At places within this documents, we have simplified the anonymisation to refer to only the relevant letter instead of the full anonymisation. Two examples of this are:
Client A = A
Client B = B

N1

BEFORE THE SOLICITORS DISCIPLINARY TRIBUNAL
IN THE MATTER OF THE SOLICITORS ACT 1974 (as amended)
B E T W E E N:

SOLICITORS REGULATION AUTHORITY LIMITED

Applicant

and

CHRISTOPHER MARK HUTCHINGS

Respondent

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

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

The Allegations

1. The Allegations against the Respondent, Christopher Mark Hutchings, made by the SRA, are that, whilst working as a solicitor at Hamlins LLP ("the Firm"), he:

   1.1. On or around 18 October 2018, in a telephone call with Solicitor G, made the following assertions which were false and/or misleading:

      1.1.1. That he had spoken to counsel and that he had been told that his client had a strong case for bringing contempt proceedings, or words to that effect; and/or

      1.1.2. That Client A had only heard yesterday about the references to Client A in Publication 2, or words to that effect,

   and in doing so breached any or all of Principles 2 and 6 of the SRA Principles 2011 ("the Principles") and failed to achieve Outcome 11.1 of the SRA Code of Conduct 2011 ("the Code").

N1

The facts and matters in support of this Allegation are set out in paragraphs 8 to 75 below.

1.2. On or around 18 October 2018, in the same telephone call with Solicitor G Solicitor G, improperly made a threat of litigation,

and in doing so breached any or all of Principles 1, 2 and 6 of the Principles and failed to achieve Outcome 11.1 of the Code.

The facts and matters in support of this Allegation are set out in paragraphs 8 to 59 and 76 to 82 below.

Dishonesty

2. In addition, Allegation 1.1 above is advanced on the basis that the Respondent's conduct was dishonest. Dishonesty is alleged as an aggravating feature of the Respondent's misconduct but proof of dishonesty is not required to establish the Allegation or any of its particulars.

Appendices and Documents

3. I attach to this Statement the following appendices:

Appendix 1: Relevant Rules and Regulations

Appendix 2: Schedule of Anonymisation

4. I also attach to this Statement a bundle of documents, marked **Exhibit IWB/1**, to which I refer in this Statement. Unless otherwise stated, the page references in this Statement relate to the documents contained in that bundle.

5. The bundle **Exhibit IWB/1** is divided into the following sections:

Section A: Notice

Section B: Documentary Evidence

Section C: Representations

Section D: Referral Decision

Section E: Witness statement of [redacted]

Section F: Exhibit [redacted]

Section G: Other Evidence

Background Summary

6. The Respondent (DoB: 11 December 1964) is a solicitor (SRA ID: 155966), who was admitted to the Roll on 15 October 1992. At the time of these Allegations, the Respondent was working at the Firm (SRA ID: 440628).

7. The Respondent remains registered with the SRA as continuing to work for the Firm, and holds a current Practising Certificate, which is free from conditions.

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

Relevant background

8. On 20 January 2023, Client B raised a complaint with the SRA in respect of the Respondent and the Firm in relation to threats that [redacted] believed had been made regarding [redacted] **[pages 81 – 82 of IWB/1]**. Further information was provided by Client B in [redacted] e-mail to the SRA of 22 February 2023 **[page 430 of IWB/1]**.

9. Client B's 14 March 2024 Witness Statement **[pages 83 – 86 of IWB/1]** provides the following background detail:

   9.1. Client B was born in Country C, and after leaving university [redacted] embarked upon a career in journalism **[paragraphs 5 - 6 on page 83 of IWB/1]**;

9.2. In or around 2006, Client B returned to Country C and became aware of issues within Country C and what Client B understood to be the *"…government corruption which was enabling it"* **[paragraph 8 on pages 83 – 84 of IWB/1]**;

9.3. As Country C did not have access to free media, Client B decided to use the internet to try and reach communities there about the issues Client B decided to investigate. Client B created Publication 1, and began investigating allegations of corruption, and publishing articles in relation to this **[paragraphs 9 – 10 on page 84 of IWB/1]**;

[redacted]

9.5. In Date 2, Client B started publishing details of the [redacted] Scandal across several articles on Publication 1. Some of these articles included reference to the Agreement [redacted] between the [redacted] Fund and Company E **[paragraph 13 on page 84 of IWB/1]**;

9.6. Some of Client B's articles referred to the involvement in the [redacted] Agreement of a lawyer by the name of Client A, whilst they had been working at Company F, acting for Company E. These articles also made reference to a High Court decision **[paragraph 14 on page 84 IWB/1]**;

9.7. In or around Date 22, Client B was approached by the Respondent, who was acting for Client A, in relation to these articles. A Court of Appeal decision had served to reverse some of the findings in the High Court decision to which Client B had made reference. Client B sought legal representation from Solicitor G at Company H. The claim from Client A culminated with Client B agreeing to amend several articles, removing reference to Client A, and agreeing to the terms of a Consent Order dated Date 65[1] **[paragraphs 15 – 19 on page 84 of IWB/1]**; and

9.8. On Date 80, Client B published Publication 2 [redacted], which explored the [redacted] Scandal. Publication 2 did not make reference to Client A, [redacted]

[1] The Consent Order, dated Date 65, can be found at **pages 32 – 38 of IWB/1**.

[redacted] **[paragraphs 20 – 21 on page 85 of IWB/1]**.

10. Following the Date 65 Consent Order, it is clear that reference to Client A could still be located within articles on Publication 1, as well as being found in articles from Client B that had been published by other online content providers. This much is made clear within a 3 October 2018 e-mail from the Respondent to a Counsel M of [redacted] Chambers N, seeking advice on how to address a number of the on-going issues:

> *"Following the Order [redacted], there have been several breaches – of varying degree of seriousness – on* [Client B]*'s part.* [Client A] *has asked us to instruct you to provide advice on a strategy.*
>
> A's *underlying objective is to put* [Client B] *under sufficient pressure so as to obtain licence to copyright in* [Client B]*'s articles, which would facilitate our take-down requests for online content providers, albeit* [Client A] *appreciates that this is going to be hard to achieve"* **[page 42 of IWB/1]**.

11. The desire on the part of Client A to obtain the copyright for Client B's articles appears to have been within both A's and their representatives' contemplation from Date 78 Date 78 (at the latest, if not before), given the e-mail exchange to which the Respondent was copied into:

> *"I'd say that there is a reasonable chance that we may be able to convince* B *to license us the copyright for removal purposes only, with the benefit that* B *will therefore not have to expand the temporal and financial effort in removing the copies"* **[page 386 of IWB/1]**.

12. Express reference was made to Client A obtaining the copyright licence in a 17 September 2018 e-mail sent by Callum Galbraith (another Partner at the Firm) to Client A, which the Respondent was again copied into:

> *"Firstly, we have discussed whether it might be possible to obtain an exclusive licence of their copyright in respect of the content complained of and now removed by* B *so as to enable us to seek for this to be removed from third*

party websites on the basis that you have a copyright interest" **[page 387 of IWB/1]**.

