Case No. 12629-2024

BEFORE THE SOLICTORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

B E T W E E N:

SOLICITORS REGULATION AUTHORITY LIMITED

Applicant

-and-

CHRISTOPHER MARK HUTCHINGS

Respondent

ANSWER TO
APPLICANT'S RULE 12 STATEMENT

THIS ANSWER CONTAINS INFORMATION THAT WOULD ORDINARILY BE CONFIDENTIAL AND, IN PART, PRIVILEGED; SUCH INFORMATION IS INCLUDED ON THE BASIS OF THE ANONYMISATION PROTOCOL PUT FORWARD BY THE SRA AND ON THE PREMISE THAT SUCH PROTOCOL, AND ANY OTHER NECESSARY PROTECTIONS, WILL BE FOLLOWED AT HEARINGS IN THIS MATTER.

1 This Answer is submitted on behalf of the Respondent in accordance with paragraph 2 of the Standard Directions issued by the Tribunal on 2 July 2024, and in response to the Statement of Mr Ian Brook of Capsticks LLP dated 27 June 2024 (the "**Rule 12 Statement**").

2 In this Answer, save as indicated to the contrary:

(a) References to paragraph numbers are to the correspondingly numbered paragraphs in the Rule 12 Statement;

(b) Abbreviations used in the Rule 12 Statement are adopted for convenience only and without admission as to their accuracy; and

(c) Where a document is referred to, its contents will be referred to in full at the substantive hearing and relied on for its full meaning and effect.

3 This Answer is divided into the following sections:

(a) **Section A** sets out an executive summary of the Respondent's position;

(b) **Section B** sets out the Respondent's position in respect of the delay in bringing the Allegations;

(c) **Section C** sets out the relevant factual background to the Allegations;

(d) **Section D** sets out the Respondent's position in respect of Allegation 1.1;

(e) **Section E** sets out the Respondent's position in respect of Allegation 1.2; and

(f) **Section F** sets out the Respondent's response to the individual paragraphs of the Rule 12 Statement.

4 Exhibited to this Answer at **Exhibit A** are those documents on which the Respondent intends to rely at the substantive hearing, in accordance with paragraph 3 of the Standard Directions. References to Exhibit A are in the form **[TAB/PAGE]**.

A Executive Summary

A.1 Allegation 1.1.1 - Alleged claim that Counsel had stated that there was a strong case for bringing contempt proceedings

5 Allegation 1.1.1 is denied:

(a) The Respondent did not make a false and/or misleading assertion;

(b) The Respondent did not say that Counsel had stated that there was a strong case for bringing contempt proceedings, or words to that effect;

(c) It is accordingly denied that the Respondent acted in breach of any of Outcome 11.1, Principle 6 or Principle 2.

6 It is in any event denied that the Respondent acted dishonestly in relation to Allegation 1.1.1. The evidence relied upon by the SRA comes nowhere near to establishing such a serious allegation.

A.2 Allegation 1.1.2 – Alleged claim that Client A had only been aware since 17 October 2018 of the issues with Publication 2

7 Allegation 1.1.2 is denied:

(a) Allegation 1.1.2 falls outside the scope of the SRA's Referral Notice to the SRA's Authorised Decision Maker and so outside the scope of the referral made; that being so, and in light of: (i) the SRA's failure to act in accordance with its own Regulatory and Disciplinary Rules which meant that this Allegation was never put to the Respondent; (ii) the delay between the index events, the start of the SRA's investigation, the conclusion of that investigation and the issue of the Rule 12 Statement; and/or (iii) the (additional) prejudice to the Respondent (as to which see below), Allegation 1.1.2 is:

(i) Not open to the SRA and/or is impermissible; and/or

(ii) In breach of the Respondent's Article 6 rights; and/or

(iii) An abuse of process and should be struck out;

(b) The remainder of this Answer is served without prejudice to this contention in respect of Allegation 1.1.2;

(c) The Respondent did not make a false and/or misleading assertion;

(d) The Respondent did not say that Client A had only been aware since 17 October 2018 of the issues with Publication 2, or words to that effect;

(e) It is accordingly denied that the Respondent acted in breach of any of Outcome 11.1, Principle 6 or Principle 2.

8 It is in any event denied that the Respondent acted dishonestly in relation to Allegation 1.1.2. The evidence relied upon by the SRA comes nowhere near to establishing such a serious allegation.

A.3 Allegation 1.2 – Alleged improper threat of litigation

9 Allegation 1.2 is denied. The threat to commence contempt proceedings was not improper in circumstances where:

(a) The copyright licence sought by Client A was directly connected, and not collateral, to both the underlying proceedings and the matters giving rise to them, and to the very breaches of the Consent Order on which any contempt proceedings would have been based; and

(b) Client A, while they may well have been reluctant to issue contempt proceedings, was prepared to do so as a last resort, and in any event they had provided specific instructions to the Respondent to that effect.

10 It is accordingly denied that the Respondent acted in breach of any of Outcome 11.1, Principle 6 or Principle 1.

B Delay

11 These proceedings concern statements allegedly made in the course of a single telephone call (the "**Call**") which took place between the Respondent and Solicitor G on 18 October 2018.

12 No report was made to the SRA in respect of such matters by Client B until 20 January 2023, over four years later (and no report was ever made to the SRA by Company H, so far as the Respondent is aware).[1] The reason for such delay, and why Client B did not report such matters at the time, remain unclear notwithstanding the contemporaneous documents which have been disclosed by the SRA.[2] However, it is apparent that such delay is not a matter for which the Respondent bears any responsibility.

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[1] **IWB/1 pp. 81 – 82**.

[2] It appears that Client B decided not to report the matter to the SRA merely because contempt proceedings were not issued against Client B – see Client B's email to Solicitor G at 19:43 on 22 October 2018: "*If [Client A] issues proceedings I will be compelled to report [Client A]*" **IWB/1 p. 410**. If so, this would suggest that Client B viewed such a report as, at least in part, a tactical matter.

13 After receiving Client B's complaint, the SRA did not issue its Notice recommending a referral to the Tribunal (the "**Referral Notice**") until 15 March 2024, over a year later.[3] There is, similarly, no real explanation or justification for this delay.

14 Such delay has caused and will continue to cause substantial prejudice to the Respondent. In particular, neither the Respondent, Solicitor G nor any of the other relevant witnesses are likely to have any direct recollection as to the precise contents of the Call (let alone the individual words spoken) by the time of the substantive hearing in February 2025. Recollections will have faded over time. Further, the note of the Call taken by Solicitor G, upon which the SRA relies, was not genuinely contemporaneous but appears instead to have been prepared the day after the Call. The precise circumstances in which the TAN came to be prepared remain unclear, apparently even to the SRA.

15 Such prejudice already existed in relation to what has now become Allegation 1.1.1 and Allegation 1.2. However, it has now been compounded and exacerbated by the making of Allegation 1.1.2, which was raised by the SRA for the first time in the Rule 12 Statement on 27 June 2024. This is an Allegation:

(a) Which formed no part of the Referral Notice originally made in March 2024;

(b) To which the Respondent was therefore given no opportunity to respond in his Response to the Referral Notice; and

(c) Which, accordingly, was not considered by the Authorised Decision Maker and not referred to the Tribunal in his Decision on Referral.

16 There is no proper basis for such Allegation only to be raised for the first time now, almost six years later, and in circumstances where the SRA did not previously seek to have it referred to the Tribunal or even give the Respondent an opportunity to respond to it. It concerns an alleged statement which appears to have been derived from a single line in Solicitor G's TAN. That is a document which the SRA has had in its possession for some time, and in any event since well before the original Referral Notice. The SRA

[3] **IWB/1 pp. 6 – 28**.

has also had access to Hamlins' internal documents since 23 March 2023 (i.e., almost a year before the Referral Notice was issued).

17 Accordingly, and as a result of the significant delay for which he is not responsible, it is impossible for the Respondent to have a fair trial in respect of the Allegations (alternatively, in respect of Allegation 1.1.2) and it would be a breach of his Article 6 rights and/or an abuse of process for the prosecution of those Allegations to continue.

18 Alternatively, to the extent that any Allegations remain, any and all issues of doubt as to the precise events on 18 October 2018 must be resolved in favour of the Respondent.

19 The remainder of this Answer proceeds without prejudice to the above position.

C Factual Background

20 The "*background detail*" set out in paragraph 9 and in Client B's Witness Statement is selective and a mischaracterisation of the relevant background, particularly in relation to the substance of the underlying proceedings brought by Client A against Client B. A full account of that background is set out below.

C.1 Events prior to issue of proceedings

21 The relevant High Court decision, to which Client B had made reference in their article on Publication 1 on Date 6 (the "**Article**"), was handed down on Date 3.[4]

22 On Date 7, at 12:03, Client A emailed the Respondent for the first time, making contact in respect of the Article. In this email, Client A sought Hamlins' assistance "*with respect to false and misleading allegations made by [Client B] and [Client B's] online blog [Publication 1]*" and that Client A wanted to discuss the matter "*as soon as possible*", owing to "*a Court of Appeal judgment that is due to be released this week and is directly relevant to certain of [Client B's] false and misleading allegations*".[5]

[4] **[1/8-35]**.

[5] **[2/36]**.

23 Following an initial call which took place between the Respondent and Client A on Date 8,[6] the Respondent emailed Client A with his initial advice at 15:25 on Date 9.[7] This email included the following advice:

"*1. Libel*

The statements made about you personally are plainly defamatory, including serious allegations that you were connected with fraudulent actions in your capacity as general counsel for [Company E]. You have identified 19 articles of this nature, and it is clear from the content of these articles that their author is determined to link you to allegations of corruption. These allegations are clearly highly damaging to you, particularly in your capacity as a solicitor…

…

4. Right to be forgotten

The information published about you is untrue and inaccurate, and on this basis you may apply to a search engine to remove links to [Publication 1's] web pages from a list of results displayed following a search made against your name. However, there is no guarantee that this will result in removal of the links. We would apply to Google and in our experience this can be both slow and uncertain as there is no constructive engagement process with that third party."

24 Client A was accordingly concerned, right from the outset, not merely with the publication of defamatory allegations on Publication 1 by Client B, but with the republication of such allegations by third parties.

25 On Date 10, the Court of Appeal handed down its decision which overturned the High Court decision of Date 3 and made express findings exonerating Client A's conduct, including that Client A's actions were "*not fraudulent in any sense*", that Client A was "*entitled*" to act as they had done, and that Client A "*was not dishonest*".[8]

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[6] **[3/37-41]**.

[7] **[4/42-44]**.

[8] **[5/45-67]**. See Christopher Clarke LJ's judgment at [81] **[5/65]**.

26 A first draft of a Letter of Complaint to be sent to Client B was prepared by Hamlins and sent to Client A at 16:54 on Date 11.[9] This first draft made complaints in respect of 12 separate articles on Publication 1 which mentioned Client A and made allegations against Client A.

27 On Date 13, at 11:09, the Respondent emailed Counsel L with preliminary instructions to act for Client A.[10] This email stated:

"…

- *[Client A's] objective is to cause the publisher to engage and remove references to [Client A] from the articles which continue to be published, rather than removal. The draft letter of complaint adopts an approach seeking to encourage a sensible response, rather than threatening immediately to sue.*

- *[Client A] is also concerned to limit the prospects of [Client B] drawing [Client A] into a legal battle about the [Scandal], [Company E], [the Fund] or other directors. [Client A] does not want to pursue full-blown action if it were to give [Client B] a platform to do so.*"

28 In an initial call between Counsel L and the Respondent on Date 13, Counsel L advised that there was a "*strong case for [the Article] to be taken down/clarified, in light of CoA judgment*".[11] An initial conference was held between Hamlins, Client A and Counsel L on Date 14.[12]

29 On Date 16, the Supreme Court refused an application for permission to appeal against the Court of Appeal decision of Date 10, stating its opinion that the Court of Appeal "*reached what was plainly the correct result*".[13]

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[9] **[6/68-69]**; **[7/70-76]**.

[10] **[8/77-79]**.

[11] **[9/80]**.

[12] **[10/81-85]**.

[13] **[11/86-88]**.

30 On Date 17, Counsel L provided a written Opinion to Client A in respect of Client B and Publication 1.[14] As set out in Counsel L's advice:

(a) Their view was that Client A's prospects of success in defamation proceedings against Client B were "*in principle, high*";

(b) However, success in such proceedings "*could come at a very high price, in particular owing to the publicity that such proceedings would attract and the increased public profile this would give to [Client B] and [Publication 1]*". Counsel L noted that litigation is "*rarely the ideal strategy for tackling a campaigning blogger… whose allegations the mainstream press would be excited to have any lawful excuse to repeat*";

(c) Counsel L also noted that "*a successful judgment rarely receives the degree of publicity that sensational accusations attract, even grossly erroneous accusations*". Further, there was a "*significant incentive for [Client B] to exploit rather than settle litigation, treating the case as a marketing opportunity for [Client B's] campaign and blog and thereby committing [Client A] to considerably more time, energy and expense than the matter ultimately warrants, notwithstanding [Client A's] high prospects of ultimately prevailing in the legal proceedings*";

(d) In particular, a defamation action, whatever its ultimate outcome, "*would provide [Client B] with a wider public platform [Client B's] campaign and ventilate [Client B's] defamatory allegations against [Client A]*", and the proceedings and Client B's allegations "*could be (and very likely would be) widely reported and commented upon in the press and on other media and social media platforms in this country and elsewhere*";

(e) Accordingly, such matters were "*powerful factors pointing to why the bringing of such proceedings could well prove counter-productive*" and, for those reasons and "*notwithstanding the high prospects of success*", a claim for defamation against Client B would "*be almost certainly very ill-advised*";

[14] **[15/110-123]**.

(f) Counsel L's advice concluded: "*There are no easy solutions for problems of this very difficult and fraught nature but I have no doubt at all that the safest course here by far is to avoid direct confrontation of [Client B] through legal proceedings*".

31 Discussions in relation to the draft Letter of Complaint continued between Hamlins, Client A and Counsel L during Date 4.

32 The Respondent also began taking preliminary action on Client A's behalf in respect of the republication of allegations on third party websites. On Date 20, the Respondent sent a request to Google that search results in relation to the Article on Publication 1 be removed, on the basis that it was "*stale, inaccurate and highly misleading*". Google responded to this request on Date 21 stating that it had decided not to take action in respect of such results.[15]

33 On Date 23, at 16:30, the Respondent sent an email to Counsel L providing an update on the status of the matter, together with an updated draft of the Letter of Complaint.[16] The email stated:

"*… given Google's refusal to remove the link to the [Publication 1] article re the legal rulings relating directly to [Client A], [Client A] wants to change tack and to proceed with a reduced-scope complaint to [Publication 1]. [Client A] relayed to me an anecdote of a complainant [Client A] has learned of who made a complaint to [Client B] for defamation recently. [Client B] delayed response to the point the complainant was forced to issue proceedings. After being served with Particulars, I am informed that [Client B] capitulated and agreed to take down the offending article but on the basis there was some sort of confidentiality agreement*".

34 On Date 24, Hamlins sent a formal Letter of Complaint to Client B on Client A's behalf.[17] In this Letter of Complaint:

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[15] **[19/133-134]**.

[16] **[20/135-136]**; **[21/137-139]**.

[17] **IWB/1 pp. 154 – 156**.

