels "*Private and Confidential*" and "*NOT FOR PUBLICATION*" to the Letter.

142. As explained above, I understood that it was relatively common for labels such as these to be attached to defamation letters.

143. [redacted] and still believe, [redacted]

[redacted]

144. [redacted]

145. The contention that the Letter was confidential was done in particularly measured terms. Specifically, it stated "*[p]lease 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.*" [redacted]

146. The Letter expressly stated: "*[p]lease also do not misrepresent the nature of this letter. It is not a threat to sue for libel*" [redacted]

147. The Letter also stated, "*if your request for open correspondence is motivated by a desire to publish whatever you receive then that would be improper*". [redacted]

148. As explained above, the use of the label "*NOT FOR PUBLICATION*" is commonplace amongst practitioners when responding to media enquiries or corresponding with media organisations. This enables lawyers to communicate their client's legal case without this information being published. In my experience, this label is largely respected by the mainstream media, as was the case in relation to the letters that Osborne Clarke sent to The Guardian and The Sunday Times on behalf of Mr Zahawi in the week before we wrote to Mr Neidle.

149. The Letter was sent prior to the publication of the Warning Notice and the Updated Warning Notice but I do not consider that the Letter contravened either.

Confidentiality of the fact of the Email and Letter

150. I also understand from the Rule 12 Statement that the Applicant considers it was improper for the Email and/or Letter to have sought to prevent Mr Neidle from referring to the fact that Mr Zahawi sought to protect his interests by way of legal correspondence.

151. [redacted] I should also note at this stage, that by stating that Mr Neidle was not *"not entitled to publish it or refer to it other than for the purposes of seeking legal advice"*, [redacted] I acknowledge that I could have made this clearer by including the word *"publicly"* after *"refer to it"*. [redacted] Indeed, had Mr Neidle requested confirmation as to whether he could share the Email as far as reasonably necessary with those close to him (i.e. akin to what a media organisation would do by sharing such confidential correspondence internally), I would have provided the requisite confirmation without delay. Regrettably, however, Mr Neidle did not seek any such clarification. [redacted]

152. The Email was sent on a without prejudice basis, which protects both the fact and substance of without prejudice engagements. [redacted]

153. Further, there was a real risk that in seeking to engage with Mr Neidle in respect of the Tweets and the Allegation, and in particular addressing the assertion that Mr Zahawi had lied about his tax affairs, there would be further media interest and repetition of the Allegation which would undermine Mr Zahawi's ability to resolve the matter quickly and quietly.

154.

Confidentiality of the potential defamation claim

155. The Applicant also suggests in its Rule 12 Statement that it was improper for me to prevent Mr Neidle from referring to the fact of Mr Zahawi's threatened defamation claim against him. Had Mr Neidle published the fact of the defamation claim, not only would that have undermined that confidential channel of correspondence, it would also have led to the republication of the allegations complained of and potentially unfair and uninformed public criticism of Mr Zahawi.

H. NO IMPROPER CONDUCT

156. I do not consider that in preparing and sending the Email or the Letter to Mr Neidle, I acted in breach of my regulatory obligations. I disagree with the Applicant that my conduct amounts to a breach 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**").

157. I do not believe that it was improper for me to prepare and send the Email and Letter to Mr Neidle or add the Labels to them in the manner that I did. Neither were intended to be aggressive or

intimidating. I did not seek to mislead, or abuse my position. The purpose of the Email and Letter was to protect Mr Zahawi's legitimate interests. In this regard, I emphasise that:

157.1 [redacted]

157.2 [redacted]

157.3 [redacted]

157.4 [redacted]

157.5 [redacted] The fact that Mr Neidle or the Applicant disagree with my legal analysis does not make it improper for me to have applied the Labels.

I. THE EFFECT OF THESE PROCEEDINGS ON ME

158. I have been asked to say a few words about the impact of these proceedings on me and my practice.

159. From a personal perspective, these proceedings have been extremely stressful and time-consuming. The most distressing thing of all is to have my integrity questioned, having worked very hard all of my career to develop a good reputation that has allowed me to create a successful practice and take on leadership roles. However, it has also taken up very many hours of my time, mainly outside of normal working hours. I often find myself awake at night thinking about the case and waking up early thinking about it.

160. I have spent many hours thinking about what I might have done differently. It is easy to pick holes in the precise wording that I used in hindsight and, on reflection, I could have explained some of the wording that I used in greater detail. But I remain of the view that I had a duty to act in the way that I did based on the instructions that I was given at the time. I followed what I considered to be the law, practice, and regulatory code to pursue my client's best interests.

161. The proceedings have been the subject of a great deal of publicity since Mr Neidle named me on his blog. I exhibit at **[ASH1/227]** and **[ASH2/30-33]** some of the emails that I have received from members of the public who have either read Mr Neidle's blog or subsequent press coverage. Whilst I am robust enough not to take too much notice of these emails, it is nonetheless distressing to receive them. Mr Neidle published a headline on his blog stating "*Nadhim Zahawi's lawyer at Osborne Clarke may now be struck off*." That was particularly difficult to read.

162. For the most part, the legal profession, especially those operating in the media law space, have been very sympathetic to my predicament. However, I have picked up some concerns about the allegations concerning my integrity. For example, one referrer of cyber crisis work to my team has told a colleague of mine that she will not refer work to Osborne Clarke while these proceedings are going on. Another legal industry group that I am involved with suggested that I take a "back seat role" on a particular project while the proceedings are ongoing given its own focus on legal ethics.

163. I have been asked about the proceedings by countless colleagues, clients and friends. Whilst everyone has been extremely supportive, I still have to explain the case and my position on it, which I have now had to do many times – but without of course being able to reveal privileged communications. This has all been a very big distraction to what is already an intense and often stressful role.

164. Nonetheless, it has been a learning experience. My team, and indeed the whole litigation team at Osborne Clarke, are now more cautious in the use of labels on correspondence and ensure that we explain such labels fully, even when the recipients of our letters are familiar with the labels. I have noticed that other firms are now doing the same. I hope that my experience has been a learning experience for others too and makes a meaningful contribution to the debate about SLAPPs.

STATEMENT OF TRUTH

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

I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

Signed: ..... Signed by: Ashley Hurst 3F770162B2B2484... .....

Dated: 4 November 2024

ASHLEY SIMON HURST

This statement contains references to privileged information

U121

On behalf of: Respondent
Witness: Ashley Simon Hurst
No. of Witness Statement: First
Exhibit: ASH2
4 November 2024

Case No. 12612-2024

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

WITNESS STATEMENT OF ASHLEY SIMON HURST

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