Reaction to publication of Publication 2

13. The discussion of Client A obtaining the copyright licence in relation to Client B's articles continued following publication of Publication 2. Between 18 September 2018 and 24 September 2018 **[pages 388 – 389 of IWB/1]**, the Respondent was copied into the e-mail exchange between Client A and Mr Galbraith referring to a draft letter that was to be sent to Client B. This exchange culminated with Client A, in the e-mail at 18:43 on 24 September 2018, stating:

> *"That covers the point derived from the word 'permit', but not your original point about using the breaches as leverage to compel the granting of a licence (assuming you feel there is a sufficiently strong basis for this)"* **[page 388 of IWB/1]**.

14. This prompted the response from Mr Galbraith on 26 September (which, again, included the Respondent) which stated:

> *"My advice didn't make this clear but my general view is that we should not seek a copyright licence given* [Client B]*'s position in the prior negotiations, I.e. that* they *did not wish to have anything to do with third party takedowns. I appreciate that* B's *position in negotiations does not necessarily mean that* B *will adopt the same position in respect of us seeking copyright licence but it's highly likely. I would advise you against demanding something when the legal basis is weak and likely to be rejected in any event"* **[page 388 of IWB/1]**.

15. On 1 October 2018, Tom Forshaw, a paralegal at the Firm, sent an e-mail to Client A, with the Respondent copied in, which refers to a section of Publication 2 :

> *"…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 reference a section that was removed from the articles following the Order….*

…Clearly this is something for careful consideration and potentially raising with H *and your instruction to hold off sending our letter pending review of* [redacted] Publication 2 *appears to be prudent"* **[page 39 of IWB/1]**.

16. On 2 October 2018, the Respondent, at 18:15, sent an e-mail to Client A, which contained the following comments:

"There is an argument that, in resurrecting certain deleted aspects of Annex 2, [Client B] *has added to a series of potential breaches. Consequently, we will seek to rely on section 5 of the Court Order, and the argument that* [Client B] *has permitted wording 'of the same or similar effect' to be published, against the undertaking in the same clause that* B *would not do so.*

I would advise as this stage that, should we litigate based on these breaches and in particular the most recent re Publication 2*, a Court may not be entirely sympathetic, or provide the outcome we are looking for (a license to the copyright in the articles to speed up their removal). This is because the wording of the Order by* Counsel L *and* Counsel M *was intentionally wide-reaching and as* Counsel M *repeatedly advised at the time, the terms of the Order are far broader than a Court would have provided. Further, the passages in the section of* [redacted] Publication 2 *are loosely associated with assertions relating to you, and therefore a Court may not consider that you are adversely impacted from a defamation or data protection perspective.*

I propose a strategy of writing to H *in as strong as possible terms, threatening* B *with contempt of court and requiring a response, without raising the offer of* B *providing a license to avoid contempt proceedings. Separately and shortly thereafter, we would raise the WP offer that* B *could provide us with the copyright license in return for us not bringing the claim to Court. It is unlikely that* B *will willingly provide us with the license, so we would need to take* Counsel M *s advice as to whether the strategy should be tested, with the potential to be taken before a Court. At this stage, I propose discussing with* Counsel M *whether he agrees with this position given he is the architect and author of the Order.*

Let me know if you agree to our putting this to him on the basis we will commend the aggressive strategy in an effort to compel [Client B] *to cooperate on broader issues…"* **[page 40 of IWB/1]**.

17. Client A responded to this e-mail at 19:04 on the same day. Client A made the following comments:

"I'm happy for you to run this past Counsel M *. There is no point litigating this, so the question is whether the threat is sufficiently credible and the threat sufficiently real, for* H *to advise offering up the license to make it go away"* **[page 41 of IWB/1]**.

18. On 3 October 2018, the Respondent sent an e-mail to Counsel M at N, which raised the following points:

18.1. It indicated that Client A had sought advice on a proposed strategy;

18.2. The strategy in question appears to have been summarised in the following way: *"*A's *underlying objective is to put* [Client B] *under sufficient pressure so as to obtain a license to copyright in* [Client B]*'s articles, which would facilitate our take-down requests for online content providers…";*

18.3. It drew attention to the fact that Client A's name was still available on one article of Publication 1, in an e-mail contained within the article;

18.4. That, *"…in* B's *recently* Publication 2 *…* …[Client B] *republishes several assertions that were previously deleted from the Articles in accordance with Annex 2 of the consent order"*; and

18.5. *"Our proposed strategy of relying on these breaches to seek a copyright license would be first to write in the strongest terms to* [Client B] *through* B's *lawyers referring to the breaches in the Order by* [Client B]*, and that we require a response, without raising the offer of* B *providing a license to avoid contempt of court proceedings. Separately and subsequently, we would write again with a Without Prejudice offer that* B *could provide a license to the copyright to us in exchange for our client not bringing the matter before the Court"* **[page 42 of IWB/1]**.

19. On 4 October 2018, at 17:49, the Respondent e-mailed Client A **[page 47 of IWB/1]**, attaching a document headed, *"Potential breaches of Order by* [Client B]*: Advice from* Counsel M *"* **[pages 48 – 50 of IWB/1]**. The 17:49 e-mail contained the following summary of the advice received from Counsel M :

> *"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* B *to avoid a finding of contempt"* **[page 47 of IWB/1]**.

20. The document headed *"Internal Note – call with* Counsel M *4.10.2018"* **[pages 43 – 46 of IWB/1]** provides further information as to the advice provided by Counsel M which appears to have led to the 4 October 2018 e-mail and its attachment being sent. This "Internal Note" records the following information:

20.1. That the allegations contained within page 170 of Publication 2 appear to amount, by implication, to the suggestion that anyone who had worked on the deal was, at best, committing misconduct, and, at worst, facilitating or committing a fraudulent or corrupt deal **[page 44 of IWB/1]**;

20.2. If material within Publication 2 could be used to link Client A to the deal then Client B would be in breach of the Order, as B would have said that Client A is a criminal and/or dishonest **[page 44 of IWB/1]**;

20.3. To pursue action that these sections of Publication 2 involved a breach of Paragraph 7.2 of Order **[page 33 of IWB/1]** they would need to be able to argue that any ordinary reasonable readers would read Publication 2 and know it related to Client A **[page 44 of IWB/1]**;

20.4. To achieve that, it would have to plead the original articles on Publication 1 , which did link Client A to Company F or to that particular part of the deal. The ordinary and reasonable reader of Publication 2 might know this, having read the original

articles, causing them to associate Company F with Client A **[page 44 of IWB/1]**;

20.5. Counsel M considered this to be *"arguable"* given the large overlap between readers of the articles and readers of Publication 2 **[page 44 of IWB/1]**;

20.6. *"*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]*"* **[page 45 of IWB/1]**; and

20.7. Under the sub-heading, *"Important Advice on bringing an action"*, it was stated: *"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 and 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"* **[page 45 of IWB/1]**.

