The Respondent appealed the Tribunal's decision dated 28 March 2023. The appeal was heard by Mr Justice Chamberlain on 1 March 2025 and judgment handed down on 14 May 2025. The appeal was dismissed: *Farrukh Najeeb Husain v SRA [2025] EWHC 1170 (Admin)*

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 12463-2023

BETWEEN:

SOLICITORS REGULATION AUTHORITY LTD Applicant

and

FARRUKH NAJEEB HUSAIN Respondent

Before:

Mr W Ellerton (in the Chair)
Mrs F Kyriacou
Ms E Keen

Date of Hearing:
18-22 September 2023, 18-19 December 2023,
26 & 29 January 2024, 6, 13, 20 & 23 February 2024

Appearances

Ms Louise Culleton, counsel, in the employ of Capsticks LLP of 1 St George Road, London, SW19 4DR, for the Applicant.

The Respondent appeared and represented himself.

JUDGMENT

Allegations

1. The allegations against the Respondent, Farrukh Najeeb Husain, made by the SRA are that:

1.1 Between 27 September 2020 and 6 June 2021, he used his Twitter account to publicly post antisemitic and/or inappropriate and/or offensive comments and in doing so breached any or all of Principles 2, 5 and 6 of the SRA Principles 2019.

1.2 Between 27 September 2020 and 6 June 2021, he used his Twitter account to publicly post inappropriate and/or offensive comments and in doing so breached any or all of Principles 2, 5 and 6 of the SRA Principles 2019.

1.3 On 13 and 16 December 2022, he sent inappropriate and/or offensive emails to the SRA and in doing so breached any or all of Principles 2, 5 and 6 of the SRA Principles 2019

Note: since the dates of the alleged misconduct Twitter has changed its name to "X", however, for reasons of consistency it will be referred to by its earlier name throughout the judgment.

Executive Summary

2. The Respondent denied all the allegations.

3. He said that he had used Twitter and sent the messages referred to Allegations 1.1 and 1.2 in a personal capacity and that the Applicant was acting in excess of its regulatory remit with respect to them by attempting to discipline him for exercising his freedom of speech and expression outside his professional life. Whilst some of the Tweets may have been the result of bad and hasty drafting, they had not been antisemitic. He apologised if he had caused offence. The Respondent explained that Twitter was a fast paced and dynamic medium where insults are traded, and the use of language can be robust.

4. As to Allegation 1.3, he denied he had been offensive in his messages to the SRA's Investigating Officer. However, he had not been under any obligation to respond in emollient terms to an unfair investigation of him by the SRA.

5. With respect to the alleged antisemitic Tweets, the Applicant was permitted by the Tribunal to call expert evidence to assist it with an understanding of an internationally recognised definition of antisemitism.

6. The Tribunal viewed all the Tweets both individually and collectively and applied the various definitions of antisemitism to which it had been directed (which included but was not limited to the IHRA definition). The Tribunal considered that at its core and without the layers of gloss which had been applied to the term, antisemitism is an expression that demonstrates prejudice or hatred towards Jews because they are Jews.

7. The test to be applied in assessing whether a statement is antisemitic is an objective one. The Tribunal found that some of the Respondent's Tweets had been antisemitic.

Antisemitic Tweets were inherently offensive and inappropriate. The Tribunal also found that other Tweets had been solely offensive and/or offensive, but not antisemitic.

8. The Tribunal found that the Respondent's conduct by sending the offending Tweets and messages touched upon his practise as a solicitor and upon the reputation of the profession.

9. The Tribunal found all allegations proved on the balance of probabilities.

10. The Tribunal was, amongst other things, assisted by a consideration of the following:

Adil v GMC [2023] EWCA Civ 1261
Stocker v Stocker [2019] UKSC 17
Jeynes v News Magazines Ltd [2008] EWCA Civ 130
Diggins v BSB [2020] EWHC 467 (Admin)
PSA v GPhC & Zaman Ali
Beckwith v SRA [2020] EWHC 3231 (Admin)

Sanction

11. The Respondent was struck off the roll of solicitors. There was no order for costs.

- The Facts can be found here
- The Applicant's Case can be found here
- The Respondent's Case can be found here
- The Tribunal's Factual Findings can be found here.
- The Tribunal's Decision on Sanction and Costs

Documents

12. The Tribunal considered all the documents in the case, which were contained within an agreed electronic hearing bundle.

Preliminary Matters

13. Late evidence; amendment to Rule 12 Statement and witness statements
Application for expert witness to view the proceedings prior to giving evidence

13.1 At the commencement of the hearing, Ms Culleton applied for the addendum report of Mr Silverman, the Applicant's expert, dated 14 September 2023 to be admitted into evidence. Also, Ms Culleton drew the Tribunal's attention to a matter relating to the production of the statement supporting the Applicant's application made under Rule 12 of The Solicitors (Disciplinary Proceedings) Rules 2019 ("SDPR 2019"). This statement is commonly referred to as "the Rule 12 Statement".

