On behalf of: Respondent
Witness: Lorna Jane Skinner KC
No. of Witness Statement: First
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
LORNA JANE SKINNER KC

I, LORNA JANE SKINNER KC of Matrix Chambers, Gray's Inn, London, WC1R 5LN WILL SAY AS FOLLOWS:

1. INTRODUCTION

1.1 I am a practising barrister at Matrix Chambers.

1.2 I have been asked by the Respondent's solicitors to provide this statement to set out my experience as to certain aspects of custom and practice in defamation matters.

1.3 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.

1.4 I have known the Respondent for around 20 years during which time we have worked together reasonably regularly.

2. BACKGROUND

2.1 I was called to the Bar in 1997. From 1998 to the end of 2005 I was a tenant at 1 Brick Court. Since January 2006 I have been a member (tenant) at Matrix Chambers.

2.2 My specialist area of practice is media and information law, which includes defamation, breach of confidence, misuse of private information, privacy, data protection, human rights and freedom of information.

2.3 I took silk in 2021, and in May 2023, I was appointed by the Lord Chief Justice as a Deputy King's Bench Master, based at the Royal Courts of Justice.

2.4 I was appointed Assistant Coroner for Cambridgeshire in 2018. I was appointed as Recorder (Crime) in January 2022 and in January 2024 obtained qualification to sit on serious sexual offence cases. I have been a member of the Arbitrator Panel for the Independent Press Standards Organisation since 2016. I have also sat on and chaired medical student appeals. I am an Accredited ADR Group Civil & Commercial Mediator.

3. MY MEDIA DISPUTES PRACTICE

3.1 As a media disputes barrister, I have extensive experience of acting for a wide range of both claimants and defendants. My clients have included television companies, national and local press, publishing houses, Members of Parliament, government departments, local authorities, trades unions and the police, as well as individuals. In addition to disputes work, I also provide pre-publication advisory work for entities such as NGOs and publishers.

3.2 During the early part of my career I regularly worked for *The Guardian, The Observer, The Times* and *The Sunday Times* as a "night-lawyer". This role required me to read, prior to publication, the next day's news and provide advice on libel and other legal risks. I also provided similar services to other regular publications including *The Law Society Gazette*. I co-authored *A Practical Guide to Libel and Slander* in 2003, contributed to *Atkin's Court Forms* and am a contributor to the Matrix publication, *Online Publication Claims*.

3.3 As an example of the diverse work I have been involved in across my practice:

3.3.1 I acted for Vivian Imerman in breach of confidence/misuse of private information proceedings brought against the Tchenguiz brothers;

3.3.2 I acted for News International at the Leveson Inquiry;

3.3.3 I acted for various national media entities in the Inquest into the death of Alexander Litvinenko;

3.3.4 I acted for PJS in the "celebrity threesome" misuse of private information injunction case against News Group Newspapers Ltd;

3.3.5 I acted for Appleby Global Group LLC in breach of confidence and data protection claims brought against the BBC;

3.3.6 I acted for Salman Butt in libel proceedings brought against the Secretary of State for the Home Department arising from the publication of a press release about the updated Prevent duty guidance;

3.3.7 I acted for Lexisnexis Risk Solutions UK Ltd in data protection proceedings brought against it as an Article 27 representative;

3.3.8 I acted for Neil Gerrard in misuse of private information, harassment and trespass proceedings arising from covert surveillance conducted by Diligence on the instruction of the Eurasian Natural Resources Corporation; and

3.3.9 I represented Simon Blake and Colin Seymore in their successful libel claims against Laurence Fox.

4. CONFIDENTIALITY IN DEFAMATION

4.1 Whilst I tend to become involved in media disputes at a later stage than solicitors, I often have sight of and advise on the correspondence exchanged between the parties. This includes pre-action communications, and formal correspondence of claim in accordance with the Pre-action Protocol for Media and Communications Claims. Over the years I have often drafted such correspondence, and so can speak with experience of these matters across a large spectrum of cases.

4.2 Based on my experience, it is very common practice for parties to mark defamation pre-action correspondence, including pre-publication, post-publication and formal letters before action, as "Confidential" and "Not for publication". The most likely explanation for the evolution of this practice is that the default position is that correspondence with a media entity is *for* publication. Such communications are certainly not for publication, not least because they often repeat the words or allegation complained of as libel and may contain further (previously unpublished) information. If news publishers considered themselves free to publish the content of such communications, this would stifle the free and frank exchange of information and undermine and inhibit the public policy behind the Pre-Action Protocol – namely the early settlement of disputes.