21. On 8 October 2018, a further e-mail was sent by the Respondent to Client A, at 09:55 **[page 51 of IWB/1]**. This e-mail referred to a proposed draft letter to be sent to H, and stated:

> *"I also intend to send to* Counsel M *– he suggested we prepare a draft for him to review – albeit it will be on the basis we are aiming to set out a "credible threat" as you have rightly put it, to forcefully apply pressure on* [Client B] *to take steps to assist you more broadly, and you have no intention to pursue a full legal complaint for the potential contempt."*

22. The proposed draft letter was sent to Client A by the Respondent at 21:17 on 8 October 2018, with the following comments:

> *"This has not as yet been reviewed by* Counsel M *but if you agree, I will instruct him to do so. His position was that to give final advice and provide a green light to threatening action for contempt of court, he would require various additional information. Clearly we're not going to provide that at this stage and I will stress that the strategy is to put forward a plausible threat with a view to engaging in discussions with* H *to seek an agreed remedy"* **[page 392 of IWB/1]**.

23. At 15:53 on 9 October 2018 **[page 393 of IWB/1]**, the Respondent sent an e-mail to Counsel M which contained as part of its attachments a two-page draft letter, dated 8 October 2018 **[pages 395 – 396 of IWB/1]**. The e-mail to Counsel M contained the following comments:

> *"…We reported back to* [Client A] *last week in detail, further to the call with you, setting out your preliminary analysis but explaining that it was only that, but* A *wants us to put pressure on* [Client B] *now, and clearly also wants references to* A *removed as soon as possible…"*

> *"…*[Client A] *appreciates that, in order to reach a conclusive position, you would need to consider the underlying factual matrix and purported involvement of* [Client A] *in* [the [redacted] Fund] *and that your comments would at this stage be based on a preliminary position but* A *wants to proceed with the threat on the basis* A *does not intend to litigate this but to apply pressure on* [Client B] *to take action…"* **[page 393 of IWB/1]**.

24. At 16:16 the same day (9 October 2018), the Respondent e-mailed Client A, confirming that Counsel M would be reviewing the draft letter the following day, and stating:

> *"…We should be able to get the letter off to* H*, on the basis of* Counsel M*'s time-scale, by around Thursday. It is important of course that it is as compelling as it can be, to exert maximum pressure on* [Client B]*"* **[page 391 of IWB/1]**.

25. A document headed, *"Call with* Counsel M *10/10/2018"* appears to document further advice provided by Counsel M **[page 53 of IWB/1]**. This document contains the following comments:

> *"1. The initial premise needs to have already been taken regarding Contempt of Court before any letter is sent to* H*.*
>
> - [Client A] *does not want to litigate for contempt – but if there is any prospect at all of* A *doing this, it is not something to decide at a later date.*
> - *The letter cannot be seen to be offering a ticket out – there can be no possibility at all of it appearing as blackmail, or contempt proceedings will be thrown out. Further, there is no collateral gain, only* [Client B] *being imprisoned…."*

> *"…*Counsel M *also noted that there would be no harm in writing the shorter letter to* H *regarding the offending content remaining in one of the articles"* **[page 53 of IWB/1]**.

26. The call with Counsel M referenced in this document is then drawn to the attention of Client A, by the Respondent, in an e-mail timed at 15:00 on 10 October 2018 **[page 54 of IWB/1]**. This communication with Client A contained the following assertion:

> *"We informed* Counsel M *that you do not want to go to Court on this matter, but he needs to know, for purpose of strategy and construction of the complaint, if you will under no circumstances go to Court, whatever* [Client B] *does or doesn't do, or whether you might be prepared to litigate if you do not obtain your objective…"*
>
> *"…With these points made,* Counsel M *has said that we should separately write to* H *regarding the less significant breach on the Article, as this would not detract from any future letter…"*

27. Client A replied at 16:00 on 10 October 2018, in which the following was stated:

> *"The intention of the letter that* Counsel M *is looking at is to exert maximum pressure on* [Client B] *so as to have* B *feel that a contempt of court finding is a genuine risk and to look for alternative resolution, that resolution being a copyright licence in articles that refer to me for the sole purpose of assisting the removal of that material, on the basis that your advice is that this licence will be of material benefit in procuring removal from stubborn websites. However, I am concerned as to the 'breadth' of the explanation required for the Court. I don't want to push* B *to publish the letter and give* B *an enticing narrative to print. I believe therefore that this requires further discussion with you"* **[page 55 of IWB/1]**.

28. The Respondent's reply, sent at 13:48 on 11 October 2018, returned to the issue of strategy:

> *"In terms of strategy and objective* Counsel M *was insistent that we could not proceed with any intention of using pressure to bring a corollary objective, eg a licence of copyright. I do feel that this merits a 3-way conversation (call or in*

person) with you, us and Counsel M *due to the seriousness of what we would be alleging"* **[page 56 of IWB/1]**.

29. Despite the suggestion of a conference or call involving both Client A and Counsel M, the time recording entries for the Firm in relation to this matter indicate that no such call or conference took place between 11 October 2018 and the telephone call with [redacted] Solicitor G of H that occurred on 18 October 2018 **[pages 71 – 72 of IWB/1]**.

30. On 11 October 2018, Solicitor G of H received, via e-mail, a letter from the Firm which referred solely to material that still appeared on Publication 1 **[pages 371 – 373 of IWB/1]**. Solicitor G responded on 12 October 2018, confirming that the matters had been addressed **[page 374 of IWB/1]**.

31. Solicitor G's e-mail was forwarded onto Client A by the Respondent at 17:04 on 12 October 2018, with the following comments:

> *"Clearly the call we've spoken about will be made to* Solicitor G *at* H *and we can plan for that at the beginning of the week. I'll speak with Callum re the effectiveness of a copyright licence and I'll call you before COB on Monday"* **[page 399 of IWB/1]**.

32. Prior to the call with Solicitor G referenced in the 12 October e-mail, the Respondent sent an e-mail to Client A on 16 October in the following terms:

> *"…I've had a meeting with Callum to discuss the copyright licence point and have now had a meeting with Callum and Tom to discuss web issues.*
>
> *I'm going to plan an outline for the call with* H *this afternoon. Would you be free for me to call you at say 16:00 or 17:00 today? I will then make the call to* H *tomorrow and also update you on actions we are now taking as to remaining web content and removal thereof"* **[page 401 of IWB/1]**.