13.2 Ms Culleton said that the Rule 12 Statement had been signed as a statement of truth however, the statement/declaration of truth which read *"I confirm that the contents of this statement are true to the best of my knowledge and belief"* was incorrect and not compliant with Rule 3 of the SDPR 2019 which required the statement/declaration of truth to be as follows: *"I believe that the facts and matters stated in this statement are*

true". The same issue applied to the witness statements of Mr Myerson KC and Ms Kauser and Ms Culleton applied to amend the declarations made in similar fashion.

13.3 The Respondent did not object to the applications.

13.4 The Respondent also applied to the Tribunal to allow into evidence his medical records and further news and journalistic articles in support of his case *[Note: during this part of the proceedings the Respondent waived the right to have his medical information discussed in private stating that his mental health condition was not a matter which caused him embarrassment.]*

13.5 Other than the observation that there had been a timetable for the submission of evidence set out in the Standard Directions and at the last Case Management Hearing on 30 June 2023, Ms Culleton was neutral on the application.

13.6 Ms Cullerton requested the Tribunal's permission for Mr Silverman to observe the hearing on the basis that he was being called as an expert and not as a lay witness. He was therefore bound by his duty to the Tribunal as an expert witness.

13.7 The Respondent opposed the application on the basis that Mr Silverman should not be treated differently to any other witness. Further, the presence of Mr Silverman would exacerbate the Respondent's anxiety. To alleviate his levels of anxiety the Respondent asked for regular and longer breaks, up to half an hour.

<u>The Tribunal's Decisions</u>

13.8 The Tribunal exercised its powers under Rules 6, 22 *(procedural applications)* and 24 of the SDPR 2019 to permit the Applicant to amend the declaration of truth on the respective statements to ensure each accorded with the wording in Rule 3 SDPR 2019.

13.9 With respect to the material that the Respondent wished to rely upon, the Tribunal noted the position of the Applicant and gave permission for it to be introduced into evidence. However, it had not had the opportunity to consider the material in depth so permission was subject to the caveat of relevance which the Respondent would need to demonstrate when he intended to deploy the evidence.

13.10 The Tribunal refused Ms Culleton's application for Mr Silverman to view the proceedings prior to his giving evidence. The Tribunal considered that this witness was not giving evidence regarding purely technical matters, and he should be in no more advantageous position than any other witness of fact and that the usual practice of a witness not being permitted to view proceedings prior to giving evidence should be observed.

13.11 Lastly, as reasonable adjustment the Tribunal agreed to the regular and longer breaks in accordance with the Respondent's request.

14. Matters in closed session

14.1 The Respondent made applications in which his state of mental health was key, and he requested the Tribunal hear and determine the applications in closed session. The Tribunal agreed to do so.

15. [REDACTED]

15.1 [REDACTED].

15.2 [REDACTED].

15.3 [REDACTED].

15.4 [REDACTED].

15.5 [REDACTED].

15.6 [REDACTED].

15.7 [REDACTED].

15.8 [REDACTED].

The Tribunal's Decision

15.9 [REDACTED].

15.10 [REDACTED].

15.11 [REDACTED].

15.12 [REDACTED].

15.13 *The case continued in open hearing.*

Factual Background

16. The Respondent was a solicitor having been admitted to the Roll on 3 February 2014. He was not currently employed according to SRA records.

17. He had a current practising certificate free from conditions

Findings of Fact and Law

18. The Applicant was required to prove the allegations on the balance of probabilities. The Tribunal had due regard to its statutory duty, under section 6 of the Human Rights Act 1998, to act in a manner which was compatible with The Respondent's right to a fair trial and to respect for their private and family life under Articles 6 and 8 of the

European Convention for the Protection of Human Rights and Fundamental Freedoms.

19. **The Applicant's Case**

19.1 The conduct in this matter came to the attention of the SRA when it received a report from Bevan Brittan LLP ("the Firm") dated 1 June 2021. Mr Peter Rogers, a Partner and the Director of Risk at the Firm, reported that at the end of May 2021 the Respondent, who was engaged by the Firm as a self-employed consultant to deliver on a particular client mandate between 19 April and 28 May 2021, had posted comments on his Twitter account directed towards Mr Simon Myerson KC, which Mr Rogers indicated could be considered to be in breach of Principles 2 and 6 of the 2019 SRA Principles.

19.2 Mr Myerson KC had himself posted a tweet tagging the Firm to indicate that he would be in touch with the Firm about personal abuse directed towards him by the Respondent who he had identified as having a connection with the Firm. Other Twitter users subsequently indicated in Tweets replying to Mr Myerson KC's Tweet that it did not appear that the Respondent was employed by any particular firm at the time.

19.3 Screenshots of the Tweets provided by Mr Rogers showed the Respondent's responses to Mr Myerson KC's indication that he was going to be in touch with the Firm given the *'personal abuse'* towards him from the Respondent. The Respondent's Tweets in response included:

> *9.1. "What's wrong Myerson – still treating junior Barristers like Palestinians through bully boy tactics?"*
>
> *9.2. "Looks like u want to set the Zionist lynch mob on me"* and *"Lynch mob is working overtime. Well done Al Nabka continues".*

19.4 In earlier Tweets between the Respondent and other Twitter users, the Respondent had posted inappropriate and/or offensive Tweets as detailed further below.