4.3 Whilst, self-evidently, marking such correspondence "confidential" and "not for publication" cannot guarantee that it will not be put into the public domain by the recipient, the instances of this occurring are, in my experience, very rare. I can think of no example from my own

practice where a news publisher has done so. So much so that, when advising my claimant clients contemplating bringing proceedings against professional publishers, I reassure them about confidence in such communications being respected by recipients. The principal circumstances in which I warn of any real risk of such communications being published is in cases where the potential defendant is an individual whose conduct to date indicates that he or she is unlikely to understand or adhere to the usual litigation processes. In such circumstances I still advise that the marking of "confidential" and "not for publication" be applied, together with a sentence to the effect that legal advice should be sought before any further action is taken, but I also warn my clients that there is a risk of publication.

5. DEFAMATION COMPLAINTS AND WITHOUT PREJUDICE

5.1 In my experience, without prejudice communications and discussions between parties in defamation complaints are very common, at all stages of the dispute. There are strong and well-established policy reasons for encouraging the practice and which apply to all types of legal dispute. The first step in the process is often in the form of a mere invitation to communicate, which itself may or may not contain a concession or offer. Often it will not, because it is important to establish whether there is any real appetite for compromise. Such communications are usually marked 'without prejudice' and would be treated as such. They would not, for example, be included in any inter partes correspondence bundle for court.

6. DEFAMATION CORRESPONDENCE

6.1 I have read the email from the Respondent dated 16 July 2022 to dan@taxpolicy.org.uk. I note that it is marked "Confidential & Without Prejudice". I note that it goes on to provide an explanation as to why this is the case. I note that it also contains a suggestion that Mr Zahawi may not progress any libel claim arising in the event that the allegation of dishonesty is immediately retracted, and also recommends that the recipient seek advice from a libel lawyer. On the face of things, the content of the email is unremarkable in my experience.

6.2 I have been asked about the reference to publication of or reference to the email being a "serious matter" and my understanding, through experience, of the same. I have been asked whether, in my experience, it is common to use such phrases to threaten the issue of proceedings. I can say with some certainty that I would never use such a phrase for that purpose and nor, in my experience, have any of my instructing solicitors. It is far too ambiguous. For obvious reasons, a threat to issue proceedings is typically set out unambiguously. In my experience, in such correspondence, to the extent that the word "serious" is intended to signify anything material (and sometimes it may just be hyperbole), it is that the matter in question requires specific consideration by the recipient.

7. DEFAMATION AND SENIOR POLITICIANS

7.1 As I note above, I have acted for politicians in defamation cases, albeit I recall that the last was some years ago. I do not recall any that reached formal proceedings. This was not necessarily due to the lack of inherent merit but because there are myriad reasons why a public figure such as politician may not wish to commence such claims.

7.2 It is true that defamation complaints involving politicians may give rise to a particular focus on the application of the public interest defence (now contained in section 4 of the Defamation Act 2013). It is fairly common for defendant practitioners, including inhouse media lawyers, to take issue with a complaint from a politician or other public figure of authority by reference to the fact of their position alone. In doing so, they are of course advocating on behalf of their journalist or news media clients, some of whom may genuinely believe that all public figures should be "fair game". But that is not the law. And nor, in my experience, is there any general consensus across the profession to this effect. On the contrary, there are very good reasons why the law permits such individuals to bring defamation claims.

8. WEALTHY DEFAMATION CLAIMANTS

8.1 I am informed that the SRA suggest that there is an "expectation" that wealthy claimants in defamation matters should not seek to recover damages. This does not reflect my experience, which is much to the contrary. The major purpose of an award of a sum in general damages in a libel claim is to "nail the lie" and provide public vindication to the Claimant. The amount in question must be sufficient to demonstrate to the public that there was no truth in the allegation made. This may, however, be the case in misuse of private information cases – where the primary aim is either to prevent publication in the first place, or remove from publication as soon as possible.

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: ……

Dated: …4 November 2024.....

LORNA JANE SKINNER KC