<u>18 October 2018 telephone call</u>

33. On 18 October 2018, ahead of a planned call to H, the Respondent exchanged e-mails with Client A, which attached a number of versions of documents entitled, *"Script*

for call with H *"* **[pages 57 – 62 of IWB/1]**. The changes to the relevant sections of this document can be noted as follows:

Version 1 **[Page 58 of IWB/1]**	**Version 2** **[Page 60 of IWB/1]**	**Version 3** **[Pages 61 – 62 of IWB/1]**
"7. ***Contempt of Court*** *– we have consulted counsel and been advised that the serious breach likely to be found in contempt."*	*"7.* ***Contempt of Court*** *– we have consulted counsel as to bringing committal proceedings and have been advised that the serious breach likely to be found in contempt."*	*"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."*
"11. ***Way out*** *– If your client will give a limited licence of copyright limited strictly to allow* A *to have passages taken down by resistant platforms* A *may be prepared to forgo* A's *right to go back to Court."*	*"11.* ***Way out*** *– If your client will give ~~a limited~~an exclusive licence of copyright in the original unedited articles ~~limited strictly to allow~~solely for the purpose of allowing* A *to have passages taken down by resistant platforms* A *may be prepared to forgo* A's *right to go back to Court."*	*"12.* ***Willingness to issue*** *proceedings for contempt.* *13.* ***Way out*** *– If your client will give an exclusive licence of copyright in the original unedited articles solely for the purpose of allowing* A *to have passages taken down by resistant platforms* A *may be prepared to forgo* A's *right to go back to Court.* *14.If option one is not accepted, left with* ***only alternative****, which* A *instructs me* A *will pursue, to bring contempt*

		proceedings, get Publication 2 ***pulped*** *and use that to bring further pressure on others."*

34. On 18 October 2018, there was an exchange of e-mails between the Respondent and Solicitor G in an effort to arrange a mutually convenient time to speak **[pages 375 – 377 of IWB/1]**.

35. Solicitor G provided a Witness Statement to the Applicant on 14 May 2024 **[pages 142 – 152 of IWB/1]**. In the course of his Witness Statement, Solicitor G described his telephone call with the Respondent in the following manner:

35.1. The call took place at around 5pm on 18 October 2018 **[paragraph 17 on page 146 of IWB/1]**;

35.2. The Respondent indicated, at the outset of the call, that he wished to speak on a "without prejudice" basis to avoid long letters that would "raise the temperature" **[paragraph 18 on page 146 of IWB/1]**;

35.3. The Respondent went onto state that his client, Client A, had two problems with Client B. The Respondent stated that the first related to Client B's publication of Publication 2, which was said to breach the Consent Order. It was asserted that Client A had been referred to in Publication 2 by references to Company F. The Respondent informed Solicitor G that he had spoken to counsel and he had been told that his client had a strong case for bringing contempt proceedings against Client B, and that Client A was entitled to get Publication 2 pulped **[paragraph 19 on page 146 of IWB/1]**;

35.4. The Respondent stated that he wanted to "open a door" to Client B in relation to the second issue, which concerned the fact that Client A was having difficulties in removing copies of Client B's articles that had been published by third parties. The Respondent mentioned WordPress.com blogs in the United States in particular **[paragraph 19 on page 146 of IWB/1]**;

35.5. The Respondent suggested that there was a "way out" for Client B to avoid contempt proceedings, which was for Client B to agree to help Client A to get

content removed from these US-based websites **[paragraph 20 on page 146 of IWB/1]**;

35.6. The Respondent proposed that to avoid Client A bringing contempt proceedings over Publication 2 against Client B an option open to B would be for B to provide Client A with a narrowly-worded licence in copyright over the passages of B's articles which Client A wanted to remove from the internet. It was acknowledged by the Respondent that this was a "radical solution", but mentioned that US courts were more amenable to copyright claims than defamation actions **[paragraph 21 on pages 146 – 147 of IWB/1]**;

35.7. Solicitor G informed the Respondent that he did not believe that Client A had been referred to in Publication 2. He also stated that it had been made clear in previous negotiations that Client B needed to be able to discuss Company F's involvement. Solicitor G was also confident that reference to Company F was permitted by the Consent Order as Annex 2 to that Order contained agreed amendments to Client B's blogs **[pages 356 – 366 of IWB/1]**, which continued to refer to Company F **[paragraph 22 on page 147 of IWB/1]**; and

35.8. Solicitor G informed the Respondent that he thought the call was unusual and that he would have to take instructions. He was surprised at the Respondent's proposal, but thought he needed to take full instructions before engaging further. Whilst he had misgivings about the merits of the contempt complaint, he was conscious of the risk of exposing Client B to criminal proceedings by Client A **[paragraph 23 on page 147 of IWB/1]**.

36. The following day, the 19 October 2018, Solicitor G produced a Telephone Attendance Note ("TAN") to capture his recollection of the call **[pages 79 – 80 of IWB/1]**. This TAN records the following exchange:

36.1. *"CH knew that they had recently pointed out some breaches of the order, which has been quickly remedied by* G *. However* [Client A] *had heard only yesterday about references to* A *in* Publication 2*, which CH was absolutely confident were in breach of the order"* **[page 79 of IWB/1]**;

36.2. *"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 had advised that there was a strong contempt case" **[page 79 of IWB/1]**; and

36.3. *"CH said that it had been accepted in the WP negotiations to settle the claim that there was synonymity between his client and references to* [Company F]*. CH's Counsel had now advised that* [Client A] *had a strong basis for bringing contempt proceedings against* [Client B]*"* **[page 79 of IWB/1]**.

Aftermath of 18 October 2018 telephone call

37. Client B's Witness Statement describes the contact B had with Solicitor G in relation to the 18 October 2018 telephone call **[pages 83 – 86 of IWB/1]**. The Witness Statement asserts the following:

37.1. B heard from Solicitor G, who told B that G had just received a call from the Respondent, in which the Respondent had threatened Client B with further legal action **[paragraph 22 on page 85 of IWB/1]**;

37.2. That the Respondent had obtained counsel's advice that Publication 2 somehow defamed Client A as someone could detect that B was referring to A **[paragraph 23 on page 85 of IWB/1]**;

37.3. The threats had included that Publication 2 would be pulped and that Client B could be imprisoned. The Respondent made an offer to Solicitor G that no action would be taken if Client B provided Client A with a copyright licence to paragraphs from B's articles **[paragraph 24 on page 85 of IWB/1]**; and

37.4. Solicitor G informed Client B that he had been shocked and that he had taken an immediate note **[paragraph 26 on page 85 of IWB/1]**.

38. On 19 October 2018 at 5:52pm, Solicitor G sent an e-mail to Client B, attaching a copy of the TAN from his call with the Respondent, as well as including a proposed e-mail response **[pages 402 – 403 of IWB/1]**.The e-mail to Client B included the comment:

"I would suggest it may be better to wait until Monday before sending this, in the hope they may think slightly more rationally about what to do next on a Monday morning, compared to a Friday evening" **[page 402 of IWB/1]**.