(a) Hamlins stated that the continuing publication of the Article on Publication 1 was "*out of date, inaccurate and highly misleading*" following the subsequent Court of Appeal decision. Further, Client B was in fact aware of that subsequent decision, as evidenced by two more recent articles published by Client B on Publication 1 concerning Company E. Continuing publication was not in the public interest;

(b) It was further noted that in the Article (and in other postings) Client B had made use of a stolen passport photograph of Client A which Client B had no right to have in Client B's possession or publish;

(c) Accordingly, Hamlins requested that, by close of business on Date 32, Client B would: (i) take down the Article from Publication 1; (ii) publish a corrective statement; (iii) provide a written undertaking that Client B would not make these or any similar reference to Client A in future; (iv) remove Client A's stolen passport photo from all of Client B's posts; (v) make proposals as to damages; and (vi) confirm Client B would provide an indemnity in respect of legal costs;

(d) Hamlins also drew attention to "*other false and highly defamatory statements*" about Client A published by Client B on other posts on Publication 1, stating: "*We will be writing to you about these separately in due course, but after you have responded to the requests in this letter to the complete satisfaction of [Client A]*";

(e) Hamlins concluded by emphasising that "*it is not the practice or style of [Client A] to issue threats of legal action*" but that, in the absence of Client B's agreement to take the requested steps by the stated deadline, Client A had instructed Hamlins "*necessarily to serve and then pursue legal proceedings in the High Court*" against Client B.

35 Client B made two responses to the Letter of Complaint on the following day, Date 25:

(a) At 11:52, Client B sent an email to Hamlins stating: "*The last I looked at this matter I understood that the Court of Appeal Ruling had been forwarded to the Supreme Court. Having had my attention drawn to the matter I have now seen that subsequent to my original article at the start of the year… the Supreme*

Court has declined the appeal. I am happy to make this rectification and clarification in any articles where I have referred to this matter. I will not take down [The Article], because it was accurate at the time of writing – the Court of Appeal reversal was announced [Date 12] and it was immediately made known there would be an appeal… On the other hand, I will be happy to post a clarification and update on the article".[18] Thus, Client B refused to take down the Article, on the purported basis that it was "*accurate at the time of writing*", as the "*Court of Appeal reversal was announced [Date 12] and it was immediately made known there would be an appeal…*";

(b) At 18:37, Client B sent a further email to Hamlins, informing them that Client B had "*made reasonable clarifications to the articles complained of… in light of the subsequent information you drew my attention to, regarding the decision by the Supreme Court not to review the judgment of the Appeal Court…*".[19]

36 On the basis of Client B's 11:52 email the statement in paragraph 15 of their Witness Statement – i.e., that Client B first became aware of the Court of Appeal decision when approached by Hamlins in Date 22 – is demonstrably incorrect.[20] In fact, on the basis of the 11:52 email, Client B must have been aware of the Court of Appeal decision (as otherwise there could not have been any appeal to the Supreme Court) since early Date 4.

37 Hamlins wrote in response to these emails on Date 26.[21] In this letter:

(a) Hamlins noted that the Article, which Client B had declined to take down, continued to contain material which was "*wrong and misleading*" in regard to Client A. It was therefore "*with considerable reluctance*" that Client A had now instructed Hamlins "*to commence the preparation of legal proceedings against you unless within the next 24 hours you have rectified matters to [Client A's] satisfaction*";

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[18] **[23/142-144]**.

[19] **[24/145-147]**.

[20] **IWB/1 p. 84**.

[21] **[25/148-151]**.

(b) Hamlins went on to set out the "*true position*" in relation to various articles on Publication 1.

38 On Date 27, Client B responded to Hamlins by letter.[22] Client B continued to refuse to take down the Article, while also seeking to rely on s. 8 of the Defamation Act in respect of various of the other articles which had been cited by Hamlins.

39 Hamlins wrote in response to this letter on Date 28, noting that it clearly demonstrated Client B's "*lack of appreciation for the significance and potential implications of making such serious and highly defamatory allegations pertaining to a professional lawyer living and working in this jurisdiction*".[23] Hamlins further noted that, in the absence of Client B's agreement, without reservation, to take the outstanding steps requested by Date 31, they were "*instructed to proceed with the formal steps to pursue legal action*".

40 On Date 31, at 19:09, Client B emailed Hamlins stating that Client B would remove the Article, but without any "*admission of liability whatsoever on [Client B's] part*".[24] Client B also stated that they had "*extensive documentary evidence and also witnesses*" to confirm that a number of claims made on behalf of Client A were untrue, and reserved Client B's right to publish "*extensively*" on the detail of the Company E ventures, at a time Client B believed to be appropriate, stating that this was Client B's "*final position*" on Hamlins' demands.

41 Hamlins responded to Client B by letter on Date 33 noting that Client B's response was "*not remotely satisfactory*" to Client A, and that Client A had "*thus instructed us to issue proceedings against you, which we anticipate doing tomorrow, [Date 34]*".[25] This letter further stated:

"*[Client A] is now only prepared to desist from serving upon you legal proceedings in respect of the [Article] if you now agree as a minimum:*

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[22] **[26/152-154]**.

[23] **[31/168-171]**.

[24] **[32/172-174]**.

[25] **[34/179-181]**.

(a) *to remove to [Client A's] complete satisfaction all references to [Client A] in your postings;*

(b) *to remove [Client A's] stolen passport photograph from all postings where it appears;*

(c) *to give undertakings in writing in terms agreed with this firm not to repeat your defamatory references or republish [Client A's] photograph; and*

(d) *to indemnify our client for the legal costs […] incurred in this matter*".

42 Client B responded by email at 09:58 on Date 34 stating that the Article had now been removed. However, Client B concluded by stating that they reserved their rights entirely on the matter and did "*not accept any liability whatsoever*".[26]

43 Also on Date 34, Hamlins issued a Claim Form against Client B on Client A's behalf.[27] This Claim Form sought various remedies, including damages for libel and/or malicious falsehood in respect of the Article, and an injunction to restrain Client B "*by [Client B] or through others or by any means whatsoever, from the continued publishing or causing or authorising the publication of the same or similar words defamatory of and concerning [Client A]*".

44 The same day, Hamlins sent a letter to Client B which enclosed (but did not serve) the Claim Form.[28] In this letter:

(a) Hamlins welcomed the partial removal of the Article, but noted that the link to the article and its meta description (including Client A's name) remained active and accessible on Google, and the "Comments" section of the Article, which included express reference to Client A in defamatory terms, had also not been removed;

(b) Hamlins further noted that Client B had still not complied with any of the other requirements set out in their Date 33 letter and had failed to engage with them

[26] **[35/182-183]**.

[27] **[39/189-191]**.

[28] **[40/192]**.

entirely, and that in these circumstances Client A had been "*compelled to issue proceedings today*" and had retained Counsel L.

45 Client B responded to this letter by email at 22:00 on Date 34, making various requests, including that Hamlins explain the legal basis on which all references to Client A could be removed from Publication 1, "*given many of the articles are time limited*".[29]

C.2 Events after issue of proceedings and prior to Consent Order

46 On Date 35, at 09:00, Client A emailed the Respondent noting that Client B had now "*updated the meta-tags in [Client B's] stories*" to add Client A in, such that a Google search for "Client A Company E" would now only return hits from Publication 1.[30] Client A noted that: "*This wasn't like this before yesterday and is typically vindictive*".

47 On Date 36, at 14:16, Client A sent a further email to the Respondent noting that Client B appeared to have taken down a second article on Publication 1 which mentioned Client A, and that it was possible that Client B was "*seeking to minimise risk on all articles that are within the limitation period, then hide behind section 8 for the others*".[31]

48 On Date 37, at 15:35, the Respondent emailed Client A attaching the first draft of a response to be sent to Client B.[32] His email noted:

"*As discussed on a number of occasions, once proceedings are commenced, litigation can build momentum. Costs (including non-recoverable costs and [Client B's] solicitors costs in the event [Client B] were to defend some or all of [Client B's] pages) will continue to be accrued and will escalate once proceedings have commenced. Moreover, I know you're acutely aware of the risks in terms of disclosure and [Client B] broadening issues to include documents which would then risk being aired in public. Its therefore vital, per your views and ours, that we all understand these underlying risks and we continue to approach matters from a highly strategic perspective.*"

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[29] **[38/187]**.

[30] **[41/193-195]**.

[31] **[42/196-197]**.

[32] **[43/198-199]**; **[44/200-204]**.

49 The response to Client B was sent by Hamlins on Date 38[33]. In this letter:

(a) Hamlins noted that the removal of two articles from Publication 1 "*goes some small way towards mitigating the serious harm continuing to be caused to [Client A's] reputation*", but "*in no respect*" did the steps taken by Client B thus far provide Client A with "*the remedial actions necessary to resolve [Client A's] complaint in advance of service of the Claim*";

(b) Further, in response to Client B's suggestions that claims in respect of publications which pre-dated the Article were time-barred, Hamlins noted that if the Court were to uphold Client A's libel complaint in respect of the words complained of, "*[Client A] can expect to be granted an injunction against you against further repetition of the same or a similar defamatory allegation*", which would "*compel you to take down all postings that refer to our client in that way (so in effect all references to [Client A]) regardless of their dates of first publication*";

(c) Hamlins repeated again that in order to avoid service of the issued Claim Form, Client B would be required to: (i) remove all references to Client A in Client B's postings to Client A's complete satisfaction; and (ii) remove all postings of Client A's stolen passport photograph. Were Client B to carry out those requests, Client A was prepared to "*consider afresh at that point whether to press on against you for damages and costs in respect of those causes of action set out in the issued Claim Form*", but "*would of course expect you to offer a suitable undertaking to protect [Client A's] position in the future*";

(d) Hamlins also drew Client B's attention to the republication of Client B's articles by others on third party websites:

"*We should add that [Client A] is now aware of a number of websites and webpages, in English [redacted], and [redacted][34] (including [Publication 1]), which have cloned substantial parts of the material you publish regarding [Client A]'. This includes the highly defamatory material contained in the two*

[33] **[293/3846-3853].**

[34] Redacted to avoid jigsaw identification.

> *articles that you have purported to remove from [Publication 1], which you should now take immediate steps to have taken down.*
>
> *As we point out below, the republications by others of your posting are also **your** legal responsibility. Our client holds you responsible for all material of which you are the author wherever or by whomsoever it is re-published. Such republication of your defamatory allegations by other publishers is a foreseeable consequence of your own postings for which you can be made liable to pay our client in damages for the wider injury to [Client A's] reputation. It is sometimes referred to as part of the 'grapevine' effect.*"

50 Client B responded to Hamlins by email at 22:03 on Date 39, noting that they had "*been travelling the last few days*" but would "*come back to you by the start of next week*".[35] No substantive response having been received, Hamlins sent a letter to Client B on Date 40 requiring such a response by Date 41.[36] On Date 42, Hamlins sent a further letter to Client B noting the lack of such a response and stating they would take steps to arrange service on Client B personally.[37]

51 On Date 42, at 11:26, Solicitor G sent an email to Hamlins noting that Company H had now been instructed by Client B and stating that they were currently preparing a response on Client B's behalf.[38] On Date 43, Hamlins agreed to Company H's request that such response be provided by Date 44.[39]

52 In the event, the response was not provided by Company H until the following day, Date 45.[40] This letter did not set out a substantive defence to the majority of Hamlins' correspondence, instead alleging that Client A's complaints remained inadequately particularised. As Counsel L noted, having reviewed Company H's response, it

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[35] **[45/205-206]**.

[36] **[46/207]**.

[37] **[50/223]**.

[38] **[49/221-222]**.

[39] **[53/227-229]**.

[40] **[56/236-244]**.

represented "*a complete failure to engage with the merits and the facts and nothing but tactics of prevarication and fishing*".[41]

53 Hamlins responded to Company H's letter on Date 47.[42] This letter concluded by observing that Client A had given Client B "*one opportunity after another to avoid legal proceedings against [Client B]*", and that Client A had "*no desire to litigate against [Client B] unnecessarily and no intent to interfere in [Client B's] investigative reporting beyond achieving the removal of all false, damaging and distressing references to [Client A] personally*". However, Company H's letter had "*brought it home fully to [Client A] that service of proceedings is unavoidable*". Company H responded to this letter on Date 48 simply stating they had "*noted its contents*".[43]

54 On 27 April, Hamlins wrote to Company H on a WPSC basis enclosing a draft Amended Claim Form and Particulars of Claim (settled by Counsel L and Counsel M), noting that these were being provided in draft "*in order to afford [Client B] one final opportunity voluntarily to provide [Client A] with relief that would be acceptable to [Client A] and to which [Client A] is entitled, as described in our letter dated [Date 38], before proceedings are served.*"[44]

55 This letter reiterated the steps which Client B was required to agree to, if service of proceedings were to be avoided. These were: (i) to "*remove from [Client B's] website all personal data of [Client A], that is to say all references to [Client A] on the website (as particularised in detail in the draft Particulars of Claim), and all copies of [Client A's] stolen passport photo appearing there*"; and (ii) "*an undertaking… not further to publish personal data of [Client A], defame [Client A] or infringe [Client A's] copyright in the passport photo and deliver up or delete all copies in [Client B's] possession of that photo, whether electronic or print copy*". Were Client B to agree to those steps, Client A would forbear from serving proceedings and therefore not pursue any claim for damages against Client B, and also not insist upon payment of Client A's substantial legal costs.

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[41] **[55/234-235]**.

[42] **[58/251-254]**.

[43] **[59/255]**.

[44] **[63/302-303]**; **[60/256-259]**; **[62/264-301]**.

56 The draft Amended Claim Form (which was issued the same day)[45] contained various amendments to the Brief details of claim. However, it maintained the claim against Client B which had been made in the Claim Form for an injunction in respect of the same or similar words about Client A.

57 The draft Particulars of Claim included:

(a) A claim in libel in respect of the Article:

(i) In paragraph 9, it was stated that this Article had been widely published and that Client A would also rely on the grapevine effect;

(ii) In paragraph 13, it was stated that Client A would rely on third party internet republications of the Article both: (i) in support of Client A's claim for general damages; and (ii) as evidencing the grapevine effect, citing four such specific republications of which Client A was aware;

(iii) In paragraph 14, it was alleged that Client B knew and could and/or did foresee that the Article would be repeated and republished by other publishers;

(b) A claim under the Data Protection Act 1998 in respect of 17 separate Publications (including the Article), which were listed in the Schedule to the draft PoC; and

(c) A claim in copyright in respect of the use and publishing of Client A's passport photograph in six of those Publications (including the Article).

58 Company H responded to this WPSC correspondence on Date 50, stating: "*[Client B] is, in principle, minded to compromise [Client A's] complaint. Are you available tomorrow for a telephone call (on a WPSATC basis) to explore this before proceedings are served?*".[46]

[45] See **[61/260-263]**.

[46] **[67/311-312]**.

59 Following a WPSC call which took place between Company H and Hamlins on Date 51,[47] Hamlins wrote a WPSC letter to Company H.[48] This letter referred to the earlier discussions and stated:

"*We have conveyed to [Client A] [Client B's] proposal that the claim be compromised on the basis of removal of all references to [Client A] from [Client B's] website, along with an undertaking to the Court in favour of [Client A] but one which you have stated cannot inhibit [Client B] from reporting on matters not complained of, in the future.*

[Client A] welcomes this change of position on the part of [Client B], albeit at this very late stage, although the detail will have to be carefully worked out… [Client A] is in principle willing for us to engage in discussions with you with a view to settlement of [Client A's] claim, to be incorporated in an order of the court, including undertakings by [Client B] to the court, for which purpose it will, of course, be necessary for the proceedings to be served".

60 This letter noted that following service of proceedings Client A would be amenable to any reasonable proposal from Client B for a short stay of proceedings to allow for settlement terms to be fully agreed. Further, it was stated: "*In the meantime, we enclose a set of articles, as discussed, marked up to indicate the sort of references to [Client A], whether explicit or implicit (by virtue, for example, of a reference to [Client A's] previous position at [Company F]) where wrongdoing is falsely imputed*".

61 It was stated in respect of these articles that Client B would be required as part of any settlement of the proceedings expressly to: (i) "*assume and discharge a general obligation to remove all other such references on [Publication 1], explicit and implicit, to [Client A]*"; and (ii) "*take all reasonable steps within [Client B's] power to procure the removal of all such references to [Client A] as appears on other websites appearing in articles authored, syndicated, authorised or participated in by [Client B]*".

62 Company H responded in a WPSC email to Hamlins at 20:09 the same day, rejecting their characterisation of the conversation which had taken place and noting: "*Sadly, it does not appear likely that we will reach an agreement prior to service of proceedings*",

[47] **[71/324-325]**.