19.5 The SRA received a further report from another individual, Mr Victor Teoh, on 7 June 2021. Mr Teoh provided Tweets from the Respondent's Twitter feed from 6 and 7 June 2021, indicating that he took the view that the Respondent used antisemitic language on numerous occasions on those dates.

19.6 Mr Teoh set out the Tweets, including Tweets which had been directed to/were about Mr Hugo Rifkind, a British journalist who is Jewish, where the Respondent had tweeted:

> *"Giving an interview to a Zionist supporting twat – well done!", "And Rifkind is a Zionist pig supporting theft of Palestine for his Eastern European kin"* with other Tweets referring to Israel as *"ShitRael"* and *"Do you have a problem reading Zionist? Or are you just mentally retarded as a racist?*

19.7 Mr Teoh said that he was appalled at the Respondent's Tweets and dismayed that an SRA regulated solicitor would express themselves in such an offensive way, including

an apparent hostility towards Jews, as to potentially diminish public confidence in the profession.

19.8 Following these reports the SRA reviewed the Respondent's Twitter account FarrukhHUSAIN1969 (@Najeeb01249662)/Twitter, which was started in September 2020 and was on a public setting meaning that anyone can access and view the Respondent's profile.

19.9 The Respondent's Twitter profile describes him as:

> *"SOAS alumni, lawyer and author of 'Afghanistan in the Age of Empires', enjoy public speaking, collecting art and antiques from the Islamic world"*.

19.10 In several Tweets offering assistance to individuals in a professional capacity, the Respondent referred to himself as an employment solicitor.

19.11 The Respondent's Twitter 'bio' stated that he had written articles regarding the Israeli-Palestine conflict focusing on an anti-Zionist narrative. There was a link to one of his articles that he Tweeted about on 21 May 2021, '*How Zionism consumed Jaffa'*, The Friday Times, Naya Daur. At the bottom of the article it stated, "*The writer is the author of Afghanistan in the Age of Empires and a London-based barrister."*

19.12 The SRA's review of the Twitter account found that there were numerous inappropriate, offensive and/or pejorative Tweets, as detailed further below. The SRA considered a number of the Tweets to be antisemitic as well as generally inappropriate, offensive and pejorative.

Legal Framework

19.13 The SRA's Warning Notice on Offensive Communications, August 2017 (updated in November 2019) reiterates the importance for solicitors to comply with the SRA Principles, and importantly Principles 2, 3, 5 and 6, in light of a significant increase in the number of complaints concerning inappropriate communications, specifically in relation to (but not limited to) emails and the use of social media, both inside and outside of practice.

19.14 The Warning Notice sets out examples of types of conduct that the SRA has investigated and which have subsequently been referred to the SDT, including making offensive or pejorative comments relating to another person's race, sexual orientation or religion, referring to women in derogatory terms and making sexually explicit comments and using language intended to shock or threaten.

19.15 The Warning Notice states: –

> *"We expect you to behave in a way that demonstrates integrity and maintains the trust the public places in you and in the provision of legal services.*
>
> *In the context of letters, emails, texts or social media, this means ensuring that the communications you send to others or post online do not contain statements*

which are derogatory, harassing, hurtful, puerile, plainly inappropriate or perceived to be threatening, causing the recipient alarm and distress.

19.16 In respect of conduct outside the course of business, the Warning Notice emphasises the following:

> *"The above Principles continue to apply to you (as the context admits) outside your practice, whether in some other business capacity or in your personal life. It is in this sphere – namely outside of work – that we are currently receiving the majority of complaints.*
>
> *The risk referred to above – namely that social media by its nature tends to encourage instant communication without the necessary forethought – tends to be greater when you are outside a work context. You must at all times be aware of the content you are posting and the need for professionalism.*
>
> *This is especially true if you are participating in online discussion (whether this be on Facebook, Twitter, other social media, forums, blogs, etc) and you have identified yourself as, or are known to be, a solicitor. You should bear in mind the possibility that users will re-share the content you have posted on their own social network, potentially leading to rapid sharing with a huge number of users. Similarly, you cannot rely on your own privacy settings to prevent the posting from being passed on by others.*
>
> *Even if you do not identify yourself as a solicitor, anonymity is not guaranteed; material which you post under a pseudonym may still be traced back to you or you may be identified as a solicitor if you include a photograph of yourself.*
>
> *You should also consider carefully before retweeting an offensive comment. Unless you refute the content, you will be at risk of being seen as implicitly endorsing it. If it comes to your attention that a third party has accessed your computer and posted an inappropriate comment in your name on a social media network, you should take immediate steps to go online to refute the comment. It is advisable in any event to regularly audit your online presence to remove any material which makes you uncomfortable."*

19.17 The SRA also published a '*Topic Guide on Use of social media and offensive communications'* in February 2019 (updated in November 2019). The Guide reiterates that the SRA treats seriously communications that are offensive, derogatory or inappropriate whether in nature, tone or content and that regulatory action can be taken if the sender is identifiable as someone the SRA regulates (even if acting in a personal capacity) and the communication would tend to damage public confidence. The Guide sets out mitigating and aggravating features which will be considered by the SRA when considering what action should be taken.