39. Client B's reply, sent at 7:50pm on 19 October 2018 **[page 404 of IWB/1]**, contained an express reference to what B considered to be an attempt to blackmail [redacted]:

"This seems very effective. I do not hold much hope that they will not again issue a writ, because CH is clearly willing to do whatever it takes to bully on behalf of his client who is likewise obsessed.
On the other hand, it took [Client A] *three years to bite the bullet and complain about what I had written about* A*, so* A *is also a coward.* A *knows that if* A *goes to court it will undo everything* A *has sought on the issue of keeping this private and their case is pretty terrible, now they have attempted to blatantly blackmail me…"*

40. At 4pm on 22 October 2018, Solicitor G e-mailed Client B, seeking final confirmation from B that the proposed e-mail to the Respondent could be sent. In the course of this e-mail, Solicitor G commented:

"…Hamlins will no doubt reply denying everything but with some luck they won't issue committal proceedings knowing they made this improper threat at the start" **[page 407 of IWB/1]**.

41. At 17:46 the same day (22 October 2018), Solicitor G sent an e-mail to the Respondent, responding to the issues raised in their 18 October telephone call **[pages 63 – 64 of IWB/1]**. In the course of this e-mail, Solicitor G made the following points:

41.1. That he had discussed the Respondent's proposal with his client, and B was unable to agree to it;

41.2. He summarised the two problems that had been described by the Respondent, including stating that, *"You said that (1) your client has a strong basis for bringing committal proceedings against our client…"* and that, *"…your client would be amenable to not pursuing those committal proceedings if our client*

agrees to help your client with removing content from certain US websites…"; and

41.3. *"It is improper to use the threat of committal proceedings to compel our client into agreeing to a copyright licence. The threat of criminal sanction cannot be used to extract an ancillary or unwarranted benefit, however deftly that demand is made."*

42. On 23 October 2018, at 17:41, the Respondent forwarded to Client A the e-mail he had received from Solicitor G on 22 October 2018 **[page 65 of IWB/1]**. In the course of that e-mail to Client A, the Respondent confirmed:

"The issue we have is that understandably you don't want to pursue a full-blown contempt application all for good reason."

"Their email itself will need a careful response, marked WP, stating that the call they refer to was on that basis and making clear key points made on the call, to the effect that we have taken advice from counsel and that the passages in Publication 2 *are in breach and that the call and proposal was a practical alternative to avoid further litigation. It is important, regardless of whether you take any further action in respect of* Publication 2*, to be seen to respond and not accept their position."*

43. Client A replied to the Respondent at 19:13 on 23 October 2018, and made the following points:

"- Reconfirm that the discussion was WP.
- Deny that there was improper use of a committal order. The simple point is that B *has breached the order and all sanctions are available to me. Counsel has confirmed this. We have put* [Client B] *on notice of this. The threat of sanction is based on the breach of the Order by their client.*
- We would accept pulping of Publication 2 *as an appropriate remedy. This would remove the offending content and would demonstrate to any would-be third party publishers that the content of* Publication 2 *is unsafe.*
- Without an acceptable proposal on their part we will be forced to commence proceedings" **[page 66 of IWB/1]**

44. The Respondent replied at 20:01, stating:

> *"Agreed regarding the inappropriate cover under which their email was sent and this point will be made up front in response.*
>
> *We'll discuss approach given the sensitive nature of contempt complaints when we speak, which* Counsel M *was at pains to make"* **[page 411 of IWB/1]**.

45. This was followed up with an e-mail sent on 26 October 2018 at 17:39 to Solicitor G Solicitor G. The e-mail is sent from the e-mail address of one of the Respondent's colleagues, Callum Galbraith, but it is marked as ***"SENT ON BEHALF OF CHRISTOPHER HUTCHINGS"*** and it is signed off by the Respondent **[pages 67 – 68 of IWB/1]**. This e-mail makes the following points:

> *"It is regrettable that your letter misrepresents the substance of my call and therefore my client's position. Further, your response is erroneous both as a matter of fact and law.*
>
> *For the avoidance of any doubt, my client very reasonably sought, once again, to afford your client an opportunity to avoid committal proceedings which you acknowledge carries "criminal sanctions" by offering* B *the chance to remedy* B's *breaches of the Order.*
>
> *You indicated on our call that you appreciated this approach, not least given the costs of litigation, but you now seek to resile from that position to improperly (and unfairly) criticise my client's pragmatic approach. This is disappointing in circumstances where 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. In any event, your client's position will not assist the resolution of matters and my client will proceed accordingly…*
>
> *…Your client published very extensive references to our client on* Publication 1 *which culminated in the legal proceedings and the Order. As such, given that* Publication 2 *was heavily advertised through* Publication 1 *and originally sold through it, the readership of* Publication 2 *and* Publication 1 *are likely to be the same. Therefore, any reasonable reader would associate my client with the*

allegations, irrespective of the fact that my client is not explicitly named. It was for this reason that the Order was framed as it was and your client is unarguably in breach of the same.

2. Your email suggests that my client has raised the spectre of Committal proceedings so as to improperly extract a collateral benefit. This is not correct and, in any event, my client seeks removal of the offending references to A *from within* Publication 2*, as was made clear on the call. Your client has failed to address this (no doubt tactically).*

3. As to your comments concerning the copyright licence, I do not agree with your analysis and consider the request to be in line with the spirit of the Order in any event. Your client's position is noted, albeit not accepted.

4. You acknowledge that the consequences of my client's proposed Application being successful are "serious". You will no doubt therefore have advised your client as to the likelihood of an order being made for Publication 2 *to be pulped,* B *being fined and/or* B *being committed to prison for contempt. You will no doubt further advise your client that if such proceedings are commenced and resolved as between our clients in that the event a Judge may nevertheless order a Hearing so as to impose sanctions given your client's flouting of the Court order.*

…In conclusion, I urge your client to reconsider their *position and my client is prepared to afford* B *a further seven days in which to do so. I hope it will not be necessary but, out of an abundance of caution, I reserve my client's rights and remedies without limitation and, for the avoidance of doubt, my client will rely on breaches of the Order* A *is aware of and to which you have alluded in any proceedings* A *needs to commence."*

46. It is of note that whilst this e-mail takes issue with Solicitor G's description of the telephone call, and specifically refers to the advice that had been received from counsel as to the strength of Client A's case, no attempt was made to correct Solicitor G's assertion in his 22 October 2018 e-mail: *"You said that (1) your client has a strong basis for bringing committal proceedings…"* **[page 63 of IWB/1]**.

47. At 2:30pm on 29 October 2018, Solicitor G forwarded to Client B the 26 October 2018 e-mail from the Respondent, along with a proposed response. Within his e-mail to Client B, Solicitor G made the following comments in relation to the Respondent's most recent e-mail and the stance of Client A:

> *"…Unsurprisingly Hamlins are continuing to threaten you with committal proceedings, as well as a civil application to enforce the terms of the consent order to stop you continuing to publish alleged references to* [Client A] *in* [redacted] Publication 2 *. They say I misrepresented the call by suggesting that they raised the spectre of committal proceedings for collateral benefit. However, they also acknowledge a) their client's 'pragmatic approach', b) that the strength of their client's 'proposed Committal Application' was raised on the call; and c) that granting* [Client A] *a copyright licence is in line with the spirit of the Order 'in any event'. This all fits in with my account that a contempt application was threatened and you were asked to agree to a copyright licence. I am unclear how they say I have misrepresented the proceedings.*
>
> *…Whether or not you have breached the order is irrelevant to the question of whether* [Client A]*'s threat constitutes blackmail, but it will be what they are weighing up in considering whether to deny the threat and pursue the contempt/civil enforcement action"* **[page 412 of IWB/1]**.