[48] **[70/322-323]**.

but proposing "*that upon service of proceedings we agree to an indefinite stay for the purposes of ADR, terminable at 7 days' written notice*".[49]

63 The Amended Claim Form and Particulars of Claim were served on Company H on Date 52, in substantially the same form which had previously been shared in draft and on a WPSC basis on Date 49.[50]

64 Also on Date 52, Hamlins wrote a WPSC letter to Company H noting that Client A would be prepared to agree a short stay of seven days following service of proceedings, but that this was conditional on Client B agreeing to: "*take down all references to [Client A] (explicit and implicit) on [Publication 1]*" and "*take all steps within [Client B's] power to procure the removal of all such references to [Client A] as appear on other websites appearing in articles authored, syndicated, authorised or participated in by [Client B]*".[51]

65 Company H responded to this letter with a WPSC email to Hamlins at 14:17 the same day, stating that the requirement for Client B to take all steps within Client B's power was "*unreasonably onerous and would place an open ended and unlimited obligation*" on Client B, and that they did "*not have control over any references to [Client A] appearing on any website other than [Publication 1]*".[52]

66 At 16:46, the Respondent emailed Counsel L and Counsel M noting that Client A wanted to flag "*the issue of other sites publishing similar material and how we optimise the settlement with [Client B] to help with subsequent steps to remove similar material*".[53] His email went on to state:

"*[Client A] has raised the option of asking [Client B] to agree a short "To whom it may concern" type of letter which we can deploy in asking other sites to take down references to [Client A]. In addition [Client A] wants to consider how the final*

[49] **[69/319-321]**.

[50] **[75/332]**.

[51] **[76/333]**.

[52] **[72/326]**.

[53] **[76/329-339]**.

Order/settlement can be most effectively framed to assist us in those steps, including asking Google to remove links".

67 On Date 53, Hamlins sent a WPSC letter in response to Company H which noted that the request in respect of assisting Client A in the removal of other similar references on other websites in items authored, syndicated, authorised or participated in by Client B was not a new request as had been suggested, but one that appeared in Hamlins' open letter to Client B of Date 38.[54] Further:

(a) The letter requested that Client B provide Client A with "*a full account of all articles currently being published on websites other than [Publication 1] (whether they are the same complained of in the Particulars or articles which contain similar allegations) which contain references to [Client A] (explicit or implicit), of which [Client B] is aware and over which [Client B] acknowledges [Client B] has some control, whether in the form of a power or an ability to take down or procure the take down of the relevant articles (or the relevant parts of such articles) from those sites, or to withdraw [Client B's] authority to continuing publication*"; and

(b) The letter stated: "*With respect to third party websites over which [Client B] does not exercise control or influence [Client A] will accept a 'for whom it may concern'-type written statement or letter from [Client B] which we would be able to send to such third party websites and, for that matter, search engine operators, to help bring about the desired result in the event that [Client B's] attempts to procure the removal of those articles directly*". It was requested that Company H propose "*some wording which will be suitable for this purpose*".

68 On Date 54, the parties agreed a consent order staying the claim for 14 days, so that they could "*continue to engage in without prejudice settlement discussions*".[55]

69 On Date 55, at 17:55, Company H emailed Hamlins on a WPSC basis, attaching a draft Tomlin Order setting out proposed terms to settle the proceedings.[56] All of the terms of

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[54] **[80/343-345]**.

[55] **[88/359]**.

[56] **[93/367]**; **[94/368-369]**; **[95/370-497]**.

settlement in this draft were contained in a "Confidential Schedule". Company H's covering email stated:

"*As for articles appearing on other websites, as we have said before, [Client B] does not have any control or responsibility over any articles published elsewhere other than on [Publication 1]. Nothing therefore can, or will, be offered in respect of any other articles*".

70 On Date 56, at 15:03, Client A emailed Hamlins setting out Client A's comments on Company H's proposals.[57] Client A noted that they were "*Constructive, but doing the absolute minimum*" and that Client B needed to be reminded that "*I have already made significant concessions (costs, damages and no correction) and am not prepared to concede more of my legal rights*". Client A's email further stated:

"*3. **Confidentiality**. [Client B] appears to have placed the entirety of the agreement inside a "Confidential Schedule". I don't know how these orders work and need to be advised here, but clearly this doesn't work for me. [Company H] has stated that [Client B] doesn't have any control over any third party website that has republished [Client B's] materials. As such, I need a basis for these matters to be removed, so at a minimum, the fact [Client B] has removed any mention of me from [Publication 1] cannot be confidential. I will need to be able to contract [sic]: (a) those websites, … (c) search engines such as Google and Bing for the right to be forgotten…*

As we have explained already, the purpose of this exercise is restitution – I need to be put back in the position I would have been had [Client B] not published these false statements. Therefore, [Client B] cannot expect confidentiality beyond the specific text edits. In Court I would have public vindication. Here I expect the same.

The way [Client B] gets to mitigate this is: (i) not have to publish the court order; (ii) not having to publish a correction.

*4. **Third Party Websites***

[57] **[96/502-510]**.

(a) [Client B] has now stated that [Client B] has no control of any third party websites. I have no proof that [Client B] does, so we will need to accept this, backed by a warranty…

…

(c) The fact [Client B] has now stated [Client B] doesn't have control over any website that has republished [Client B's] articles, provides the basis for (i) the order not being confidential; and (ii) getting a "To whom it may concern letter". We will need to draft the latter as they have ignored it…"

71 On Date 57, at 15:58, Counsel M emailed Hamlins attaching a revised draft Tomlin Order, which now contained the relevant terms in the body of the Order.[58] The second recital in the revised draft Tomlin Order stated: "***AND UPON*** *the Defendant agreeing to sign and permit the Claimant to send to any person whom [Client A] sees fit a letter in the form contained in Annex 3 to this Order*". Counsel M noted in the covering email: "*some further drafting / advice in respect of the 'To whom it may concern' letter will follow in due course*".

72 At 17:17, Counsel L emailed Hamlins a first draft of Annex 3 (i.e., the draft "*To whom it may concern*" letter) which They and Counsel M had drafted.[59] This draft letter was stated to be from Client B, on the basis that Client B had authorised Client A to send a copy to the recipient. It referred to the Order settling the proceedings and to a list of URLs enclosed with the letter, going on to state:

"*If you are currently a publisher of any of the listed articles, whether in English or as translated into any other language, please note that, as the author and copyright owner of these articles, I hereby withdraw my authority or consent to you continuing to publish the same*"

73 On Date 58, at 12:57, Counsel M circulated a revised draft of Annex 3 which included a further paragraph putting the recipient on notice that the relevant articles were based

[58] **[97/511-516]**; **[98/517-520]**; **[99/521-527]**.

[59] **[100/528-534]**; **[101/535]**.

on personal data of Client A which were either significantly inaccurate or should never have been in Client B's possession.[60] Later that day:[61]

(a) Client A sent an email to the Respondent at 21:52 querying whether the "*To whom it may concern letter*" was to be sent by Client A or by Client B, noting: "*Wouldn't it make sense to be sent by me (i.e. Hamlins) as we would then control this process?*";

(b) The Respondent replied at 21:59 stating: "*It was envisaged that the "to whom letter would be sent by [Client B], not us. I do understand your concern as to obtaining control of the process. Equally it would, in an ideal world, be a letter which – as envisaged – comes from [Client B's] address, as it will carry more weight. My opinion is that we stick with the starting position that [Client B] is under an obligation to send their "to whom" letter, but that on my call tomorrow with [Client B's] solicitor I then put forward the alternative of us taking control and sending out the letter. There is no "right" answer and as we've said and agreed, this is going to be a key aspect where [Client B] kicks back but we can use the starting point that [Client B] is responsible as leverage*".

74 On Date 59, Hamlins wrote a WPSC letter to Company H, enclosing a copy of the revised draft Tomlin Order, together with drafts of Annexes 1 – 3.[62] The draft Annex 3 was substantially in the same form as circulated by Counsel M the previous day. Hamlins' letter stated:

"*So far as concerns Annex 3, given that [Client B] has failed to make any proposals, as requested, to assist our client to rectify the harm [Client B] has caused, and for which [Client B] is legally liable, via publication on third party websites, we have prepared a 'to whom it may concern' letter to be signed by [Client B] and sent by the Claimant to the publishers or operators of such third party sites and platforms in order to achieve this objective, which is of the utmost importance to our client*".

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[60] **[108/557-562]**; **[109/563]**.

[61] **[111/566]**.

[62] **[117/750-752]**. The enclosures are at **[116/746-749]**; **[114/575-578]**; **[115/579-745]**; **[118/753]**.

75 On Date 60, a WPSC call took place between Solicitor K of Company H and the Respondent.[63]

76 At 18:37 the same day, Respondent emailed Client A conveying the contents of that WSPC call and, having spoken with Counsel M, passing on Counsel M's comments on certain of the points made by Company H.[64] This email stated:

"*Terms of confidentiality:*

[Solicitor K] queried why we completely redrafted their order, and reframed not as a Tomlin order. We conveyed to [Solicitor K] your requirements re confidentiality, particularly if [Client B] was resistant on the "to whom" letter and he stated he would take further instructions on this point.

…

'To whom it may concern letter' – paragraph 4 of recital to the Order:

[Solicitor K] confirmed in the call that [Client B] would not be prepared to sign off on this letter. We explained we included this paragraph and the letter as a compromise regarding [Client B's] concerns that [they] can't control what third party websites do. In response to this, [Solicitor K] said [Client B] isn't prepared to sign the letter but proposed this may potentially be addressed in respect of the confidentiality point.

We have raised this with [Counsel M], who considers we can push back on this point, explaining that this effectively grants the relief available pursuant to sections 13 of the Defamation Act, and 14(5) of the Data Protection Act. He is of the view that whilst this is relief that you are, at law, entitled to, it is questionable how, practically speaking, sending this letter to the sorts of third party websites we have already identified would practically achieve the objective we are seeking (i.e. taking the offending article down)."

[63] **[128/999]**; **[129/1000-1001]**.

[64] **[130/1002-1005]**.

77 Hamlins sent a WPSC email to Company H at 23:27 on Date 60, following up on the call and attaching a revised draft Order.[65] This email noted in respect of the "*To whom it may concern*" letter: "*This is something to which [Client A] is legally entitled; this addresses third party publications picking up on the information published by [Client B] concerning [Client A], for which [Client B] is the direct cause and for which [Client B] is legally liable. This request requires very little of your client – a mere signature – and [Client B] should have no difficulty in providing the same. It reflects the effects of s. 13 Defamation Act 2013 and s.14(5) of the Data Protection Act 1998*". Further, in respect of confidentiality, it was stated: "*There is no basis for this settlement to be deemed confidential. It is [Client B] who chose to unilaterally put this matter into the public domain. [Client A] cannot be prevented from curing the resultant harm*".

78 Company H did not provide a substantive response to this email until 11:12 on Date 61, when Solicitor J sent a WPSC email to Hamlins attaching a revised draft Tomlin Order.[66] The covering email stated:

"*3. 'To whom letter' / confidentiality*

I understand from [Solicitor K] that it is of significant importance to your client to have either the 'to whom it may concern' letter or no confidentiality.

[Client B] will not agree to the letter you propose. Your assertion that such a letter 'reflects the effects of s13 Defamation Act 2013 and s14(5) Data Protection Act 1998' is not accepted. The letter appears to be deliberately drafted to cause professional embarrassment to [Client B] and is not something that [Client B] would be prepared to have sent in [Client B's] name, as if [Client B] drafted it.

[Client B] is willing to have the settlement open, in order to settle this matter if that is truly important to your client. This would allow [Client A] to tell anyone [Client A] pleases about it. This is however on the condition that [Client A's] demands for any kind of letter signed by [Client B] is removed from [Client A's] demands."

[65] **[131/1006-1007]**; **[132/1008-1011]**; **[133/1012/1016]**.

[66] **[137/1029-1039]**; **[140/1207-1211]**; **[138/1040-1068]**; **[139/1169-1206]**.

79 At 15:42 the same day, the Respondent emailed Counsel L and Counsel M summarising a call he had had with Client A following receipt of the above proposals.[67] This email stated: "*Not writing to 3rd parties – [Client A] is happy to drop this requirement, providing the key aspects to Order are genuinely "open". [Client A] needs [Client B] either to write such a letter asserting [Client B's] copyright, or to agree to use of the phrase "Judgment" and for the Order to have on its face (rather than the confidential schedule) everything [Client A] would need in order to persuade 3rd parties as referred to above*".

80 On Date 62, at 11:36, the Respondent emailed Client A noting he had had a "*positive call*" with Solicitor J, who had "*stated with clarity that if terms of settlement are agreed generally then, yes, the full details – the Schedule to the Order as well as the front of the Order – would be available to you to inform any 3rd party of the same*".[68] The Respondent noted: "*This is a helpful clarification which ought to make matters somewhat more straightforward in terms of your primary objective of being able to rely on the terms of settlement to force 3rd parties such as Google, Bing and Hachette to play ball*".

81 On Date 63, Hamlins sent a WPSC letter to Company H enclosing revised drafts of the Tomlin Order and Annexes 1 and 2.[69] This letter noted that Client A's "*generous offer in respect of public vindication, monetary remedies and costs will not be repeated if this case beyond the service of a Defence*", and this was therefore Client B's "*last chance… to take advantage of these very valuable concessions*". The letter further referred to Annex 2, which set out the amendments to articles on Publication 1 to be made by Client B, and made the following "*general observations*":

"*(1) In writing about [Company F] and [Client A] in the way [Client B] has, and falsely and repeatedly ascribing to [Client A] leadership of the [Company F] team that was purportedly involved in planning the alleged '[Scandal]' [Client B] has created a situation whereby readers of [Publication 1] would regard our client as synonymous and interchangeable with [Company F]. The only context in which [Company F] is*

[67] **[141/1212-1214]**.

[68] **[142/1215-1216]**.

[69] **[149/1258-1263]**; **[146/1234-1239]**; **[148/1250-1257]**; **[147/1240-1249]**.

referred to in [Client B's] articles is as supposed accomplices in the '[Scandal] heist, and the only lawyer at [Company F] ever implicated by name in [Client B's] articles in this context is [Client A]. The false insinuation of [Client A's] culpability is reinforced by the erroneous references to [Client A] supposedly, immediately after the signing of the deal, having resigned to take up a directorship at [Company E].

(2) These serious errors have been repeated on other websites and contaminated the body of information available about [Client A] online.

(3) The effect of this – and it is a difficulty entirely of [Client B's] own making – is that simply to remove from [Client B's] articles and the embedded emails the references to [Client A's] name, without more, does not solve the problem. Having regard to the information available on [Publication 1] and on other websites more broadly, references to wrongdoing by [Company F] will be understood by readers to be references to [Client A], as will mere deletions of [Client A's] name from embedded emails. Under the circumstances, a more nuanced approach is called for…"

82 Following a WP meeting which took place at Hamlins' offices on Date 64 and was attended by both Solicitor I and Solicitor G from Company H,[70] the parties engaged in further discussions and eventually agreed the terms of the Consent Order and its Annexes, and the Consent Order was sealed on Date 65.[71] The sealed Consent Order provided:

(a) Judgment was to be entered for Client A in the proceedings against Client B (paragraph 1). Client B accordingly admitted, on an open basis, that the allegations set out in the Particulars of Claim were made out against them;

(b) Client B was required to amend the articles identified in the Particulars of Claim which remained published on the Publication 1 (namely those numbered 1-12, 15 and 17-22 in Annex 1) in accordance with the amendments set out in Annex 2 (or, where any articles were not in English, to make substantively the same amendments), such amendments to be made within 14 days of the date of the Consent Order, and Client B undertook to the Court to do so (paragraph 4);

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[70] See **[160/1342-1345]** and **[161/1346-1355]**.

[71] **[198/2720-3047]**.