19.18 In Diggins v Bar Standards Board [2020] EWHC 467 (Admin), where an unregistered barrister had made an offensive, derogatory and racist tweet, Mr Justice Warby dismissed the notion that conduct occurring in the private as opposed to public/professional realm was not properly within the remit of a regulator.

19.19 The Court held that it was proper for a regulator to consider whether alleged conduct was likely to undermine trust and confidence in an individual professional or the profession as a whole.

19.20 Mr Justice Warby stated that it was not necessary for a professional to be immediately or readily identifiable as a member of a profession, although reference or a link to something identifying a professional was an element of the factual matrix that was relevant to the panel's assessment and a Tweet in any event is in the public domain, as a public Tweet, available to anybody. Ultimately the question for the panel was whether the conduct was likely to undermine trust and confidence in an individual professional or the profession as a whole, which was a question for assessment on the basis of the facts of the individual case.

19.21 Allegation 1.1 - Antisemitic and otherwise inappropriate and/or offensive Tweets

Tweets towards Simon Myerson KC

19.21.1 On 18 May 2021, Simon Myerson KC posted a tweet (re-posting a tweet by Alexandra Wilson (@EssexBarrister) where she asked for book recommendations about the conflict in the Middle East/Israel and indicating relevant and helpful book recommendations could be left in the feed and that racism/islamophobia/antisemitism would not be tolerated) stating:

> "*I would very much have liked you to recommend a book on antisemitism. To suggest that you can understand the conflict by only reading one side is foolish. To ignore the Jewish experience is discriminatory. A huge disappointment"*.

19.21.2 Another Twitter user responded to Mr Myerson KC's tweet asking for his recommendations to Ms Wilson on books about the history of antisemitism or contemporary antisemitism, to which Mr Myerson KC replied.

19.21.3 Another Twitter user stated on the same date:

> *"1/2 Spending time in Israel/with Israelis led me to conclude that it is not really possible to fully understand what is going on in the Middle East without an understanding of the history of antisemitism and the Holocaust"*.

19.21.4 The Respondent responded to these Tweets stating:

> *"We also need to spend time with Palestinians and understand Al Nakba which is on going. It is not acceptable to peddle racism in the form of Zionism a cruel and fascist ideology. Look how Israeli schools promote killing and enslaving Arabs."*

posting a video from another Tweet about teachers in Israeli schools teaching students how to treat Arabs and Palestinians.

19.21.5 Mr Myerson KC responded saying:

"*An Israeli school. This was the subject of some investigation about 3 years ago. The result (from recollection an independent body) was that the majority of Israeli schools taught well and a majority of Palestinian…. Lets not generalise from one example".*

19.21.6 The Respondent responded:

"Given your taste in reading I am not going to take your word for it. Palestinian schools are underfunded in the so call (sic) 1948 borders and in the COLONISED 1967 region Palestinians education gets a fraction of what Israeli Jewish schools get since Israeli society = RACIST/ZIONIST".

19.21.7 When other Twitter users discussed that the conflict in the region is complicated and that @EssexBarrister's proposed reading list was not balanced but also that they did not like the *'pile on'* by senior barristers, the Respondent tweeted on 20 May 2021:

"The conflict in the region is not a 'conflict' it is an occupation and treatment of the colonised as sub-humans by the occupying power. It is very simple ZIONISM is a FASCIST APARTHEID STATE IDEOLOGY"; and *"It is called Zionist trolls acting to arm twist others who wish to present an accurate picture of the RACIST IDEOLOGY OF ZIONISM. South African Apartheid ended – Israeli apartheid needs to end. A colonial settler state by Europeans in 1948 – the age of decolonialism is an anomaly".*

19.21.8 Further Tweets in response by the Respondent towards Mr Myerson KC and others included:

"I reiterate the point with more evidence so as not to allow our learned and 'venerable' QC to pull the wool over our eyes that Israeli schools teach Israeli students to hate Palestinians because Israeli= FASCISM";

"Or is it because ZIONIST FASCISTS are full of SHIT and flood Palestinian schools with their faeces. I hope Myerson was not trying to imply that Palestinian teachers teach poorly since he states 'majority of Israeli schools taught well'???";

"Our learned friend makes the point 'majority of Palestinian schools taught badly' is that because Israeli Apartheid regime starves Palestinians schools of funding?"

"Implicit in what you are challenging me over is that you are a ZIONIST (RACIST) ISRAEL supporter. You therefore choose to attack me on my German usage since u can't attack me for criticising FASCISM/ZIONIAM ISRAELI SOCIETY"; and
"I reiterate the point with more evidence so as not to allow our learned friend and 'venerable' QC to pull the wool over our eyes that Israeli schools teach Israeli students to hate Palestinians because Israeli = FACISM" (posting another video re. Jewish girls instructed not to 'hang around with Arabs').