48. At 5:49pm, Client B replied to Solicitor G's proposed response. In the course of that e-mail, B commented:

> *"…I think your letter is a good reply but I also think that I should approach the SRA now, because their letter as you say denies but at the same time confirms and compounds the nature of their threats and they need to understand I mean business."* **[page 417 of IWB/1]**

49. This was followed up by an e-mail at 5:56pm from Client B to Solicitor G, in which B stated:

> *"I do think you have them cornered with the demand that they withdraw their improper request. If they don't then the tactical issue of issuing a writ will become plain"* **[page 417 of IWB/1]**.

50. Solicitor G's response to the 26 October 2018 e-mail, sent on 31 October 2018 at 17:34 **[page 74 of IWB/1]**, made it abundantly clear the way in which the stance communicated in the telephone call, and confirmed in the 26 October e-mail, were being viewed:

> *"We refrained from stating in our last email what we feel necessary to say now explicitly. The proposal you made by telephone and appear to be repeating now come across to us as blackmail. Your email below suggests I have misrepresented your client's 'pragmatic approach' but then a) does not say what your client's proposal was; and b) goes onto acknowledge the constituent elements of blackmail: the threat of a contempt application (including the threat of serious criminal sanction), an additional threat to have* Publication 2 *pulped, both used as leverage for your 'request' for a copyright licence, which you acknowledge your client is not legally entitled to.*
> *Did you take a contemporaneous attendance note of the call? If so, we suggest you send it to us now so we can see what you say your client's proposal was and how, if at all, it differs from my account. In any event, you seem to be continuing to pursue the copyright licence against the threat of contempt and civil proceedings, even in spite of our first email, as you ask our client to 'reconsider* B's *position' without altering or withdrawing your client's proposal.*
>
> *…Please now withdraw your client's demand that our client agree to an assignment of the copyright in the articles complained of to your client. In the absence of your express withdrawal, our client will have to assume you continue to hold the threat of criminal and civil proceedings over* B *against this demand, and will be seeking to extract that licence as a term of settlement of any proceedings. In the meantime, our client's position is reserved."*

51. On 1 November 2018, the Respondent was copied into an e-mail from a paralegal, Tom Forshaw, at the Firm, which attached a note on *"WP correspondence"* **[pages 419 – 420 of IWB/1]**. This document made the following points in relation to the Client A communications:

> *"*
>
> - *We need to state that we were communicating with the genuine intention of settling an issue before having to litigate.*

- *We must back this up by showing that we are prepared to litigate, and that this is not a sham – we should (and I believe already have) provide reasons that we believe* [Client B] *has breached the Order…"* **[page 420 of IWB/1]**.

52. The Respondent acknowledged receipt of this document, and commented on its contents, in his 1 November 2018 e-mail, sent at 15:26 **[page 421 of IWB/1]**.

53. Solicitor G's 31 October e-mail appears to have been forwarded onto Client A by Mr Galbraith, with the Respondent copied in, at 18:01 on 2 November 2018 **[page 75 of IWB/1]**. This e-mail contained the following comments:

53.1. *"As you know,* Counsel M *s advice was not to seek the license alongside threating a committal application. We will need to involve him if the matter proceeds but he will certainly reiterate his earlier advice"*;

53.2. It was asserted that there had been no improper threat of criminal sanctions so as to extract an unwarranted benefit;

53.3. An attempt was made to distinguish the facts of this case from those in *Ferster v Ferster* (an authority referenced by Solicitor G in his 31 October e-mail) with the following description:

> *"Whereas here: -*
>
> - *The criminal sanction is the consequence of* B *breach of the Order;*
> - *The alleged demand is a lesser sanction than the consequence of a successful committal application; and*
> - *It was also not understood initially to be a threat but has subsequently been used opportunistically".*

53.4. The point was made: *"We therefore need to discuss where we are ultimately going and whether public committal proceedings are sensible from your perspective given the lengths gone to in order to get content removed from the internet etc."*

54. The Respondent sent a further e-mail to Solicitor G on 8 November 2018 at 12:12 **[page 76 of IWB/1]**, purporting to respond to the criticisms contained within the 31 October 2018 e-mail:

> *"It is telling in this regard that you:-*
>
> *a) ignore that the purpose of our correspondence was to offer your client an opportunity to resolve matters without recourse to further litigation;*
>
> *b) acknowledge that you characterised our client's position in our call of 18th October as being "constructive" and pragmatic but now assert it is improper such as to amount to "unambiguous impropriety"…*
>
> *…For the avoidance of any doubt, our client does not seek any copyright licence as referred to in your earlier correspondence, but this is not because we consider that your legal arguments have merit, we do not. In particular, note:-*
>
> *a) no improper threat has been made: Counsel has already been instructed to advise and, further, one outcome from the proposed proceedings is that the Court may order that* Publication 2 *be pulped…*
>
> *…This email is a without prejudice communication as are all of the communications within this chain. Any debate in this regard can be resolved by the Judge as and when he considers the matter."*

55. The Respondent then provided confirmation, at 12:29pm, to Client A that the e-mail had been sent, as well as commenting:

> *"FYI, I have made your amendments to the draft to* H *and I have sent below a short time ago.*

When they inevitably respond, we'll convey to you and discuss next step to close this issue down whilst not retracting from our position or removing the threat we'll pursue this" **[page 427 of IWB/1]**.

56. The 12:12 e-mail from the Respondent was forwarded on by Solicitor G to Client B at 12:33pm, with the comments:

"See below from Hamlins. They have now withdrawn the copyright licence demand, while continuing to threaten proceedings.

Again, there is no denial that my account of the call is incorrect in any single respect. Their suggestion instead seems to be that this was not 'unambiguous impropriety' which allows us to rely on the attendance note and email exchange in any coming proceedings. Ambiguous impropriety then? I will have to go back to my note, but as far as I recall I welcomed Hamlins' call as 'constructive' at the start of the call when I didn't know what was being demanded of you. I certainly didn't described (sic) *the copyright demand as 'constructive'"* **[page 422 of IWB/1]**.

57. Client B expressed their views on the 8 November 2018 e-mail from the Respondent in the following terms:

"Hutchings says I have refused to resolve things, but the only deal on the table that I think we have seen is for me to give [redacted] *the copyright. Otherwise what?*

Also, is there an established distinction between 'ambiguous' blackmail and 'unambiguous' blackmail in the precedents here? Clearly, the matters were linked in the same call and presented as the only option so far to resolve things, I doubt A *wants to argue it"* **[page 426 of IWB/1]**.