(c) Client B was required not to repeat the original wording to the same or similar effect in the aforementioned articles once they had been amended, or permit or cause the original wording or any wording to the same or similar effect to be published anywhere else in any form, and undertook to the Court accordingly (paragraph 5);

(d) Client B was required not to publish, permit or cause to be published, and undertook to the Court not to publish, permit or cause to be published:

(i) Any of the allegations about Client A set out in paragraph 7 of the Particulars of Claim (all of which allegations were agreed to be false) or any allegations concerning Client A to the same or similar effect (paragraph 7.1); or

(ii) Any allegations otherwise imputing to Client A, whether by referring to Client A by name, description (including by referring to Company F), image or otherwise howsoever, that Client A has been engaged in fraudulent, dishonest, untrustworthy, unlawful or criminal misconduct of any kind (paragraph 7.2).

C.3 Events after Consent Order and prior to Date 76

83 After the Consent Order had been agreed, the parties continued to engage in discussions regarding the precise form of Annex 2, which set out the amendments to be made to Publications on Publication 1.[72]

84 On Date 66, at 10:50, Ms Stephanie Osborn, an Associate solicitor at Hamlins emailed Client A providing updates on various matters[73], and attaching:

(a) A "*Draft Takedown Request*" to be sent to Google and Bing, in respect of both Publication 1's metadata and third party websites[74]; and

[72] See **[199/3048-3050]**; **[200/3051-3207]**; **[201/3208-3211]**.

[73] **[294/3854-3855]**

[74] **[296/3859]**

(b) An updated list of Publications from Publication 1 which continued to appear on third party websites.[75]

85 On Date 67, at 15:04, Hamlins sought advice from an American law firm, in respect of various matters, including "*advice in relation to the coverage of a Google / Bing takedown request made in the UK, and its impact in the US*".[76] Earlier, at 12:25, the Respondent had noted in an email to Client A that they would be seeking advice "*as to Google.com and whether the UK judgment in your favour can be used to seek take down in the US*", stating Client A's view that "*potentially the fact much more of your case relates to Data Protection, rather than libel (where the US takes a very different position and is hostile to UK libel judgments), could be relied on to improve prospects.*"[77]

86 On Date 68, at 16:39, Ms Osborn emailed Client A providing further updates on various matters, including: "*Google / Bing takedown requests: We have not heard anything from Google or Bing as yet in relation to our takedown requests*".[78] Client A responded at 16:52 noting that they would leave it to Hamlins to follow up on.[79]

87 On Date 69, Client B served a Witness Statement on Client A, purportedly in order to confirm that Client B had complied with paragraphs 3, 9 and 10 of the Consent Order (as required of Client B under paragraph 10 of that Order).[80]

88 The same day, Hamlins wrote to Company H drawing attention to various breaches of paragraphs 3 and 4 of the Consent Order, notwithstanding the Witness Statement which Client B had served that day.[81] In particular, having conducted a review of Publication 1, it was noted that a number of the English pages had concealed links to the foreign

[75] **[295/3856-3858].**

[76] **[208/3243-3244]**.

[77] **[207/3241-3242]**.

[78] **[209/3245-3258]**.

[79] **[210/3259]**.

[80] **[212/3279-3284]**.

[81] **[215/3297-3299]**.

language iterations of those pages.[82] Further, foreign language links in relation to 8 of the Publications listed in Annex 1 were unamended in accordance with paragraphs 3 and 4. The letter noted that Client B was in breach of the Order and required Client B to confirm that Client B would now comply with their obligations.

89 On Date 71, at 10:46, Company H responded by email stating that the foreign language versions of the articles were removed "*yesterday*", that this was within 14 days of the Consent Order, and there had "*therefore not been any breach*".[83]

90 During Date 70, Hamlins continued to take steps to seek to effect the removal of republications of the Publications on third party websites, including by making direct contact with third party websites such as WordPress. On Date 72, WordPress responded to such a request. The request was rejected on the basis that WordPress required "*a U.S. court order, or a foreign order that has been recognized by a California state or federal court, for our review before removing content*".[84]

91 On Date 73, at 17:40, Mr Forshaw emailed Client A stating that Hamlins had been "*working on seeking removal of [Publication 1] copies and references on Google, Bing, Blogger and Wordpress*".[85] Mr Forshaw provided an update in respect of each site and, after noting the above response from WordPress and similar responses received from other sites, stated: "*[the Respondent] emphasises that these resistant/non-engaging responses are, regrettably, par for the course and all US platforms are notorious for placing hurdles in the way when asked to take action pursuant to UK media-law related Court Orders. We will, as stated, need to consider further strategies if we are met with ongoing failure to engage*".

92 On Date 74, at 15:03, Mr Forshaw emailed the Respondent and Mr Galbraith stating: "*[Publication 2] on the [Scandal] is coming out on [Date 79]*".[86] The following day, Hamlins wrote to Company H noting that it had come to Client A's attention that Client

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[82] The links were obscured because they appeared as "*a white link on a white background next to the date at the top of the relevant page*" **[215/3297]**.

[83] **[217/3301-3302]**.

[84] See **[220/3309-3310]**.

[85] **[219/3306-3307]**.

[86] **[297/3860-3861]**.

B had written Publication 2, and that it would be made available through Publication 1.[87] The letter stated: "*We trust it is not necessary to go into detail but we expect you to have advised your client as to [Client B's] obligations pursuant to the Order and of the consequences of [Client B] breaching the same*".

C. Events from Date 76

93 Paragraphs 10 – 58 of the Rule 12 Statement contain a summary of, and quotations from, relevant correspondence (and other documents) between Date 78 and 5 December 2018. The Respondent does not repeat such reference here, save where the summary or quotation provided in those paragraphs is incorrect or materially incomplete.

94 On Date 77:

(a) At 13:43, Mr Forshaw emailed the Respondent and Mr Galbraith noting that Publication 15 on Publication 1 still contained Client A's email address, which was "*clearly against the Order*", and the reason it was not showing up on the searches which Hamlins had been undertaking was that it was "*part of the picture, and therefore can't be read*";[88]

(b) At 16:07, Mr Forshaw emailed Client A (copying the Respondent and Mr Galbraith) stating: "*As an update on the take-down requests, we are continuing to contact Google regarding removal of content relating to the [Publication 1] articles*".[89] This email also attached a draft letter to Company H in relation to the breach of the Order which Mr Forshaw had identified earlier that day.[90]

95 On Date 78, at 13:03, Mr Forshaw sent Mr Galbraith the email which is cited in paragraph 11.[91] That email began: "*I have left a copy of the Order on your desk with the sections I was thinking about highlighted*";

[87] **[223/3641]**.

[88] **[224/3642-3643]**.

[89] **[225/3644-3646]**.

[90] **[226/3647-3648]**.

[91] **IWB/1 p. 386**.

96 Publication 2 was published by Client B on or around Date 80. On Date 81, at 08:27, Client A emailed Mr Galbraith noting Publication 2 .[92]

97 On 12 September 2018, at 10:10, Mr Forshaw emailed Client A (copying the Respondent and Mr Galbraith) noting that:[93]

(a) He has [redacted] of Publication 2, which was due to arrive "*on or before Thursday*";

(b) Publication 15 still contained the embedded email showing Client A's name; and

(c) Chasers had been sent to Blogger and Google in respect of take downs, including a separate right to be forgotten request to Google.

98 On 17 September 2018, at 11:23, Mr Forshaw emailed Mr Galbraith (copying the Respondent) stating[94]:

"*I have left a copy of [Publication 2] on your desk. I have read as far as the tab, and the only possible reference I could find was on the dog-eared page where there is a reference to "another person", ie someone who [Client B] wanted to include but can't.*"

99 On 27 September 2018, at 14:05, the Respondent emailed Mr Forshaw asking him to "*please prioritise completing review of [Publication 2]*".[95] Later that day, at 16:49, Mr Forshaw emailed Client A (copying the Respondent and Mr Galbraith) noting that he was continuing to read Publication 2, had found no direct references to Client A, but would "*continue reading and update you as soon as I find any direct references, or in any case when I have finished*".[96] This email also provided updates on the requests made to Google and Bing, and stated:

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[92] **[229/3660-3663]**.

[93] **[230/3664-3667]**.

[94] **[298/3862-3863].**

[95] [**243/3703-3704].**

[96] **[244/3705-3707]**.

"*Article on [Publication 1] with your name in the imbedded (sic) picture… As discussed, we are unlikely to be granted a license to the copyright in the Source Articles, and requesting it at this stage may not be productive. We should however discuss paying for a license which we could utilise for takedowns*".

100 On 1 October 2018, at 18:15, Mr Forshaw sent the email to Client A cited in paragraph 15.[97] With respect to Publication 2, Mr Forshaw stated: "*.. pages 167 to 179 of [Publication 2] refer to an incident, reference to which was removed from one of the [Publication 1] articles in Annex 2, which can be found at pages 187-188 of the Order. Whilst these pages do not mention you specifically, they do refer to a section that was removed from the article following the Order. The section states that there was a meeting on 23 September involving [Company F] and [Company E] at the [Company F] offices, because the [Company E] offices were cramped and unsuitable…*". Mr Forshaw also provided an update in relation to two fresh requests which had been made to Google. At 18:26, Mr Forshaw forwarded to Client A scanned copies of the pages in Publication 2 referred to in his previous email.[98]

101 On 4 October 2018, and prior to sending the email cited in paragraph 19, the Respondent emailed Counsel M attaching the draft letter to Company H in relation to Publication 15, and stating: "*This is an existing draft complaint to [Company H] but which was prepared prior to identification of the potential breach in [Publication 2]*".[99]

102 The document headed "*Internal Note – call with [Counsel M] 4.10.2018*", and cited in paragraph 20, also contained the following sections:[100]

"***<u>Initial Position</u>***

- *We would need to construe the Order objectively, as the Court would do, without regard to the fact that we were involved in drafting the Order.*

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[97] **IWB/1 p. 39**.

[98] **[256/3729-3730]**; **[257/3731]**; **[258/3732]**; **[259/3733]**; **[260/3734]**; **[261/3735]**; **[262/3736]**; **[263/3737]**; **[264/3738]**; **[265/3739]**; **[266/3740]**; **[267/3741]**; **[268/3742]**; **[269/3743]**.

[99] **[272/3752-3753]**; **[273/3754-3755]**.

[100] **IWB/1 pp. 43 – 46**.

- *We need a proper basis to commit [Client B] to imprisonment for breach of the Order, considering the view that the Court would take.*

- *This basis needs to meet the criminal standard – it has to be evidence beyond reasonable doubt.*

- *Any ambiguity in our claim would, in Court, be counted in [Client B's] favour.*

…

[Publication 2]

…

- *[Counsel M's] current, preliminary, analysis is that the deal itself is criminal and / or dishonest, and therefore by implication so are the people involved in it. Therefore if we can use the material in [Publication 2] to link [Client A] to the deal, then [Client B] would be in breach of the Order, as [Client B] would have said that [Client A] is a criminal and / or dishonest. Again, we would need to prove this to a criminal standard.*

…

- *P.170 mentions " at [Company F]", followed with "The [Company F] team", who worked on the document, even re-naming it and including more "close legal language". The implication is that those individuals were acting deceitfully.*

- *[Counsel M's] main issue is if this can be related to Paragraph 7.2. To pursue this action, we need to be able to argue in Court that any ordinary reasonable readers would read this passage of [Publication 2] and know that it relates to [Client A] (special knowledge).*

- *To do this, we would have to plead the original article as they appeared on [Publication 1], which link [Client A] to [Company F] or that particular part of the deal. These sections would be considered as "facts" (though they clearly do not have to be true) that the ordinary and reasonable reader might know*

having read the original articles, causing them to therefore associate [Company F] with [Client A].

- *As there are large overlaps between the readers of the articles and the readers of [Publication 2], [Counsel M] mentioned that this would be arguable.*

…

Potential next steps

…

- *[Counsel M] thinks, at this stage, that [Client A] has a reasonably arguable case, whether or not [Client A] pursues a case to commit [Client B]. He noted that publication of [Publication 2] was deeply questionable, and that if we were found to be right in our case, [Publication 2] would likely be pulped.*

…

Important Advice on bringing an action

- *In bringing an action, we would be asking the Court to perform a criminal function – there therefore needs to be a public interest in doing so.*

- *Any inference at all that we are doing this as a way to get some sort of collateral gain would not be taken kindly by the Court. This relates especially to our ability to try to get a copyright license out of these proceedings, which [Counsel M] strongly suspects is not going to happen. [Counsel M] states that if [Client A's] objective is to get the copyright, this is not a recommended option.*

- *[Counsel M] is unsure as to whether bringing a claim for this material is worth the money and effort.*

- *The outcome if successful would be punishment for [Client B], with possible collateral that [Publication 2] would be pulped or republished without the offending content.*"

103 This note also recorded that Hamlins should send to Counsel M: "*All of Annex 2 and, separately, the highlighted sections of Annex 2 where references linking [Client A] by name to [Company F] have been deleted*".

104 The document headed "*Call with [Counsel M] 10/10/2018*", and cited in paragraph 25, also stated: "*If our position is just that we want to get [Publication 2] pulped, then we are in an easier position; we do not need to have 100% certainty as in criminal proceedings or pre-action protocol*".[101]

105 The email from the Respondent to Client A at 15:00 on 10 October 2018, which is cited in paragraph 26, also stated: "*[Counsel M] did reiterate his advice that [Client B] has breached the Order by the virtue of the passages identified and contained in [Publication 2] and is liable for us to pursue a Contempt complaint but reminded us that the references to you are indirect and therefore this requires careful analysis and explanation.*"[102]

106 On 17 October 2018, and in advance of the Call the following day, the Respondent prepared a manuscript note which read as follows:[103]

"*[Client A] – Plan for Call to [Company H]*

- *Without Prejudice*
- *[Publication 2]*
- *Significant passages directly in breach of Annex 2 to Order*
- *Consulted counsel; advised.*
- *Contempt of Court.*"

107 The Respondent's email to Client A at 17:41 on 23 October 2018, cited in paragraph 42, also contained further updates in relation to third party takedowns: "*As for Bing, we have put together a list of links which still include any information from [Publication*

[101] **IWB/1 p. 53**.

[102] **IWB/1 p. 54**.

[103] **[283/3794]**.

1]. They (like Google) responded to the right to be forgotten request, so we are hoping to expand to other search terms…".[104]

108 The email sent by Mr Galbraith to Client A at 12:06 on 5 December 2018, and cited in paragraph 58, was partly the product of research which Mr Forshaw had carried out on or around 27 November 2018, and passed on to Mr Galbraith by email at 12:27 that day.[105] Mr Forshaw had been tasked with researching "*the procedure to commit someone for contempt of court*".

D Allegation 1.1 – Alleged claims made in respect of the Call

D.1 Allegation 1.1.1 – Alleged claim that Counsel had stated that there was a strong case for bringing contempt proceedings

109 The SRA alleges that:

(a) During the course of the Call, the Respondent asserted that "*counsel had said that there was a strong case for bringing contempt proceedings against Client B, or words to that effect*";

(b) Such assertion was false and/or misleading in that it does not reflect the advice in fact received from Counsel M; and

(c) This constituted a breach of Principles 2 and 6 and of Outcome 11.1, and was dishonest.

110 This Allegation arises out of two passages contained in Solicitor G's TAN of the Call:[106]

(a) "*CH had gone to counsel on the issue, who had advised that [Client A] was entitled to bring committal proceedings against [Client B] over the breach. Counsel has advised there was a strong contempt case*"; and then

[104] **IWB/1 p. 65**.

[105] **[289/3817-3818]**.

[106] **IWB/1 p. 79**.

(b) "*CH's Counsel had now advised that [Client A] had a strong basis for bringing contempt proceedings against [Client B]*".

111 As a preliminary matter, the SRA simply assumes (without explanation), that these two statements, even if they had been made, amount to the same thing. That is incorrect. In particular, in circumstances where there has been a clear breach of a Court Order, that may provide a strong basis for bringing contempt proceedings, without, in itself, providing a strong contempt case. It may, for example, be difficult to establish to the criminal standard that the relevant breach was intentional, rather than technical.[107] The fact that the statements made in the TAN are not even consistent with one another, let alone the surrounding evidence, is highly material, for the reasons set out below.