19.21.9 Mr Myerson KC re-tweeted the first tweet in the paragraph above, tweeting:

> "*Farrukh is apparently a lawyer. So pupils, please learn that YOUR POINT ISNT IMPROVED BY SHOUTING."*

19.21.10 The Respondent then responded:

> *"Gosh even u r apparently a lawyer, but ur understanding of morality and law seems to part way when it comes to the apartheid state which treats Palestinians like UNTERMENSCHEN and their land like Lebensraum".*

19.21.11 On 19 May 2021, the Respondent re-tweeted and commented on a tweet by Mr Myerson KC about a fund for harassing Jewish teachers set up in the name of Zionist extremism, the Respondent stating:

> *"Those that suffer discrimination from their teachers deserve to be defended rather than castigated as being perpetrators of harassment – but then if you believe in Zionism u have victim hood mentality".*

19.21.12 On 23 May 2021, Mr Myerson KC commented on a post by Miqdaad Versi on the same date which stated:

> *"Some divisive individuals used yesterday to undermine the pro-Palestinian protests. This gained widespread media coverage. Many of those same individuals will be more circumspect today. And anyone who highlights this, will be called names & their solidarity will be ignored. Okay".*

19.21.13 Mr Myerson KC responded:

> *"I see that standing shoulder to shoulder on racism isn't important. After yesterday's appalling antisemitism, this is a divisive attempt to suggest that Jews are not only unthreatened by the right, but encourage them. It's incitement you hatred"* (sic).

19.21.14 The Respondent replied to @Miqdaad saying:

> *"Myerson is a buffoon I had an exchange with him earlier in the week after he attacked a reading list which he criticised because the books were against human rights abuses by Zionist's such as by Pappe".*

19.21.15 There were other Tweets with the Respondent replying to Mr Myerson KC, including:

> *"If u were anti-racist Myerson you would not be Zionist which is racism. You reek of white privilege that's why you cry about Reading lists circulated by Barristers whose principles decry fascism".*

19.21.16 The Respondent also tweeted: "*What's wrong Myerson – still treating junior Barristers like Palestinians through bully boy tactics?"* when Mr Myerson re-posted the Respondent's tweet about Mr Myerson being a Zionist and reeking of white privilege, without comment.

19.21.17 The Respondent further tweeted:

> *"Myerson stands 'shoulder to shoulder on racism' very obviously supporting racism but we stand shoulder to shoulder against the white man Myerson's racism which is Zionism."*

19.21.18 When other Twitter users objected to the Respondent's Tweets, including for example by saying: *"You use the word Zionist like someone who doesn't understand what it means. So what is it, are you disingenuous or illiterate?"*, the Respondent stated:

> *"Another Zionist Oik obviously shines Myerson's shoes with his tongue"*;
>
> *"Myerson is waiting for you to pick the dandruff off his wig and clean his shoes"*; and
>
> *"This is what Palestinians say to Zionists u can't have our home for any price. Ur sort have some confusion and can't take no for an answer"*.

19.21.19 The other Twitter user comments, *"Oh I see…. You do know you're having a pop at two British JEWS, yes? Not Israelis. British Jews. Not sure why….."*, to which The Respondent replied *"U r the one who started ur sort like to start and cry wolf typical Zionist shite."*

19.21.20 This exchange on 23 May 2021 prompted Mr Myerson KC to seek to complain to Bevan Brittan LLP who he had identified as perhaps being the Respondent's employer, with the Respondent replying:

> *"Looks like u want to set the Zionist lynch mob on me"* and *"Lynch mob is working overtime. Well done Al Nakba continues [laughing face emojis x 4]."*

19.21.21 The Respondent also directed a tweet to Mr Myerson KC when engaging with Mr Hugo Rifkind saying:

> *"Who the hell are u to talk about me spokesperson of Israel?"*

The SRA's Position

19.21.22 Ms Culleton said that as well as being inappropriate, offensive, pejorative, puerile and derogatory, the SRA considered that some of the Respondent's Tweets towards Mr Myerson KC could be considered to be antisemitic, for the reasons below.

19.21.23 The Respondent's use of *'Zionist'* can be seen to really amount to using it as a synonym or substitute for *'Jew'*; Mr Myerson KC being, as other Twitter users commented, a British Jew, not an Israeli (although of course not all Israelis will be Zionists either).

19.21.24 The reference to "*Untermensch"* is a term which was used by the Nazi party to refer to what they considered as inferior groups which included Jews. *"Lebrensraum"* was a principle used by the Nazi party relating to German territorial expansion into Eastern Europe. The use of these terms associated with Naziism would have upsetting

associations for Jews (not just Zionists) and were of course terms or principles/policies used towards Jews (not just Zionists) by the Nazis when perpetrating the holocaust.