58. Further correspondence between the Firm and Client A sheds further light on the client's stance in relation to (a) bringing proceedings for contempt; and (b) obtaining the copyright licence. On 5 December 2018, at 12:06, Mr Galbraith, with the Respondent copied in, sent an e-mail to Client A which contained the following comments:

"On the basis of my research, I have established that the first step, as I thought, in committal proceedings is to personally serve the relevant Order on [Client B]. *There is no case law which I can locate which addresses when you need to issue the proceedings after the Order is served but that's irrelevant given you do not intend to go down this route.*

The one thing we need to carefully consider is the impact of you upping the ante significantly with [Client B] *and then doing nothing. If you are unlikely to have issues with* B *in the future then there is perhaps little downside but I think it unlikely that* B *will immediately offer the copyright licence without an Application being issued and even then* B *may believe that* B *is in such a strong position legally that* B *does not do so"* **[page 77 of IWB/1]**.

Respondent's response to the Notice

59. On 15 March 2024, the Respondent was provided with a copy of the Notice recommending referral of his conduct to the Tribunal **[pages 6 – 23 of IWB/1]**. The Respondent's representatives, Brett Wilson LLP, provided a response, dated 16 April 2024 **[pages 102 – 133 of IWB/1]**. In the course of this document, the following points were made:

59.1. The Respondent maintained that he stuck to the script **[pages 61 – 62 of IWB/1]** that he had prepared in advance of the 18 October 2018 telephone call; it was denied that he would have said that counsel said that there was a strong case for a contempt application **[paragraphs 42 – 80 on pages 111 – 122 of IWB/1]**;

59.2. If (which was denied) the Respondent had made this claim, then *"…he would have done so innocently and mistakenly (a 'slip of the tongue')"* **[paragraph 80 on page 122 of IWB/1]**; and

59.3. It was denied that the threat of the committal application was improper. It was also denied that (a) the Respondent did not reasonably anticipate such an application would be pursued; and (b) that the limited licence sought was a collateral advantage or benefit **[paragraph 83 on page 124 of IWB/1]**.

Allegations and Breaches of Principles and the Code of Conduct

Allegation 1.1.1 – Claim that counsel had stated that there was a strong case for bringing committal proceedings

60. Paragraphs 8 to 59 above are repeated. During the course of the 18 October 2018 telephone call with Solicitor G, 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. This assertion is said to be false and/or misleading in that it does not reflect the advice which was obtained from Counsel M, as it is referred to in:

60.1. The 4 October 2018 "Internal Note" **[pages 43 – 46 of IWB/1]**; and
60.2. The note from the 10 October 2018 call with Counsel M **[page 53 of IWB/1]**

61. Solicitor G's recollection of what was said to him during that 18 October 2018 telephone call appears to be supported by:

61.1. The contents of 19 October 2018 TAN **[page 79 – 80 of IWB/1]**;
61.2. His reporting to Client B of what was said to him, as described by Client B and as can be seen set out in the e-mail exchange between the two; and
61.3. His description of what was said during the telephone call in his 22 October 2018 e-mail to the Respondent **[page 63 of IWB/1]**.

62. Solicitor G's recollection of what the Respondent said about the advice he had received about the strength of the case for bringing contempt proceedings would also appear to be consistent with the wording used within the 26 October 2018 e-mail **[page 67 of IWB/1]**; *"…and I contacted you having already received advice as to the strength of my client's position in this regard."*

63. In making a false and/or misleading claim to Solicitor G as to what had been said by Counsel M as to the strength of Client A's case for bringing contempt proceedings, the Respondent was seeking to take unfair advantage over both [redacted] Solicitor G and Client B. In making a misleading claim as to the level of advice that had been received, the Respondent was seeking to create the impression that the potential case for contempt was considered to be stronger than had in fact been communicated. Such a representation served to benefit both the Respondent and his client's position, in that it would present the alternative, the provision by Client B of the

copyright licence, as a more attractive option. On this basis, it is said that the Respondent has failed to achieve Outcome 11.1 of the Code.

64. The public trusts solicitors to engage with the representatives of other parties in an open, frank and accurate manner, particularly when such conversations are purportedly conducted on a "without prejudice" basis to try and resolve a potential dispute. The public's trust in solicitors and in the provision of legal services would be damaged by solicitors making false and/or misleading assertions, as to the strength of the legal advice that had been received, when conducting such conversations. The Respondent has thereby breached Principle 6.

65. The Respondent's behaviour in respect of Allegation 1.1.1 demonstrated a lack of integrity in breach of Principle 2. In *Wingate v Solicitors Regulation Authority v Malins* [2018] EWCA Civ 366, it was said that integrity connotes adherence to the ethical standards of one's own profession. A solicitor acting with integrity (i.e. with moral soundness, rectitude and steady adherence with an ethical code[2]) would not have sought to mislead Solicitor G as to the advice that had been received from counsel.

Dishonesty in relation to Allegation 1.1.1

66. The Applicant relies upon the test for dishonesty stated by the Supreme Court in *Ivey v Genting Casinos* [2017] UKSC 67 which applies to all forms of legal proceedings, namely that the person has acted dishonestly by the standards of ordinary decent people:

> *"When dishonesty is in question the fact-finding tribunal must first ascertain (subjectively) the actual state of the individual's knowledge or belief as to the facts. The reasonableness or otherwise of his belief is a matter of evidence (often in practice determinative) going to whether he held the belief, but it is not an additional requirement that his belief must be reasonable; the question is whether it is genuinely held. When once his actual state of mind as to knowledge or belief as to facts is established, the question whether his conduct was honest or dishonest is to be determined by the fact-finder by applying the (objective) standards of ordinary decent people. There is no requirement that the defendant must appreciate that what he has done is, by those standards, dishonest."*

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

67. If it is accepted that the Respondent stated the words set out in Allegation 1.1.1, he must have known that this did not accurately reflect the advice that had been received from Counsel M. Despite knowing that what he was stating was incorrect, he communicated this to Solicitor G, with the obvious intended benefit for Client A (the increase in pressure upon Client B to consider the proposal that was being put forward).

68. A deliberate misrepresentation as to the contents of advice received from counsel, particularly in order to achieve an unfair advantage in the course of discussions with an opposing party's representative, is conduct that would be viewed as dishonest by ordinary decent people.

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

69. Paragraphs 8 to 59 above are repeated. In the course of the 18 October 2018 telephone call, the Respondent asserted that Client A had only been aware since "yesterday" of the references to A in Publication 2, or words to that effect. Such an assertion would seem to be demonstrably false and/or misleading given that correspondence in relation to these references had commenced with the Respondent, the Firm and Client A at least as early as 1 October 2018.