112 The impact of delay is obviously relevant to this Allegation. Given the passage of time, it is inherently unlikely that either Solicitor G or CH will now have any direct recollection as to precisely what was said on the Call, particularly to the level of detail now relied upon by the SRA.

113 Solicitor G's Witness Statement, signed on 14 May 2024 (and therefore almost six years after the Call took place), makes reference to the contents of the Call in paragraphs 17 – 23.[108] However, these paragraphs simply track and/or paraphrase the contents of the TAN. Solicitor G accepts that he "*reviewed [Company H's] matter file to remind [himself] of the detail*" before preparing his Witness Statement.[109] These paragraphs do not appear to be the product of any independent recollection by Solicitor G regarding the detail of what was said, but are instead based on the TAN itself.

114 That is highly material in circumstances where the TAN is not a genuinely contemporaneous note of the Call. It appears to have been prepared by Solicitor G on the following day, 19 October 2018. In those circumstances, it would be surprising were Solicitor G to have prepared such a detailed attendance note, descending to the level of detail contained in the TAN, without first having made any manuscript notes during (or immediately after) the Call.

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[107] As set out in Counsel M's advice of 4 October 2018, in relation to the continuing presence of Client A's email address in Publication 15 on Publication 1 **IWB/1 p. 48**.

[108] **IWB/1 pp. 146 – 147**.

[109] Solicitor G WS, para. 4 **IWB/1 pp. 142- 143**.

115 Client B claims in their Witness Statement that Solicitor G told Client B that he had "*taken an immediate note*".[110] However, no other notes made by Solicitor G, whether manuscript or otherwise, have been disclosed by the SRA, and Solicitor G makes no mention of such an "*immediate*" note (or any other note) in his own Witness Statement, simply stating: "*I prepared a typed attendance note of the Call the following day*".[111] Had Solicitor G prepared any note other than the TAN, one would expect him to have referred to it, particularly given the central importance of what was said during the Call to the Allegations now being made.

116 After the Respondent's solicitors queried this issue on 9 July 2024, the SRA's solicitors responded stating they would contact Solicitor G "*and make enquiries about whether he produced a manuscript note to assist him in the preparation of his attendance note*".[112] It appears that the SRA itself does not in fact know whether or not Solicitor G made such a manuscript note.

117 To the extent that no manuscript note prepared by Solicitor G can be located:

(a) If it cannot be located because it has been destroyed or lost by Solicitor G owing to the passage of time since 18 October 2018, that is simply a further example of the material prejudice which has been caused to the Respondent by such delay and which would prevent him from having a fair trial;

(b) If it cannot be located because such manuscript note was never in fact made by Solicitor G, and the TAN was simply prepared by Solicitor G on the basis of his recollection of the Call on the following day, that must cast significant doubt on the accuracy of the TAN (and, in particular, the specific words attributed to the Respondent), given the level of detail to which it purports to descend.

118 Further, in light of the delay in the making of the complaint and the SRA's investigation and referral, any area of doubt must be resolved in the Respondent's favour.

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[110] Client B WS, para. 26 **IWB/1 p. 85**.

[111] Solicitor G WS, para. 24 **IWB/1 p. 147**.

[112] See DAC Beachcroft's letter to Capsticks of 9 July 2024 and Capsticks' response of 15 July 2024.

119 In any event, the available evidence supports the opposite conclusion: the Respondent did not say that Counsel had advised that there was a "*strong contempt case*", or words to that effect.

120 The Respondent had prepared a script for the Call, which had been specifically and carefully drafted and amended in advance, with input both from his colleagues and in particular from Client A who instructed the Respondent to deploy the wording on the Call. The Respondent then read out the script on the Call. The Respondent and his colleagues will attest that this was his invariable practice in circumstances where such a script had been prepared, particularly where (as here) there was an experienced and exacting professional client whose practice throughout was to give very specific instructions regarding the message to be conveyed to Client B and/or Client B's solicitors.[113]

121 The final version of the Respondent's script, which is the version he would have used on the Call, stated:[114]

"*9.* ***Contempt of Court*** *– we have gone to Counsel as to bringing committal proceedings and our client has been advised in clear terms that the serious breach amounts to basis to bring contempt proceedings. Your client should treat this seriously*"

122 That was an accurate reflection of the advice received from Counsel M on 4 October and 10 October 2018, namely that there was a basis to bring contempt proceedings against Client B on the basis that the publication of the relevant passages of Publication 2 was in breach of the Consent Order. Such statement was neither untrue nor misleading.

123 Further, Mr Galbraith – who was also present in the room with Mr Hutchings and listened in on the Call – did prepare a genuinely contemporaneous manuscript note of

[113] By way of example only, see the very extensive and detailed comments made by Client A on Client B's letter to Hamlins of Date 27 **[25/152-154]** and the series of emails sent by Client A to the Respondent on 13 July 2018 providing comments on the detail of the draft Annex 2 **[179/1553-1556]**.

[114] **IWB/1 p. 61**.

the Call.[115] In circumstances where the Respondent had prepared and was reading from a detailed script, Mr Galbraith only recorded in his note: (i) statements made by Solicitor G; (ii) statements made by the Respondent in response to Solicitor G and/or after he had finished reading from the script; and (iii) any statements made by the Respondent which deviated from the script. Nowhere in Mr Galbraith's manuscript note does it record the Respondent having stated that Counsel had advised that there was a "*strong contempt case*", or any words to similar effect. That provides further support to the fact that the Respondent did not say those words, but rather stuck to his script.

124 That this is what the Respondent intended to, and did, say on the Call is also evidenced by the handwritten note setting out his "*Plan*" for the Call, prepared by him the previous day.[116] The relevant point simply stated "*Consulted counsel; advised*". That was another accurate statement, which also did not refer to what Counsel's advice was regarding the strength of any contempt application.

125 Indeed, the Respondent's later statements are also inconsistent with those he is alleged by Solicitor G and the SRA to have made during the Call. For example, in his email to Solicitor G on 8 November 2018, he simply stated that: "*Counsel has already been instructed to advise*".[117]

126 In simply assuming that the contents of the TAN are accurate in every respect, the SRA has ignored that:

(a) Solicitor G may have misheard or misunderstood what the Respondent said regarding Counsel's advice during the Call. In particular, and as set out above, there is an important distinction between the seriousness of the breach of the Consent Order (if established), and the consequent strength of any contempt proceedings relying on that breach. That distinction is apparent from the final version of the script and was clearly in the Respondent's mind, but is not reflected in the TAN; or

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[115] **[280/3774]**. A typed version of this manuscript note, prepared for the purposes of these proceedings, is at **[281/3783]**.

[116] **[277/3771]**.

[117] **IWB/1 p. 76**.

(b) Solicitor G may have misremembered precisely what the Respondent said regarding Counsel's advice during the Call when preparing the TAN the following day (or, to the extent that he did prepare a contemporaneous manuscript note, may have failed accurately to transcribe that note into the TAN); and/or

(c) Solicitor G may have set out his version of what happened on the Call from the perspective of what Solicitor G perceived would best avail his client.

127 The SRA also seeks to rely on the following matters as supporting the contents of the TAN and Solicitor G's alleged recollection of what was said to him during the Call:

(a) Solicitor G's alleged reporting to Client B of what was said to him, as described by Client B in their Witness Statement and set out in the email exchange between the two;

(b) Solicitor G's assertion of what was said during the Call in his email to the Respondent on 22 October 2018 (together with the suggestion in paragraph 46 that no attempt was subsequently made by the Respondent to correct this assertion); and

(c) The statement made by the Respondent in his email to Solicitor G on 26 October 2018 that: "*I contacted you having already received advice as to the strength of my client's position in this regard*".[118]

128 None of these matters provide any support for the SRA's position.

129 As to Solicitor G's alleged reporting to Client B of what was said to him, and emails exchanged between the two at the time:

(a) Client B's Witness Statement does not make any reference to any statement by Solicitor G regarding what the Respondent had allegedly said to him on the Call regarding Counsel's advice on the strength of any contempt proceedings. While Client B refers to their understanding (presumably from Solicitor G) that the Respondent "*had counsel's advice that [Publication 2]… defamed [Client A]*",

[118] **IWB/1 p. 67**.

this does not refer to Counsel's advice in respect of contempt proceedings.[119] Indeed, it is a further, accurate, reflection of the advice given by Counsel M (and further evidence that Solicitor G's account in the TAN is wrong);

(b) Client B's report to the SRA in January 2023 also contains no reference at all to any statement allegedly made by the Respondent regarding Counsel's advice on the strength of any contempt proceedings;[120]

(c) The SRA does not specify which specific "emails" are relied upon in support of the Allegation, but the emails exchanged between Solicitor G and Client B on 19, 20 and 22 October 2018 do not themselves refer to Counsel's advice;

(d) To the extent that the SRA relies upon the fact that Solicitor G's email to Client B sent at 17:52 on 19 October 2018: (i) attached what, subject to sight thereof, appears to be a copy of the TAN; and (ii) contained a draft of what would become the response sent to Hamlins on 22 October 2018, this takes matters no further beyond the SRA's reliance on the TAN and the 22 October 2018 response.[121]

130 As to Solicitor G's 22 October 2018 email, the passage of the email relied upon stated: "*You said that (1) your client has a strong basis for bringing committal proceedings against our client for contempt of court over certain passages of [Publication 2]… which you say breach the consent order dated [Date 65] and undertaking*"".[122] However:

(a) This does not make any reference to any advice received from Counsel, let alone any advice received from Counsel regarding whether there was a strong basis for bringing committal proceedings. Indeed, that is an inconsistency which, in itself, casts significant doubt on the accuracy of the TAN and Solicitor G's recollection of the Call more generally. In any event, the statement as recorded in the 22 October 2018 email is one of legal opinion, not fact. Further, it forms

[119] Client B WS, para. 23 **IWB/1 p. 85**.

[120] **IWB/1 pp. 81 – 82**.

[121] **IWB/1 pp. 402 – 403**.

[122] **IWB/1 p. 63**.

no part of Allegation 1.1.1 that the Respondent somehow misrepresented his own views regarding the strength of any committal proceedings;

(b) Further, and even if (which is denied) the statement made by Solicitor G in the 22 October 2018 email was or was intended to be synonymous with the statements recorded by him in the TAN, Solicitor G drafted that email at or around the same time as preparing the TAN on 19 October 2018. To the extent he was simply relying on statements in the TAN, those statements were inaccurate for the reasons set out above;

(c) In those circumstances, it is nothing to the point that "*no attempt was made to correct*" Solicitor G's statement in Hamlins' response of 26 October 2018 (as alleged in paragraph 46);

(d) Further or alternatively, the SRA's broad assertion is itself incorrect; Hamlins' response of 26 October 2018 commenced: "*It is regrettable that your letter misrepresents the substance of my call …*".[123]

131 Finally, the statement made by the Respondent in the email of 26 October 2018 was as follows: "*… I have made plain to you that my client has already engaged Counsel in respect of the proposed Committal Application and I contacted you having already received advice as to the strength of my client's position in this regard.*".[124] In this regard:

(a) The SRA's position appears to rest on a conflation of the statement in fact made, which was that the Respondent had received Counsel's advice "*as to the strength*" of Client A's position, with an entirely different statement which was not made, to the effect that the Respondent had received Counsel's advice that Client A's position was strong;

(b) Those statements are clearly not synonymous. Having received advice from a surveyor "*as to the strength*" of foundations of a house does not imply that the surveyor has advised that those foundations were strong. Similarly, having

[123] **IWB/1 p. 67**.

[124] Ibid.

received advice from Counsel "*as to the merits*" of a claim does not amount to a statement that Counsel has advised that such claim had merit;

(c) The statement which the Respondent in fact made on 26 October 2018 was both: (i) accurate in itself; and (ii) consistent with what he had already said to Solicitor G in the course of the Call. Far from providing any support for the Allegation, the statement on 26 October 2018 directly undermines it;

(d) This email also reflected the drafting of the final version of the script prepared for the Call and is a further example of the care with his words taken by the Respondent in communicating such matters to Solicitor G and Client B. It provides further evidence that, having prepared that script, the Respondent would not then have deviated from it during the Call (and did not do so).

132 For the avoidance of doubt, the Respondent denies making any statement in the Call which was false and/or misleading. Any statement made by the Respondent, referring to Counsel, was consistent with the advice previously received from Counsel.

133 The SRA alleges that the Respondent sought to "*take unfair advantage*" over both Solicitor G and Client B, and that his motivation in misleading them was to create the impression that the potential case for contempt was considered to be stronger than had in fact been the case.

134 That assertion does not stand up to scrutiny. Solicitor G (and Company H) were very experienced media litigators who both could and would have formed their own view, or themselves sought advice from Counsel, regarding the strength of any proposed contempt proceedings. Client B was an individual with experience of litigation who had proved adept, in the course of the proceedings, at advancing legal arguments on Client B's own behalf.[125] There was no motivation for the Respondent to mislead them and he did not do so.

[125] See, for example, the email Client B sent to Hamlins on Date 34, several months before Company H were instructed, making reference to various statutory provisions including Article 10 of the ECHR, s. 32 of the Data Protection Act, s. 8 of the Defamation Act 2013 and ss. 14 and 15 of the Defamation Act 1996 **[38/187-188]**.

135 Strictly in the alternative, even if (which is denied) the Respondent did say to Solicitor G during the Call that Counsel had said that there was a strong case for bringing contempt proceedings against Client B (which statement would not necessarily be inconsistent in any event, with Counsel's advice on 10 October 2018[126]), or words to that effect, this would have been no more than an example of the Respondent misspeaking (i.e., an innocent slip of the tongue as against the script). That inherent probability, particularly in circumstances where the words complained of were spoken rather than written, has simply been ignored by the SRA in making such a serious allegation.

136 The accurate position, and what the Respondent intended to say during the Call, was reflected in the final version of the script and/or the 26 October 2018 email to Solicitor G. Further and in any event, as set out above, there were (and are) nuanced distinctions to be drawn between: (i) Counsel's advice regarding the underlying breach and its seriousness; and (ii) Counsel's advice regarding the strength of any contempt application relying on that breach.

137 While Counsel M had advised, on 4 October 2018, that there was an "*arguable*" case for bringing contempt proceedings, his advice in respect of the underlying breach of the Consent Order – i.e., the "basis" for any contempt proceedings – was more robust. The note of Counsel M's advice on 4 October 2018 records that he noted that "*publication of [Publication 2] was deeply questionable*".[127]

138 Further, on 10 October 2018, the Respondent passed on to Client A that "*[Counsel M] did reiterate that it is his advice that Client B has breached the Order by virtue of the passages identified and contained in [Publication 2] and is liable for us to pursue a Contempt complaint…*".[128]

139 It is therefore denied that:

(a) The Respondent sought to take unfair advantage of third parties, or acted in breach of Outcome 11.1;

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[126] As recorded in the Respondent's email to Client A at 15.00 on 10 October 2018 **IWB/1 p. 54**.

[127] **IWB/1 p. 45**.

[128] **IWB/1 p. 54**.

(b) The Respondent failed to behave in a way that maintains the trust the public placed in him and in the provision of legal services, or acted in breach of Principle 6; or

(c) The Respondent failed to act with integrity, or acted in breach of Principle 2.

140 Further, and in any event, it is denied that the Respondent acted dishonestly in relation to Allegation 1.1.1. The Respondent did not make the statement alleged. But in any event:

(a) Such a serious allegation requires clear and cogent evidence in order to be proved.[129] That is particularly true in this case, given the Allegation is made against the Respondent, who is not merely a professional but a senior Partner with an unblemished disciplinary record over more than 30 years of practice as a solicitor, both before and since the events complained of. It is therefore inherently unlikely that the Respondent would have acted dishonestly;

(b) In any case, more cogent evidence is required than to prove negligence or innocence, because the evidence has to outweigh the countervailing inherent improbability that the Respondent would have acted as the SRA alleges;[130]

(c) The SRA has simply ignored all of the evidence which is inconsistent with the Respondent having acted dishonestly, proceeding to the conclusion that he must have done so. In particular, the SRA:

(i) Has relied uncritically on the contents of the TAN and seemingly not explored the lack of any genuinely contemporaneous note of the Call prepared by Solicitor G, and the consequent implications for the basis on which the TAN might have been prepared; and

(ii) Has ignored the other compelling evidence which suggests that Solicitor G may well have misheard, misunderstood, misremembered and/or misrecorded precisely what was said by the Respondent;

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[129] *Re: H* [1996] AC 563.