19.21.25 If the Respondent was seeking to make a comparison to seek to demonstrate that Israel was treating Palestinians in the same way that the Nazis had historically treated Jews, it was reasonable to infer that the use of comparisons so closely associated with historic antisemitic violence was deliberate in order to offend the recipients (including Mr Myerson KC) not only as Zionists (as claimed to be by the Respondent) but also as Jews.

19.21.26 The SRA considered that it was relevant and important to distinguish between the following: (i) antisemitism, (ii) anti-Zionism and (iii) opposition to the Israeli government (each addressed in more detail below).

19.21.27 Whilst the Respondent claimed not to be antisemitic but rather to be anti-Zionist, it was the SRA's position that his Tweets appeared to conflate antisemitism, anti-Zionism and opposition to the Israeli government and in fact lead to him demonstrating hostility towards Jews because they are Jewish, not because they are Israeli/pro the Israeli government or Zionist in their ideology or supporters of the Zionist movement.

19.21.28 As such the Respondent's Tweets as identified demonstrated hostility to, hatred of, and/or prejudice against Jews.

19.21.29 Furthermore, some of the Tweets above (of which there are further examples detailed below) also engaged aspects of the International (IHRA) Definition of Antisemitism, including denying the Jewish people their right to self-determination (e.g. by claiming that the existence of a State of Israel is a racist endeavour) and the drawing of comparisons of contemporary Israeli policy to that of the Nazis.

Tweets to Hugo Rifkind

19.21.30 On 6 June 2021, the Times Radio posted a link to an interview between Mr Rifkind and William Dalrymple, author and historian, about British colonial India and the actions of members of the East India Company to enrich themselves at the expense of India.

19.21.31 The Times Radio post of the interview summarised *"It was plunder, loot"*. William Dalrymple, historian and author, says it is *'indisputable'* that the East India Company *'took huge sums of wealth from the richest country in the world and turned it into one of the poorest'*.

19.21.32 The Respondent tweeted in response at 11:36 p.m. on 6 June 2021, saying:

"Giving an interview to a Zionist supporting twat -well done!"

19.21.33 Following that tweet response by the Respondent, another Twitter user, tweeted *"@DalrympleWill is love,!"*, to which the Respondent responded *"And Rifkind is a Zionist pig supporting theft of Palestine for his Eastern European kin"* [11:37 on 6 June 2021].

19.21.34 Mr Rifkind replied to the Respondent's tweet (and others) on 7 June 2021 saying:

> *"Do you mean 'Jew'? You just mean 'Jew' right?"*

19.21.35 Responding to another Twitter user indicating that the article (presumably the interview between Rifkind and Dalrymple posted by the Times Radio) was behind a paywall, The Respondent tweeted *"Typical Zionist always have damn walls and want to take ur money"* [11:40 on 6 June 2021].

19.21.36 Mr Myerson KC responded to Mr Rifkind's tweet saying:

> *"He just means Jew. Husain is a lawyer whose last employers have disowned him. DM for details if it really bothers you (it shouldn't)"*.

19.21.37 This prompted a tweet from the Respondent saying:

> *"Who the hell are u to talk about me spokesperson of Israel?"*
> [1:46 pm on 7 June 2021].

19.21.38 Following other supportive Tweets to Mr Rifkind regarding the Respondent's comments, the Respondent Tweeted:

> *"How was life in IDF Hugo?"*
> [8:47 on 7 June 2021].

The SRA's Position

19.21.39 Ms Culleton said that the SRA considered that the Respondent's Tweets to Mr Rifkind (as identified above) to be antisemitic (as well as generally inappropriate and offensive).

19.21.40 The Respondent's references to Mr Rifkind being a '*Zionist pig'*, having '*Eastern-European kin'* and having walls and *'wanting to take ur money'* are both historical and modern connotations, references or stereotypes often used against Jews.

19.21.41 The use of the word Zionist appeared to be as a substitute for Jew. References to pigs were frequently used to de-humanize Jews. References to individuals being from Eastern Europe refers to Ashkenazi Jews from central and Eastern Europe and this too was also used often as an attempt to delegitimise the existence of the state of Israel by asserting that Jews originate from Europe rather than the Middle East.

19.21.42 References to *'walls'* by the Respondent could be a reference to the Western/Wailing Wall and references to money was the well-known connotation or trope of greed and avarice. Further the reference to the IDF is the Israel Defence Forces and presumed (wrongly) by the Respondent that Mr Rifkind was in the IDF. In this way the Respondent also sought to link Mr Rifkind with the Israeli state and its political and military agenda.

19.21.43 The Respondent's Tweets as identified demonstrated hostility to, hatred of, and/or prejudice against Jews.

19.21.44 In addition, a number of the Tweets engaged the International IHRA definition of antisemitism, and the examples it sets out including denying the right of the Jewish people to self-determination.

Other inappropriate and/or offensive Tweets which are also antisemitic

19.21.45 As part of its investigation into this matter, the SRA sought evidence from the Campaign Against Antisemitism ("CAA"), a volunteer-led charity in the UK whose aims are to counter antisemitism generally.