70. This false and/or misleading assertion would seem to have been made to excuse or explain the absence of this point from the 11 October 2018 letter **[page 372 of IWB/1]**. Whilst the correspondence between the Respondent, Client A and the Firm demonstrates that as of 11 October 2018 discussions were still underway as to what should be said or done about the contents of Publication 2, the false and/or misleading assertion made on 18 October 2018 appears to have been delivered to engender the false impression that Client A had only recently learnt of the issue in relation to [redacted] Publication 2. This false impression was presumably calculated to imply that the proposal being put forward in that call was a position that had been reached very quickly, rather than as the correspondence would suggest, a position that had been reached after seventeen days of communication on the topic.

71. Such a false impression, in the context of the proposal being put forward, would represent an attempt to obtain an unfair advantage. Whilst this issue would have been

a new matter or point for Solicitor G to consider, the Respondent had been aware of it for some time, and had ample opportunity to liaise with both his client and counsel as to how best to handle this. In suggesting that this was a new issue for him too, it demonstrates an attempt to obtain an unfair advantage in the course of the discussion with Solicitor G. On that basis, the Respondent failed to achieve Outcome 11.1.

72. Similar to Allegation 1.1.1, the public's trust in solicitors and the provision of legal services would be damaged by solicitors making false and/or misleading assertions in the course of discussions with opposing party's representatives. Again, such conduct is a breach of Principle 6.

73. A solicitor acting with integrity would not have made a false and/or misleading assertion as to the date at which their client became aware of the issue under discussion. This is further underscored by the fact that it would appear to represent an attempt (a) to explain why the issue was not raised in the 11 October 2018 letter; and (b) imply to Solicitor G that Client A had less time to settle upon a strategy for dealing with this matter than was in fact the case. For those reasons, the Respondent breached Principle 2.

Dishonesty in relation to Allegation 1.1.2

74. The false and/or misleading assertion as to when Client A became aware of the issue in Publication 2 must have been a deliberate one; the Respondent would have been under no illusion as to the point at which Client A did in fact become aware given that he was a party to all the correspondence on the issue, dating back to 1 October 2018.

75. As indicated above, this false and/or misleading assertion appears to have been made (a) to create a false impression as to the time in which Client A and the legal team had been able to consider this point; and (b) to explain or justify why these points were not articulated in writing on 11 October 2018. Deliberately making a false and/or misleading assertion in these circumstances is conduct that would be viewed as dishonest by the standards or ordinary decent people.

<u>Allegation 1.2 – Improper threat of litigation</u>

76. Paragraphs 8 to 59 above are repeated. In the course of the 12 October 2018 telephone call with Solicitor G, the Respondent made an improper threat of

litigation being commenced, namely proceedings for contempt against Client B, despite the fact that:

76.1. The correspondence between the Respondent, Client A and the Firm makes it clear that this "threat" was being considered as a tactic to try and persuade Client B to provide a copyright licence for extracts of B's articles;

76.2. The record of the advice from Counsel M deprecates contempt proceedings being brought in order to achieve the obtaining of the copyright licence; and

76.3. The volume of references to Client A not wanting to go to court or not wanting to litigate this matter, serving to highlight the extent to which the threat was a device to try and secure the copyright licence.

77. Whilst the Applicant acknowledges that not every threat to commence proceedings would or should be considered "improper", in the circumstances of this case (for the reasons identified above) it would appear that this threat was made solely for the purposes of trying to persuade Client B to transfer the copyright licence to Client A; an issue that it seems was of interest to Client A as early as Date 78 **[page 386 of IWB/1]**, if not before. This much is encapsulated almost exactly by Client A's e-mail to the Respondent on 2 October 2018 **[page 41 of IWB/1]**. Such a threat should be viewed as "improper" where it would appear (a) that bringing such proceedings was not in fact genuinely being contemplated by the client; and (b) its primary purpose was to place pressure on Client B to transfer the copyright licence; an outcome unlikely to have been achieved by the actual bringing of the proceedings.

78. In participating in what Solicitor G has perhaps accurately referred to as "*blackmail"*, the Respondent has sought to take unfair advantage over Client B. On that basis, the Respondent has failed to achieve a failure to achieve Outcome 11.1.

79. The use of an improper threat of litigation, in order to try and achieve, through unfair means, an acquisition on behalf of a client demonstrates a failure to uphold the proper administration of justice. On that basis, a breach of Principle 1 is alleged.

80. The public's trust in solicitors and the provision of legal services would be damaged by solicitors making improper threats of litigation, designed to achieve an unfair benefit for the party for whom they are acting. For those reasons, a breach of Principle 6 is alleged.

81. The SRA's paper, *"Walking the line: The balancing of duties in litigation"*, published in March 2015 **[pages 431 - 445 of IWB/1]**, expressly referred to a solicitor's duties to *"…act in the best interests of each client, not to allow independence to be compromised and to uphold the rule of law and the proper administration of justice"* **[page 431 of IWB/1].** The paper then goes onto refer to instances of a solicitor unduly prioritising their client's interest over their other duties, including (what it refers to as):

> *"*
>
> - *predatory litigation against third parties, where the solicitor, in the interest of the client, uses the threat of litigation to obtain settlement…*
> - *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…"*

82. Even in 2018, therefore, it was clear that solicitors making threats to achieve an ulterior motive on behalf of their clients would be viewed as a breach of a solicitor's *"key ethical requirements"*. A solicitor acting with integrity would have viewed the threat made in the 18 October telephone call (given the position of Client A and the advice from [redacted] Counsel M) as a departure from the ethical standards of the profession. For those reasons, a breach of Principle 2 is alleged.

The SRA's Investigation

83. The SRA have taken the following steps to investigate the Allegations which it makes against the Respondent:

83.1. The SRA received a complaint in relation to this incident from Client B on 20 January 2023 **[pages 81 – 82 of IWB/1]**;

83.2. Thereafter, the SRA sought to investigate this matter (including obtaining a Witness Statement from Client B), culminating with the service of Notice on 15 March 2024 **[pages 6 – 21 of IWB/1]**;

83.3. On 16 April 2024, the Respondent's representatives provided a response to the Notice **[pages 102 – 133 of IWB/1]**;

83.4. The Authorised Decision Maker referred the Respondent's case to the Tribunal on 18 April 2024 **[pages 134 – 141 of IWB/1]**; and

83.5. A Witness Statement **[pages 142 – 152 of IWB/1]**, and accompanying exhibits **[pages 153 – 385 of IWB/1]** was obtained from Solicitor G on 14 May 2024.

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

.....

Dated this 27 day of June 2024

BEFORE THE SOLICITORS DISCIPLINARY TRIBUNAL
IN THE MATTER OF THE SOLICITORS ACT 1974 (as amended)
B E T W E E N:

SOLICITORS REGULATION AUTHORITY LIMITED

Applicant

and

CHRISTOPHER MARK HUTCHINGS

Respondent

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

Relevant Rules and Regulations

SRA Principles 2011

You must:

Principle 1:	uphold the rule of law and proper administration of justice
Principle 2:	act with integrity
Principle 6:	behave in a way that maintains the trust the public places in you and in the provision of legal services

SRA Code of Conduct 2011

Outcome 11.1:	you do not take unfair advantage of third parties in either your professional or personal capacity