[130] *King v DWF* [2023] EWHC 3132 (Comm) at [433 ii)].

(d) Strictly in the alternative, even if (which is denied) the Respondent did say the words alleged, that would have been an innocent mistake and certainly not dishonest; paragraphs 135 – 138 above are repeated.

D.2 Allegation 1.1.2 – Alleged claim that Client A had only been aware since 17 October 2018 of the issues with Publication 2

141 The SRA alleges that:

(a) During the course of the Call, the Respondent asserted that "*[Client A] had only been aware since "yesterday" of the references to [Client A] in [Publication 2], or words to that effect*";

(b) Such assertion was false and/or misleading in that correspondence in relation to these references had commenced with the Respondent, Hamlins and Client A at least as early as Date 29; and

(c) This constituted a breach of Principles 2 and 6 and of Outcome 11.1, and was also dishonest.

142 The Respondent made no such statement during the Call on 18 October 2018.

143 As set out in Section B above, this is an entirely new allegation which did not form part of the Notice of Referral, has never previously been put to the Respondent in order to allow him to respond to it, and was not before the Authorised Decision Maker when considering whether to refer this matter to the Tribunal. That being so, it is both procedurally unfair and abusive for the SRA to now seek to make this Allegation (particularly when it is of the most serious kind).

144 The SRA (or its lawyers) appear to have alighted on the Allegation, at the time of drafting the Rule 12 Statement, having seized upon a single line in the TAN, which states:[131]

"*… [Client A] had heard only yesterday about references to [Client A] in [Publication 2], which CH was absolutely confident were in breach of the order*"

[131] **IWB/1 p. 79**.

145 However, it is notable that there is no other suggestion or implication that the Respondent ever made such a statement:

(a) Anywhere in Client B's Witness Statement or in Client B's report to the SRA in January 2023;

(b) Anywhere in Solicitor G's Witness Statement; or

(c) In any of the contemporaneous correspondence or other contemporaneous documents.

146 Indeed, Solicitor G's Witness Statement (which apparently sets out his recollection of the Call) does not contain any evidence at all regarding the Respondent telling him when Client A had heard about references to Client A in Publication 2. He simply states, in paragraph 19.1, that the Respondent "*asserted that [Client B's] publication of [Publication 2] breached the Consent Order on the basis that [Client A] had been referred to in [Publication 2] by references to [Company F]*".[132]

147 That is an inappropriately thin basis on which to advance such a serious allegation, particularly where, as here, if such a statement had really been made by the Respondent then it: (i) would obviously have been untrue; (ii) would obviously have been known by Solicitor G to be untrue; and (iii) would not have strengthened any of the other points which the Respondent sought to make during the Call, and would in fact have undermined them.

148 In the first instance, given that in the very same Call the Respondent conveyed the fact that Counsel's advice had been received in relation to both whether the references in Publication 2 breached the terms of the Consent Order, and whether that provided a basis for bringing contempt proceedings against Client B, it would have been scarcely believable had the relevant passages of Publication 2 also only come to Client A's attention the previous day.

149 For that to be true, all of the following events would need to have taken place, within a 24 hour period:

[132] **IWB/1 p. 146**.

(a) Hamlins and/or Client A discovering and reading the offending passages of Publication 2, and forming the view that they referred to Client A;

(b) Hamlins and/or Client A forming the view that such passages may have been in breach of the Consent Order;

(c) A decision being taken to instruct Counsel on the issue, and Client A agreeing to that instruction;

(d) The preparation of instructions to Counsel (and any other supporting documents) to be sent to Counsel on the issue;

(e) Counsel agreeing to undertake the work within the very short timescale required, and (potentially) his clerks negotiating a fee for that purpose;

(f) Counsel reading instructions and the offending passages of Publication 2, together with any other supporting documents;

(g) Counsel forming his own view and communicating his advice to Hamlins and/or Client A;

(h) Hamlins then digesting the contents of that advice in order to convey it to Company H;

(i) Hamlins reaching out to Company H to arrange the Call, and agreeing on a mutually acceptable time.

150 That is simply incredible. Further, it would have appeared that way to Solicitor G at the time. It would have made no sense for the Respondent to tell such an obvious (and bizarre) untruth.

151 The SRA suggests in paragraphs 70 – 73 that the Respondent sought to create a false impression "*to imply that the proposal being put forward… was a position that had been reached very quickly*", that this represented an attempt to obtain an unfair advantage by "*suggesting that this was a new issue for him too*", and that he attempted to imply to Solicitor G that "*Client A had less time to settle upon [Client A's] strategy for dealing with this matter than was in fact the case*".

152 None of these purported motivations come close to explaining why the Respondent would tell such an obvious untruth. The alleged motive makes no sense. Far from creating any unfair advantage, any statement by the Respondent that he, his client and his colleagues had only become aware of the passages of Publication 2 "*yesterday*" would have had precisely the opposite effect. It would suggest that any view which they and Counsel had reached was, of necessity, rushed and potentially ill-considered. Any statement made in respect of Counsel's view would only have been strengthened to the extent that it reflected Counsel's carefully considered opinion, not one which they had been forced to reach in a matter of hours (and which would almost certainly have been provisional in nature).

153 The SRA also suggests that the alleged statement might have represented an attempt by the Respondent to justify why the issue was not raised in the 11 October 2018 letter. That alleged motive also makes no sense. The 11 October 2018 letter, as sent to Company H, concerned a separate publication on Publication 1 which was plainly in breach of the terms of Consent Order.[133] This was a discrete point. There was, and would have been, nothing strange about it being addressed by the 11 October 2018 letter, and then issues relating to Publication 2 being addressed separately thereafter. Further, there was an obvious justification for not including mention of Publication 2 in that letter – Counsel M had given advice the previous day, which obviously needed to be reflected upon before making a decision as to how to progress matters.

154 Moreover, Solicitor G and Company H would also have known that it was inherently unlikely that Client A would only have become aware of the offending passages of Publication 2 the previous day. As is apparent from the extensive correspondence throughout Date 29 (both before and after the Consent Order) which is cited in Section C above, both Hamlins and Client A were assiduously monitoring Client B's output for the purposes of preventing the dissemination of defamatory and inaccurate material about Client A. That included monitoring for the purposes of ensuring that Client B was complying with their obligations under the Consent Order.

155 Indeed, Hamlins specifically wrote to Company H on Date 75 noting that it had come to Client A's attention that Publication 2 would soon be published and would be made

[133] **IWB/1 pp. 372 – 373**.

available through Publication 1, and reminding Client B of their obligations under the Consent Order.[134] At or around the same time, Hamlins were also engaged in correspondence regarding other breaches of the Consent Order by Client B, including the continuing presence of certain foreign language publications on Publication 1.[135]

156 Publication 2 was released on around Date 80. Given the terms of the Date 75 letter, Company H would have expected Client A and/or Hamlins to have obtained a copy, in order to ensure that there were no further allegations made against Client A and that Client B therefore complied with Consent Order. In those circumstances, any assertion that Client A had not become aware of the offending passages until almost five weeks later (and only the day before the Call) would not have been credible.

157 Once again, the SRA has placed wholesale reliance on the contents of the TAN and simply disregarded the possibility that this is most likely to have arisen from Solicitor G himself mishearing, misunderstanding, misremembering or misrecording what had been said by the Respondent on the Call. That is particularly acute here given that the SRA does rely on any other supporting documentary evidence, and Solicitor G does not even repeat the assertion in his own Witness Statement.

158 In fact, the contemporaneous evidence all suggests that the Respondent did not make such a statement:

(a) The final version of the script for the Call (which, for the reasons set out above, the Respondent would have used) stated: "*3.* ***First – [Publication 2]*** *– a new issue has been drawn to our client's attention*".[136] This was accurate. The issues created by Publication 2 were indeed "*new*", particularly compared to the "*previous breaches*" also referred to in the script and in respect of which Company H had already been notified; and

[134] **[223/3641]**.

[135] See Hamlins' letter to Company H of Date 69 **[215/3297-3299]**.

[136] **IWB/1 p. 61**.

(b) Mr Galbraith's manuscript note stated: "*contempt case: only aware recently*".[137] This was also accurate. Hamlins and Client A had only recently become aware of the possible contempt case arising out of the publication of Publication 2, having received Counsel's advice in respect of the same.

159 These statements, which accurately reflect what was in fact said by the Respondent, provide a far more obvious explanation as to why the timing of the issue was mentioned at all (especially when compared with the SRA's strained and inconsistent attempts at explanation in paragraphs 70 – 73). It was simply by way of comparison to the other, previously notified, breaches of the Consent Order, which the Respondent had known about at an earlier stage. It therefore provided context as to the timing of the proposal.

160 The fact that the TAN contains such an inaccuracy is, of course, fatal to Allegation 1.1.2 itself (given that no other evidence is relied upon by the SRA). However, it also infects Allegation 1.1 more widely. In particular, it renders it more likely that the TAN contained other material inaccuracies, including in relation to precisely what was said by the Respondent regarding Counsel's advice.

161 Strictly in the alternative, even if (which is denied) the Respondent did say to Solicitor G during the Call that Counsel had said that Client A had only been aware since "*yesterday*" of the references to Client A in Publication 2, or words to that effect, this would have been no more than an example of the Respondent misspeaking (i.e., an innocent slip of the tongue as against the script). As in the case of Allegation 1.1.1, that inherent probability has simply been ignored by the SRA. Indeed, it is all the more likely where (as here) such a statement would have served to undermine the Respondent's position and the other points he was making, rather than supporting it.

162 It is therefore denied that:

(a) The Respondent sought to take unfair advantage of third parties, or acted in breach of Outcome 11.1;

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[137] **[280/3774]**. While this statement appeared below the letters "*[Solicitor G]*", it is far more likely that it was said by the Respondent (and the "*[Solicitor G]*" was erroneous and/or a "*CH*" should have been inserted after it). It would have made little sense for Solicitor G to say that he had become aware of that contempt case "*recently*" when he was being told about it, for the first time, in that very same call.

(b) The Respondent failed to behave in a way that maintains the trust the public placed in him and in the provision of legal services, or acted in breach of Principle 6; or

(c) The Respondent failed to act with integrity, or acted in breach of Principle 2.

163 Further, and in any event, it is denied that the Respondent acted dishonestly in relation to Allegation 1.1.2. The Respondent did not make the statement alleged but, in any event:

(a) Far from the cogent evidence required, the SRA's evidence to support such a serious allegation is thin indeed;

(b) The TAN does not provide a proper evidential basis for the alleged statement, and indeed various pieces of evidence (together with the underlying probabilities) are inconsistent with that alleged statement;

(c) The SRA's contrived attempts to explain why the Respondent would have been motivated to tell such an obvious untruth to Solicitor G do not make sense even on their own terms. There was simply no motivation for the Respondent to have done so; he did not;

(d) Strictly in the alternative, even if (which is denied) the Respondent did say the words alleged, that would have been an innocent mistake and certainly not dishonest.

E Allegation 1.2 – Alleged improper threat of litigation

164 The SRA alleges that, during the course of the 18 October 2018 Call, the Respondent made an improper threat of litigation being commenced against Client B, namely proceedings for contempt. Such a threat is said to have been "*improper*" because:

(a) Its primary purposes was to place pressure on Client B to transfer a copyright licence to Client A in respect of [Publication 1 Content], and

(b) Bringing such proceedings was "*not in fact genuinely contemplated*" by Client A.

165 The SRA also places some reliance upon the allegation that Counsel M's advice "deprecated" contempt proceedings being brought in order to achieve the obtaining of a copyright licence.

166 Allegation 1.2 is denied for the reasons set out below. The threat of litigation which was made was not an improper one. The copyright licence sought by Client A was for the express purpose of taking steps to remedy the serious and continuing harm to Client A's reputation caused by republication of Client B's (admittedly) defamatory and inaccurate material about Client A. In those circumstances, the copyright licence sought was directly connected to the conduct complained of. It was legitimate for it to be sought by Client A on a without prejudice basis and in an attempt to mitigate the consequences of Client B's conduct and/or breaches of the Consent Order and to further the compliance with the spirit of the Order, and to avoid the need to bring contempt proceedings.

E.1 Whether the copyright licence was related or collateral to the breach of the Consent Order

167 The SRA's own March 2015 guidance, cited in paragraph 81, is that an example of a solicitor unduly prioritising their client's interest over their other duties would be: "*abuse of the litigation process, where a solicitor uses the courts or general litigation process for purposes that are not directly connected to resolving a specific dispute*".[138]

168 In *Goldsmith v Sperrings Ltd* [1977] 1 WLR 478, defendants to a libel action sought to have the action stayed or dismissed as an abuse of process, on the basis that it had been pursued not to protect the plaintiff's reputation but for a collateral purpose. At 503D-H, Bridge LJ made the following statements in relation to what is meant by a "*collateral advantage*" in such context (**emphasis** added):

"***The phrase manifestly cannot embrace every advantage sought or obtained by a litigant which it is beyond the court's power to grant him***. *Actions are settled quite properly every day on terms which a court could not itself impose on an unwilling defendant. An apology in libel, an agreement to adhere to a contract of which the court could not order specific performance, an agreement after obstruction of an existing*

[138] **IWB/1 p. 433**.

right of way to grant an alternative right of way over the defendant's land – these are a few obvious examples of such proper settlements. ***In my judgment, one can certainly go so far as to say that when a litigant sues to redress a grievance no object which he may seek to obtain can be condemned as a collateral advantage if it is reasonably related to the provision of some form of redress for that grievance****. On the other hand, if it can be shown that a litigant is pursuing an ulterior purpose unrelated to the subject matter of the litigation and that, but for his ulterior purpose, he would not have commenced proceedings at all, that is an abuse of process. These two cases are plain; but* ***there is, I think, a difficult area in between. What if a litigant with a genuine cause of action, which he would wish to pursue in any event, can be shown also to have an ulterior purpose in view as a desired byproduct of the litigation? Can he on that ground be debarred from proceedings? I very much doubt it****…"*

169 The SRA's reliance in paragraph 77 upon the fact that the transfer of a copyright licence was "*an outcome unlikely to have been achieved by the actual bringing of the proceedings*" is therefore misconceived. That is simply irrelevant to the question of whether it is improper to seek such an outcome in the context of without prejudice settlement discussions. As Bridge LJ noted, it is entirely common (including in the libel context) for parties to seek, and to agree, remedies which the Court would not itself have granted. Indeed, that is one of the main benefits of ADR and one reason why the use of ADR is encouraged by the Court. The relevant question is not whether the Court would ever grant the remedy sought, but whether it is reasonably related to the provision of some form of redress for the underlying grievance.

170 Against that background, the SRA also loses sight of the very purpose for which the copyright licence was sought by Client A. Indeed, it is telling that in paragraph 79 it misleadingly seeks to characterise the copyright licence as a simple "*acquisition*".

171 To state the obvious, Client A did not seek to obtain that copyright licence for its own sake. Nor did Client A seek it for any kind of financial gain. Rather, as was made clear to Client B at the time, it was sought for the express and limited purpose of assisting in the process of removing defamatory and inaccurate material which had originally been published by Client B on Publication 1, but had since been republished on third party websites. The reason this issue was of particular concern was that, particularly in the United States and given the legislative protections there on freedom of speech, such

third party websites were more likely to be persuaded by a demand based on copyright than one based on an English libel judgment or Order. Indeed, so concerned was Client A that they had sought specific US law advice on this issue.