19.21.46 Mr Stephen Silverman (Director of Investigations at CAA) reviewed a bundle of Tweets provided to him and provided a report identifying Tweets from the Respondent's Twitter account which he considered are antisemitic.

19.21.47 The SRA considered that the Tweets identified by Mr Silverman were antisemitic as well as being inappropriate and/or offensive.

19.21.48 The Tweets indicated hatred, hostility and/or prejudice against or towards Jews. Further, they engaged the International IHRA Definition of Antisemitism and some of the examples it referred to, including denying the Jewish people their right to self-determination (e.g. by claiming that the existence of a State of Israel is a racist endeavour), drawing comparisons of contemporary Israeli policy to that of the Nazis, denying the fact, scope or mechanisms, or intentionality, of the Genocide, and attempting to delegitimise the existence of the State of Israel by claiming that Jews originate from Europe rather than the Middle East.

19.21.49 Furthermore, the Tweets contained negative connotations, references, tropes and smears frequently used against Jews and thus used the symbols and images associated with classic antisemitism to characterise Israel, Israelis and Jews in general.

19.21.50 For example, references to *'promised people'* or the *"the superiority of the Jewish people"* in the manner and context tweeted about by the Respondent was arguably antisemitic as it referred to Jews as a people and not simply the state of Israel or indeed to Zionists.

19.21.51 References to concentration camps, ethnic cleansing, genocide, lynch mobs, Hitler and *"pogroms"* (which is a word which typically describe historic violence by Nazi and Russian authorities against Jewish people) in the manner and context tweeted about by the Respondent would have upsetting associations for Jews.

19.21.52 If the Respondent was seeking to make a comparison to seek to demonstrate that Israel was treating Palestinians in the same way that the Russian or Nazi authorities had historically treated Jews, it was reasonable to infer that the use of such a comparison so closely associated with historic antisemitic violence was deliberate in order to offend the recipients as Jews and not merely directed towards them as Zionists.

19.21.53 References to *'Shitrael'* combined with such things, also amounted to more than being generally inappropriate and/or offensive or 'merely' anti-Zionist, given the full content and context of the Tweets containing *'Shitrael'*.

19.21.54 References to Ashkenazi immigrants or to individuals/groups being from Eastern Europe, as set out above, referred to Jews *per se* and Jewish people in terms of their religious and cultural heritage and identity, not 'merely' Israelis or Zionists but also engaged aspects of the IHRA definition.

19.21.55 Calling Israeli settlers or other specific individuals terrorists, or criminals involved in the massacring of Palestinian children, would be offensive and again targeted such individuals on the basis of their being Jewish.

19.21.56 References to pigs and *'stealing wealth'* hold unfortunate and typically negative connotations and are used when stereotyping against Jews.

19.21.57 The Respondent's use of the word Zionist appeared, in the main, to be a replacement/synonym/substitute for *'Jew'* in the way in which it is used and given the content and context of such Tweets.

19.22 Allegation 1.2 - Other inappropriate and/or offensive Tweets

19.22.1 In addition to the above Tweets alleged to be antisemitic and/or offensive and inappropriate, the Respondent published a number of Tweets that are otherwise inappropriate and/or offensive. Details of these Tweets are set out below.

19.22.2 On 30 May 2021, the Respondent published the tweet:

> *"To hell with your Yuan and to hell with your Chinese empire. U will be remembered as the new Mongols and cursed for ur stupidity. You implemented gender imbalance in ur own country via aborting females and stole Uighar women for rape to breed ur race"*.

19.22.3 Such a Tweet would clearly be offensive to Chinese people. The reference to "Uighar" appears to be a reference to Uighurs which are a Muslim minority allegedly currently being held in detention camps in Xinjian province and allegedly having been systematically raped. The Tweet associates the detention and rape of the Uighurs with China and the Chinese people generally, thus being racist and discriminatory as well as plainly offensive.

> *"Brother don't you have any self-respect? This Chinese was raping Muslim women and had enslaved one million Muslims in the concentration camp. Whoever supports China is a traitor and a person with weak faith."* [Translated].

19.22.4 As above, this Tweet associated the rape and enslaving of Muslims with Chinese people generally, as opposed to being criticism of the Chinese state or certain groups or individuals within China.

19.22.5 On 30 September 2020, the Respondent published the tweet:

> *"You dirty Gujjar, who r u to speak for Pashtun. You are the biggest bacha BAZ."*

This referred to a custom in Afghanistan involving child sexual abuse by older men of young adolescent males or boys and sexual slavery/child prostitution and would thus be offensive to the recipient in terms of his race and such outlawed cultural customs.

19.22.6 On 8 May 2021, the Respondent published the tweet:

> *"That is why some Pakistani have slave mentality. They like the one who raped their great great great grandmothers."*

This would be offensive to Pakistanis in general in referring to them in such a way and associating it with rape.