172 The copyright licence was therefore a means to an end – it had no value to Client A in and of itself. Its value lay entirely in assisting Client A to remove defamatory and inaccurate material about Client A, in the form of the Articles which Client B had first put into the public domain, from third party websites.

173 Further, what was being sought by Client A was not ownership of the copyright in the entirety of Client B's articles, but rather an exclusive licence over only those sections of the articles which contained defamatory and inaccurate material about Client A. Client B would still have retained all ownership rights in respect of such articles. That licence needed to have been "exclusive" for the purposes of enforcement in the USA if such material were to be removed and the terms of any licence would, as a matter of law, need to have been agreed and in writing. However, as the Respondent's script for the Call makes clear, the licence would also have been expressly and strictly limited to the purpose of effecting such removal of the specific sections in question. In accordance with its terms, Client A would not have been permitted to use such licence for any other purpose (even if they had any desire to do so, which they did not).

174 Indeed, it is commonplace for individuals in Client B's position to utilise copyright as the mechanism for bringing about the removal of material in the public domain, even where the underlying complaint, and the basis for such removal, is not limited to the fact that there has been a copyright infringement:

(a) As set out in the Particulars of Claim, Client A advanced a claim in copyright against Client B in respect of Client A's (stolen) passport photograph, which appeared in six Publications on Publication 1, including the Article. However, Client A also advanced claims under the Data Protection Act in respect of that same passport photograph;

(b) In other cases where sensitive or compromising photographs have been stolen from private devices and put into the public domain, individuals will often assert their copyright in respect of such photographs as the simplest way to effect their

removal, even though the underlying complaint will likely be the intrusion of privacy rather than any copyright infringement;

(c) Even where individuals do not actually own the copyright in respect of such photographs (e.g. where they were originally taken by the paparazzi), they will often seek a copyright licence from the original photographer in order to prevent publication and republication by third parties.

175 As is apparent from the detailed background set out in Section C above, the republication of defamatory and inaccurate statements made by Client B on third party websites was also central to: (i) the initial complaints made by Client A; (ii) the underlying proceedings arising from those complaints; (iii) the subsequent negotiations regarding the Consent Order which settled those underlying proceedings; and (iv) the discussions which then took place regarding compliance with the Consent Order.

176 That Client A would be concerned with such third party republications is, in itself, unsurprising. Client A was motivated by a legitimate desire to repair the damage done to Client A's reputation by the very serious and false allegations originally made about Client A by Client B, which continued to be published not merely by Client B but, verbatim, by third parties. The harm caused to Client A's reputation was significantly exacerbated by such republications, and it did not matter to Client A whether or not such third party websites were under Client B's control. In this respect:

(a) The Respondent's initial advice to Client A in Date 5 made clear that Client A was concerned not merely with the publications on Publication 1 itself, but also the links to those publications available on third party search engines such as Google;[139]

(b) In Date 19, prior to the issue of proceedings, a request was made to Google for the search results to an article on Publication 1 to be removed.[140] Google rejected that request and, accordingly, Client A felt that Client A was left with

[139] **[4/42-44]**.

[140] See **[19/133-134]**.

no choice but to pursue Client A's claim against Client B directly (as set out in the Respondent's email of Date 23);[141]

(c) In the Claim Form initially issued on Date 34, Client A sought an injunction to restrain Client B, not merely by themselves but "*through others or by any means whatsoever*", from continuing to publish, or cause or authorise the publication of, the same or similar words as those defamatory statements complained of;[142]

(d) Hamlins first drew attention to the republication of defamatory material on third party websites – including in relation to articles which Client B had already taken steps to remove from [Publication 1] – in its open letter to Client B of Date 38[143]. This letter made clear Client A's position that such republications were Client B's responsibility, and that they were the foreseeable consequence of Client B's own postings. It also specifically cited the "grapevine effect";

(e) On Date 51, shortly after Company H had first indicated Client B's willingness to settle the proceedings, Hamlins' letter noted that as part of any settlement Client B would be required not merely to remove references to Client A on Publication 1, but also to "*take all reasonable steps within [Client B's] power to procure the removal of all such references to [Client A] as appears on other websites appearing in articles authored, syndicated, authorised or participated in by [Client B]*";[144]

(f) The Particulars of Claim, which were served on Date 52:

(i) Expressly relied upon the "grapevine" effect in relation to the Article (in paragraph 9);[145]

(ii) Expressly relied upon 4 republications of the Article of which Client A was aware, both as evidencing the grapevine effect and in support of Client A's claim for injury for feelings, on the basis that Client B knew

[141] **[20/135-136]**.

[142] **[39/191]**.

[143] **[293/3846-3853].**

[144] **[70/322-323]**.

[145] **IWB/1 pp. 167 – 168**.

and could and/or did foresee such republications, and which were the consequence of Client A publishing the Article on [Publication 1] (in paragraphs 13 – 14);[146]

(g) The potential for Client B to send a "*To whom it may concern letter*" to address this issue as part of any settlement was also first raised by Client A on around Date 52;[147]

(h) On Date 53, Hamlins sought from Client B a "*full account*" of all articles currently being published on websites other than [Publication 1] which contained explicit or implicit references to Client A, of which Client B was aware and over which Client B acknowledged they had some control (whether in the form of a power or an ability to take down or procure the take down of the relevant articles from those sites or to withdraw Client B's authority to continuing publication).[148] Further, the letter stated that, with respect to third party websites over which Client B exercised no control or influence, Client A would accept a "*To whom it may concern*" type letter or statement from Client B, to be sent to "*such third party websites and, for that matter, search engine operators, to help bring about the desired result*";

(i) The first draft of the "*To whom it may concern letter*" was prepared, by Counsel, on Date 57.[149] It made express reference to Client B's status as the "*author and copyright owner*" of the relevant articles. The importance of Client B's copyright in such articles in effecting their removal was therefore clear;

(j) On Date 59, Hamlins shared a revised draft Tomlin Order and the draft "*To whom it may concern letter*" with Company H, noting that this had been provided "*to assist our client to rectify the harm [Client B] has caused, and for which [Client B] is legally liable, via publication on third party websites*".[150] It

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[146] **IWB/1 pp. 170 – 171**.

[147] **[73/329-330]**.

[148] **[80/343-345]**.

[149] **[100/528-534]**; **[101/535]**.

[150] **[117/750-752]**. The enclosures (the revised draft Tomlin Order and Annexes) are at **[116/746-749]**; **[114/575-578]**; **[115/579-745]**; **[118/753]**.

further stated expressly that the objective of removal of such material from third party websites was "*of the utmost importance*" to Client A;

(k) The requirement for Client B to send such a letter was also a remedy to which Client A could have been entitled and which the Court could have ordered, had proceedings continued. As Counsel M noted in his advice on Date 18, it effectively granted the relief available to s. 13 of the Defamation Act and s. 14(5) of the Data Protection Act;[151]

(l) Following without prejudice discussions which had taken place on Date 60, it was made clear by Company H that, while Client B would not agree to sending such a letter, Client B was content for the settlement to be on an open (rather than confidential) basis, which would allow Client A to "*tell anyone [Client A] pleases about it*";[152]

(m) On Date 61, the Respondent passed on to Counsel Client A's view that Client A required either for Client B to write a letter to third parties "*asserting [Client B's] copyright*", or to "*agree to use the phrase "Judgment" and for the order to have on its face (rather than the confidential schedule)*" everything Client A would need "*in order to persuade 3rd parties*";[153]

(n) Accordingly, the Consent Order which was eventually agreed did not include any provision for the sending of a "*To whom it may concern letter*". However, in order to address Client A's stated concerns: (i) the terms of settlement were open and not contained in any confidential schedule; and (ii) judgment was entered against Client B in paragraph 1 of the Order.[154] Further, paragraph 7 of the Order to which Client B was agreed was drafted in wide terms, including that Client B would "*not publish, permit or cause to be published*" the allegations complained of;

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[151] **[130/1003]**.

[152] **[137/1031].**

[153] **[141/1212]**.

[154] **IWB/1 pp. 32 – 36**.

(o) Shortly after the Consent Order had been agreed, on Date 66, Ms Osborn of Hamlins sent Client A a "*Draft Takedown Request*", to be sent to Google and Bing.[155] Further, at this time Hamlins was actively monitoring on Client A's behalf third party websites which made reference to the articles from Publication 1 pleaded in the Particulars of Claim, and keeping a list for that purpose;

(p) On Date 67, the Respondent informed Client A that Hamlins would be seeking US legal advice in respect of various matters, including "*whether the UK judgment in [Client A's] can be used to seek take down in the US*".[156] He also stated "*potentially the fact much of your case relates to Data Protection, rather than libel (whether the US takes a very different position and is hostile to UK libel judgments), could be relied on to improve prospects*";

(q) On Date 69, in accordance with paragraph 10 of the Consent Order, Client B gave a witness statement which set out all other journalists to whom Client B had disclosed or made available any of Client A's personal data.[157] The same day, Hamlins wrote to Company H drawing attention to various instances of non-compliance by Client B with the Consent Order;[158]

(r) Hamlins continued to take steps to effect the removal of republications of Client B's articles from third party websites, including WordPress. On Date 72, WordPress responded to such a request made by Hamlins, refusing it and stating that it required "*a U.S. court order, or a foreign order that has been recognized by a California state or federal court, for our review before removing content*";[159]

(s) On Date 73, following this refusal, Mr Forshaw emailed Client A noting that the Respondent had emphasised that "*these resistant/non-engaging responses are, regrettably, par for the course and all US platforms are notorious for*

[155] **[294/3854-3855]; [295/3856-3858]; [296/3859].**

[156] **[207/3241]**.

[157] **[212/3279-3284]**.

[158] **[215/3297-3299]**.

[159] **[220/3309-3310]**.

placing hurdles in the way when asked to take action pursuant to UK media-law related Court Orders. We will, as stated, need to consider further strategies if we are met with ongoing failure to engage";[160]

(t) On Date 77, Mr Forshaw provided a detailed update to Client A on the "*take-down requests*" which were being made, including that Hamlins was "*continuing to contact Google regarding removal of content relating to the [Publication 1] articles*";[161]

(u) Efforts to remove content from such third party websites continued even after the events of October 2018. On 22 November 2018, Mr Galbraith emailed Client A providing updates on various matters, including third party take-downs.[162] The following day, Mr Galbraith also sent to Client A an "*updated schedule of 3rd party websites*".[163] This evidenced third party republication of all 22 Articles listed in Annex 1 to the Consent Order, with the exception of Article 16;

(v) Indeed, such efforts have still not been entirely successful. Even today, Hamlins is aware of some 8 Articles which continue to be published on third party websites (including WordPress), even where those web pages have been delisted from search engine results.

177 Accordingly, the copyright licence which was sought by Client A was not "collateral" in any relevant sense. It was directly related to the underlying grievance for which Client A had always sought redress, both in the underlying proceedings and then in seeking to ensure Client B's compliance with the terms of the Consent Order. The redress sought was the mitigation of the harm which had already been caused and continued to be caused to Client A's reputation, as a result of the original defamatory and inaccurate publications complained of.

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[160] **[219/3306-3307]**.

[161] **[225/3644-3646]**.

[162] **[286/3800-3801]**.

[163] **[287/3802-3803]**; **[288/3804-3816]**.

178 Client B's Witness Statement, on which the SRA relies, states at paragraph 25 that Client B perceived the "*ulterior motive*" of the demand to be "*not to prevent me from defaming [Client A] but to clean their reputation*".[164] Leaving to one side the pejorative language, that is a distinction without a difference. Client A was entitled to take all reasonable steps to repair the harm to [Client A's] reputation caused by Client B's admitted wrongdoing, and seeking a copyright licence was not collateral to, but a critical part of, that aim.

179 Further, the implication that the only breach of the Consent Order in respect of which contempt proceedings were contemplated is the publication of Publication 2 by Client B is also incorrect:

(a) There were other breaches of the Consent Order which had been drawn to Company H's attention, including:

(i) The continuing presence of foreign language versions of certain Articles (and unamended links to those Articles) on Publication 1, highlighted on Date 69;[165] and

(ii) The continuing presence of Client A's name and email address in Article 15 on Publication 1, highlighted on 11 October 2018.[166] Hamlins' letter also expressly stated that this: "*represents a breach of the Consent Order, and therefore appears to be in Contempt of Court*";

(b) Indeed, it is for this reason that the Respondent's script for the Call stated:[167]

"*2.* ***2 problems caused by your client****:*

3. ***First – [Publication 2]*** *– a new issue has been drawn to our client's attention.*

4. ***2 previous breaches*** *of Order – this, most serious, follows our having to complain of 2 earlier breaches happened upon.*"

[164] **IWB/1 p. 85**.

[165] **[215/3297-3299]**.

[166] **IWB/1 pp. 372 – 373**.

[167] **IWB/1 p. 61**.

(c) The Respondent's email to Counsel M of 3 October 2018, seeking his advice, also stated: "*Following the Order in July, there have been several breaches – of varying degree of seriousness – on [Client B's] part.*"[168] It was on this express basis that Client A had asked that Counsel M be instructed to provide advice on strategy;

(d) That these breaches were being considered together was also apparent from an earlier draft of the 11 October 2018 letter to Company H, which made references to "*Several breaches of the Order*", including: (i) the publication of the relevant passages of Publication 2; (ii) continued references to Client A on Publication 1; and (iii) foreign language versions of Publications on Publication 1 not complying with the Consent Order;[169]

(e) There was in fact an arguable case that the continued presence of such republications on third party websites was itself a breach of the Consent Order and of Client B's undertakings to the Court, on a proper construction of their terms. In particular, the wide wording contained in paragraphs 5 and 7 meant that, in not asserting Client B's right to the copyright in such Publications in order to have them removed, Client B was "permitting" the original wording (or any wording to the same or similar effect) to be published "*anywhere else in any form*".[170] It cannot realistically be alleged that the copyright licence would have been collateral to any such breach. In those circumstances, and where multiple breaches have been committed, there is nothing improper about a solicitor acting for a litigant who is prepared to waive one breach in return for redress which specifically addresses another breach.

180 While they may have differed in form, the substance of Client A's complaints in respect of: (i) the publication of Publication 2; (ii) other notified breaches of the Consent Order; and (iii) continuing republication on third party websites were the same. All were directed at removing the defamatory and inaccurate material which Client B had themself put into the public domain.

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[168] **IWB/1 p. 42**.

[169] **IWB/1 pp. 395 – 398**.

[170] **IWB/1 p. 33**.

181 Therefore, as was correctly stated by the Respondent in his email to Company H on 26 October 2018, the request for a copyright licence was "*in line with the spirit of the Order*" in any event.[171] The SRA does not come close to meeting the high bar set out in *Goldsmith*: in no sense can the request be considered as an ulterior purpose unrelated to the subject matter of the litigation.

182 In any event, even if (which it is not) any closer or more direct connection than that were required between, on the one hand, the breach of the Consent Order constituted by the publication of Publication 2 and, on the other hand, the request for a copyright licence in order to assist with the removal of third party republications, such a connection exists in this case.

183 The offending passages of Publication 2 did not make reference to Client A explicitly. Rather, they referred to Client A by implication and by mention of Company F. However, this still constituted a breach of the Order because:

(a) As Hamlins had highlighted in its letter to Company H of Date 63, it was Client B's original publications on Publication 1 which had "*created a situation whereby readers of [Client B's] website would regard [Client A] as synonymous and interchangeable with [Company F]*".[172] Further, this letter expressly highlighted that such serious errors had been "*repeated on other websites and contaminated the body of information available about [Client A] online*". It was for this reason that, having regard to the information available both on Publication 1 and on other websites more broadly, "*references to wrongdoing by [Company F] will be understood by readers to be references to [Client A]*";

(b) The Particulars of Claim also expressly pleaded reliance on various republications in order to evidence the grapevine effect;[173]

(c) The Consent Order was therefore agreed in terms whereby Client B undertook not to publish, under paragraph 7.2, "*any allegations otherwise imputing to*

[171] **IWB/1 p. 67**.

[172] **[149/1260]**.

[173] See para. 13 **IWB/1 p. 170**.

*[Client A], whether by referring to [Client A] by name, description (**including by reference to [Company F]**), image or otherwise howsoever, that [Client A] has been engaged in fraudulent, dishonest, untrustworthy, unlawful or criminal misconduct of any kind*" (**emphasis** added);[174]

(d) The issue was also squarely addressed in Counsel M's advice on 4 October 2018 in respect of Publication 2.[175] As he noted:

(i) Any argument that the Consent Order had been breached would rest on the contention that "*any ordinary reasonable readers would read this passage of [Publication 2] and know that it relates to [Client A] (special knowledge)*";

(ii) It would therefore be necessary to plead "*the original articles as they appeared on [Publication 1], which link [Client A] to [Company F] or that particular part of the deal. These sections would be considered as "facts"… that the ordinary and reasonable reader might know having read the original articles, causing them to therefore associate [Client A] with [Company F]*";

(iii) Further, there was a "*large overlap between the readers of the articles and the readers of [Publication 2]*";

(e) This was precisely the point made in the draft letter to Company H prepared on around 9 October 2018.[176] That draft letter contained a Schedule which set out 9 of the original Publications on Publication 1, giving rise to the special knowledge which would allow the reasonable reader to identify Client A from the references to Company F in Publication 2.

184 Accordingly, the copyright licence sought would not merely have assisted Client A in removing the republished material from third party websites. It would also, by necessary implication, have assisted in directly addressing and/or mitigating the harm

[174] **IWB/1 p. 33**.

[175] **IWB/1 pp. 43 – 46**.

[176] **IWB/1 pp. 395 – 398**.

of Client B's breach of the Consent Order in publishing the relevant passages of Publication 2.

185 The reason for this is that such third party republications were not separate from, or unrelated to, Publication 2. They continued to contain unamended material from Publication 1, which expressly linked Client A with alleged wrongdoing by Company F. They therefore constituted the material which continued to be published and which had, for the reasonable reader of Publication 2, made Client A synonymous with Company F, allowing that reader to identify Client A simply from the reference to Company F. To the extent that such republications could still be removed, whether by way of a copyright licence or otherwise, that would at least go some way to mitigating the serious harm caused by Publication 2's publication and the breach of the Consent Order.

186 Indeed, as Mr Forshaw stated in the email of 1 October 2018, which is cited in paragraph 15, the allegations contained in the relevant passages of Publication 2 were not new. In fact, they referred to an "*incident, reference to which was removed from one of the [Publication 1] articles in Annex 2*".[177] The article in Annex 2 referred to was Publication 2 and, specifically, the reference in that article to the alleged involvement of Client A and Company F in the Agreement between the Fund and Company E in Date 1 (i.e., the very same incident which is referred to in pages 167 to 170 of Publication 2).[178]

187 In fact, while Mr Forshaw referred to Publication 2 in his email, various other Publications – which continued to be republished on third party websites – also contained references to that very same transaction in Date 1, including Client A's and Company F's alleged involvement in it. It was for this reason that the draft letter to Company H prepared on around 9 October 2018 stated that "*the average reasonable reader of [Publication 2] will have special knowledge relating to the material, namely that [Client A] is intrinsically associated with [Company F]* ***particularly in conjunction with… the [Agreement]****. References to [Company F] in [Publication 2]*

[177] **IWB/1 p. 39**.

[178] See **[198/2903-2910]**.

thereby associate our client with the deal, which… act as serious allegations against our client, specifically prohibited by the Order" (**emphasis** added).[179]

188 Therefore, the original material – which continued to be republished on third party websites – did not merely link Client A with Company F generally. It linked Client A with Company F in the context of the very incident which is referred to in the relevant passages of Publication 2. Removing the republication of that material would, undoubtedly, have gone some way towards mitigating the harm which publication of Publication 2 (and breach of the Consent Order) had caused.

189 The copyright licence sought was, accordingly, directly connected not merely to the underlying proceedings but also to the very breach of the Consent Order upon which the threatened contempt application was based, and indeed was, in part, aimed at addressing and/or mitigating the harm caused by that breach.

190 The SRA's contention that this request constituted an improper collateral purpose is therefore unsustainable.

E.2 Client A's intention to bring proceedings

191 The SRA relies on certain statements reflecting Client A's reluctance to bring public proceedings against Client B as evidence of the fact that Client A never intended to pursue such proceedings. That is both a *non sequitur* and is also contradicted by the available evidence.

192 While it is common for individuals to be reluctant to litigate, given the costs and other risks involved, that reluctance is likely to be particularly acute in the case of defamation claimants. Individuals who are seeking to protect their reputation will undoubtedly be alive to the risk that, in ventilating defamatory allegations in open court and giving them wider publicity, they in fact increase awareness of such allegations.

193 Indeed, as Counsel L [redacted] noted in their original advice in Date 15, notwithstanding Client A's high prospects of success in any proceedings, those proceedings could come at a "*very high price*" and could well prove "*counter-productive*", given the publicity

[179] **IWB/1 p. 395**.

they would undoubtedly attract, together with the incentive for Client B to "*exploit*" those proceedings, treating the case as a marketing opportunity for Publication 1.[180]

194 That Advice was prescient, in circumstances where it is now apparent from documents disclosed by the SRA that Client B was well aware of such factors, and the leverage which it gave Client B.[181]

195 This was also borne out in the approach Client A took to the underlying proceedings against Client B:

(a) As Hamlins repeatedly made clear to both Client B and Company H, Client A viewed proceedings as a last resort and sought to give Client B every opportunity to avoid such proceedings;

(b) That was reflected in Client A's conduct, including: (i) waiting until shortly before limitation expired in Date 29 to issue proceedings; (ii) waiting until shortly before the Claim Form had expired in Date 46 to serve proceedings; (iii) agreeing to various stays and extensions of time in order for settlement discussions to take place and the Consent Order to be agreed;

(c) That was also reflected in the concessions which Client A made to Client B in order to settle the proceedings, including forgoing Client A's right to damages and costs which would have been significant given Client B's admitted defamation of Client A.

196 However, and notwithstanding Client A's obvious reluctance, Client A did, as a matter of fact, pursue the underlying proceedings at every stage at which it was necessary for

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[180] **[15/110-111]**.

[181] See Client B's email to Solicitor G at 19:50 on 19 October 2018 in which Client B noted that Client A "*knows that if [Client A] goes to court it will undo everything [Client A] has sought on the issue of keeping this private… It will be a news story if [Client A] pursues [an] attempt and if it doesnt get what [Client A] wants, which is the copyright removed in the states that will be less tempting for [Client A] – indeed [Client A's] demand could be a point of media interest…*" **IWB/1 p. 404**; Client B's email to Client B's spouse at 20:42 the same day in which Client B stated "*I don't think we can threaten them openly. [Client A] will be worried about that without me saying anything…*"; and Client B's Spouse's response at 20:51: "*Not threatening them but highlight that they would then make the issue a very public one*" **IWB/1 p. 407**

Client A to do so. In particular, Client A instructed Hamlins to issue proceedings, to prepare the Amended Claim Form and Particulars of Claim, and then to serve proceedings. Accordingly, it cannot be inferred from any reluctance on the part of Client A to litigate that they would not, in fact, have done so had it been required.

197 Any references to Client A neither "wanting" nor "intending" to bring contempt proceedings must therefore be read with this important context well in mind. The risks in respect of such public proceedings would have been the same, not least as they would have given significant further publicity to Publication 2 (which had only recently been published), and they would also have resurrected the very issues about which Counsel L had warned, and which were behind Client A making significant concessions to Client B and agreeing to the Consent Order.

198 Such references did not however mean that Client A had ruled out bringing such proceedings in all circumstances. That is itself apparent from Client A's email to the Respondent of 23 October 2018, which referred to the fact that all sanctions remained available to Client A, and [redacted] being "*forced to commence proceedings*" if no acceptable proposal were made.[182]

199 Indeed, as the SRA accepts, as late as 5 December 2018 (more than six weeks after the Call), Mr Galbraith emailed Client A informing Client A of the necessary steps required in order to personally serve contempt proceedings on Client B.[183] That email was the product of earlier research which Mr Forshaw had carried out on around 27 November 2018, which he had then passed on to Mr Galbraith.[184] That is not a task which Hamlins would have been instructed to undertake had it always been Client A's intention simply to threaten such proceedings without ever issuing them. Had that been the case, steps in relation to serving such proceedings would simply have been irrelevant to Client A.

200 Finally, and whatever Client A's actual state of mind at the time, it cannot possibly have been improper for the Respondent to warn of such proceedings in the Call in

[182] **IWB/1 p. 66**.

[183] **IWB/1 pp. 77 – 78**.

[184] **[289/3817-3818]**.

circumstances where the Respondent had Client A's specific instructions to commence such proceedings, if necessary. In particular, the script for the Call, which was specifically reviewed and approved by Client A, stated:[185]

"*14. If option one is not accepted, left with **only alternative**, which [Client A] instructs me they will pursue, to bring contempt proceedings, get [Publication 2] **pulped** and use that to bring further pressure on others*".

201 This statement did not appear in the previous two drafts of the script, and was added for the first time in the final version. Client A's agreement to this statement being made constituted instructions to the Respondent as to Client A's intentions. In those circumstances and in any event, any of Client A's previous statements regarding their reluctance to bring public proceedings were simply irrelevant.

E.3 Counsel's advice

202 The SRA places reliance on the advice given by Counsel M including the following statements recorded in the note of his call with the Respondent on 4 October 2018:[186]

"***Important Advice on bringing an action***

…

- *Any inference at all that we are doing this as a way to get some sort of collateral gain would not be taken kindly by the Court. This relates especially to our ability to try to get a copyright license out of these proceedings, which [Counsel M] strongly suspects is not going to happen. [Counsel M] states that if [Client A]'s objective is to get the copyright, this is not a recommended option.*"

203 For the reasons set out above, the copyright licence sought was not "*collateral*" in the relevant sense. Further, Counsel M's statement was made (and was understood by the Respondent to have been made) specifically in the context of his advice with respect to bringing proceedings, and as to how any attempt by Client A to seek remedies from the Court other than those to which Client A was entitled in bringing such proceedings was

[185] **IWB/1 p. 62**.

[186] **IWB/1 p. 45**.

likely to be viewed with disfavour by the Court. It is unsurprising that Counsel M would have focused on (and the Respondent would have understood him to be focusing on) this particular point, given that Counsel M would have been instructed as Counsel to draft the complaint and represent Client A in such contempt proceedings, had they ever been issued.

204 Further, when Counsel M gave this advice, he had also at the same time been invited to consider a draft open letter from Hamlins to Company H, which raised a different breach of the Consent Order (the continuing publication of Client A's email address in Publication 15 on Publication 1).[187] Counsel M's advice meant (and would also have been understood by the Respondent to mean) that, in relation to that breach, Hamlins should not make reference to a copyright licence in that open letter if contempt proceedings were in contemplation.

205 Counsel M did not make any statement to the Respondent to the effect that it would be improper for Client A to seek a copyright licence in the course of without prejudice settlement discussions, in an attempt to compromise such proceedings before they had been commenced and/or with a view to avoiding such proceedings ever needing to be commenced.

206 That the Respondent understood this to be the effect of Counsel M's advice is also apparent from his email of 4 October 2018 relaying that advice to Client A (cited in paragraph 19), in which he stated (**emphasis** added):[188]

"*In a nutshell, [Counsel M] does consider you have the basis to bring a complaint and seek a further Order for Contempt of Court but he questions whether the potential outcome of [Publication 2] being pulped justifies the cost and time needed. You'll see* ***he flags that we cannot be seen to be seeking a copyright license as an alternative to such an outcome, although Callum and I are both of the view that if [Client B] seeks to negotiate, that would be a legitimate offer for us to make in order for [Client B] to avoid a finding of contempt***".

[187] See **[272/3752-3753]** and **[273/3754-3755]**.

[188] **IWB/1 p. 47**.

207 A similar context applied to the further statements attributed to Counsel M by the Respondent on 10 October 2018. Counsel M's suggestion that the "*letter cannot be **seen to be** offering a ticket out*" as otherwise the "*contempt proceedings will be thrown out*" (**emphasis** added) was made (and was understood by the Respondent to have been made) in the context of draft open correspondence, with Counsel M addressing the issue of perception by the Court, and the consequences for such proceedings, once issued.[189] Thus, on 10 October 2018, the Respondent passed on Counsel M's comments expressly in respect of "*how a court will perceive matters*".[190]

208 Further, even if (which he did not) Counsel made any statement to the Respondent which "deprecated" (i.e., warned against) pursuing a copyright licence as part of without prejudice negotiations, such statement would merely have reflected Counsel's advice as to whether such a course was a strategically prudent one and/or one which would have served Client A's wider interests. It would not have constituted Counsel advising that such a course was professionally improper.

209 Further, or alternatively, even if Counsel had advised that pursuit of the copyright licence on a without prejudice basis was improper, any such advice would have been incorrect (or arguably incorrect) for the reasons set out above.

210 It is therefore denied that:

(a) The Respondent sought to take unfair advantage of third parties, or acted in breach of Outcome 11.1;

(b) The Respondent failed to behave in a way that maintains the trust the public placed in him and in the provision of legal services, or acted in breach of Principle 6; or

(c) The Respondent failed to uphold the rule of law and proper administration of justice, or acted in breach of Principle 1.

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[189] **IWB/1 p. 53**.

[190] **IWB/1 p. 54**.

F Response to Rule 12 Notice

F.1 The Allegations

211 All of the Allegations set out in paragraph 1 are denied, for the reasons set out above.

212 It is in any event denied that the Respondent's conduct in respect of Allegation 1.1 was dishonest. The Respondent was not dishonest, for the reasons set out in paragraphs 140 and 163 above.

F.2 Background Summary

213 Paragraphs 6 – 7 are admitted.

F.3 The facts and the matters relied upon in support of the Allegations

214 Paragraph 8 is noted. The Respondent does not know the extent of the dealings the SRA has had with Client B.

215 Paragraph 9 sets out an inaccurate and incomplete summary of the underlying proceedings between Client A and Client B, and other relevant background to the Call. A full account of such matters is set out in paragraphs 20 – 108 above.

216 As to paragraphs 10 – 58:

(a) The documents originating from Hamlins and/or comprising inter-partes correspondence are admitted as documents;

(b) The authenticity of documents originating from Company H (other than inter-partes correspondence) and/or Client B are not admitted, and the SRA is required to prove the same, and their contents;

(c) Without prejudice to the foregoing, the SRA is required to prove the authenticity of the TAN; it is denied that it is an accurate attendance note of the Call.

F.4 Allegations and Alleged Breaches of Principles and the Code of Conduct

Allegation 1.1.1 – Alleged claim that Counsel had stated that there was a strong case for bringing contempt proceedings

217 Paragraphs 60 – 65 are denied for the reasons set out in paragraphs 109 – 139 above.

218 As to paragraphs 66 – 68, it is in any event denied that the Respondent acted dishonestly in relation to Allegation 1.1.1 for the reasons set out in paragraph 140 above.

Allegation 1.1.2 – Alleged claim that Client A had only been aware since 17 October 2018 of the issues with Publication 2

219 Paragraphs 69 – 73 are denied for the reasons set out in paragraphs 141 – 162 above.

220 As to paragraphs 74 – 75, it is in any event denied that the Respondent acted dishonestly in relation to Allegation 1.1.2 for the reasons set out in paragraph 163 above.

Allegation 1.2 – Alleged improper threat of litigation

221 Paragraphs 76 – 82 are denied for the reasons set out in paragraphs 164 – 210 above.

The SRA's Investigation

222 Paragraph 83 is noted. It is denied that the SRA undertook any steps to investigate Allegation 1.1.2. The SRA is required to explain the basis on which it has seen fit to assert that any such steps were taken.

BEN HUBBLE K.C.

WILL COOK

I believe that the facts and matters stated in this Answer to the Rule 12 Statement are true.

Signed:

Christopher Hutchings

Dated …

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