19.22.7 On 27 September 2020, the Respondent published the tweet:

> *"Maseed is shitting his pants because Farrukh Husain does not think Dr Najib's murder of 1 million Afghans was very patriotic."*

This refers to the individual to whom the Tweets were directed as *'shitting his pants'* which is offensive language.

19.22.8 *"Once a Ghulam always a Ghulam"* in response to someone else saying *'we Pakistanis love being praised by a gora'* following a Tweet from Michael Kugelman indicating that he was heading to Pakistan and would be chronicling his travels in a new vlog. The Respondent appears to be calling the Twitter user (a Pakistani) a slave which would be offensive to that user.

19.22.9 *"Shame we cannot have a pic of Mr Butt Ugly. You sure he was Panjshiri, Butt is a Kashmiri surname. So his name must be Ugly Butt…."*. This tweet appeared to be being offensive towards Kashmiris and/or sought to be an offensive play on words.

19.22.10 On 28 September 2020, the Respondent published the tweet:

> *"I am sure Yusufzai like you were busy screwing as well. You know what Kushal Khan Khattak was right about you. You have no honour you would sell your women for gold. What is ur obsession with Punjabi, is u so desperate for tor makel go to HiRA MANDI. If u need help VIAGRA for u."*

This refers to the red-light district in Lahore, Pakistan (Hira Mandi) and a Yusufzai is a Pakistani minister, the Tweet being offensive towards such individuals/Pakistanis and their conduct towards *'their'* women and visiting an area known for prostitutes.

19.22.11 On 30 September 2020, the Respondent published the tweet:

> *"U like bottom TIER cos u r Gujjar BACHA BAZ na pak spey!"* (30 Sep 2020).

Once again referring to the child sexual abuse of young adolescent males or boys in Afghanistan and appearing to be a play on words on *'bottom tier'* and what such an outlawed custom entailed, thus being offensive to the recipient.

19.22.12 On 30 September 2020, the Respondent published the tweet:

> *"If there are so many disappeared, how come the Army has not taken your butt and shoved some bottles up it and filled your mother's hole with some baby juice?"*

Such language is generally inappropriate and offensive to anyone, referring to the intended recipient's mother being raped as well as the recipient himself being raped by the army.

19.22.13 On 18 May 2021, the Respondent published the tweet:

> *"But my TALIB blow up doll with additional strap on manhood is a best seller and Brigitte said she'd be ordering a replacement because her current one has holes in all the wrong places."*

This was in response to another Twitter user and was following a Tweet from Brigitte Gabriel, who indicated that she would be boycotting Islamic terrorist countries/groups, including the Taliban, rather than Israel whom she described as being the only country in the Middle East that values life and equal rights.

19.22.14 The Respondent's Tweets appeared to be referring to a Taliban blow up doll and is offensive in its content and what it implies. There was a further tweet directed to Brigitte on the same day which could also be considered to be offensive and designed to shock:

> *"So u not going to buy my high-grade Afghan heroin anymore? It is a quality product luv ur soldiers will buy it all up too bad u lost out on mega high mega profit*😂😂😂😂🙂*".*

19.22.15 On 30 September 2020 at 8:05pm:

> "*u SPEAK ORAL DIAHORREA."*

19.22.16 On 4 January 2021 at 10:02pm:

> *"Who let the mentally challenged out of the hospital."*

19.22.17 On 15 April 2021 at 9:38pm:

> "*What do you expect from a Zionist retard."*

19.22.18 On 23 April 2021 at 9:06pm:

> *"@ShkhRasheed Has any one told you, that if you adopt a Hitler mustache, you would look exactly like the Fuhrer?"*

19.22.19 On 15 May 2021 at 5:45pm:

> *"I do not understand cow shit speech."*

19.22.20 On 3 June 2021, the Respondent tweeted:

> *"Was he black aboriginal or one of those European white guys who get jobs in the legal profession with their broad white European 'Aussie' smile"*.

19.22.21 Also on 6 June 2021, the Respondent tweeted:

> *"Matthew Standon was on the ground crying like a baby because he pissed his pants with no nappy on. The Israeli terror forces got upset cos they'd have to clean Standon with a Greek shower and baton clean Standon's Rear. Next time keep ur dummy in mouth and stand down Standon"*. (Matthew Standlen to whom this tweet was directed is a journalist/author/presenter of Jewish origin).

19.22.22 Ms Culleton said the SRA considered that the above Tweets were inappropriate, offensive and pejorative.

19.23 <u>The Respondent's Response to the SRA</u>

19.23.1 Ms Culleton said that although the Respondent appeared to indicate some acceptance of the matters alleged and some remorse, on closer scrutiny his substantive response appeared in fact to show extremely limited insight and only partial acceptance of some of the conduct alleged.

19.23.2 His responses appeared to go full circle in seeking to justify his conduct and the language used and offensive comments contrary to his initial indications of remorse.

Response of 9 June 2022

19.23.3 On 9 June 2022, in response to the Notice Bundle, the Respondent indicated regret for "*any offence caused by my Twitter messaging which I can see was inappropriate"*. He said that he had clients from all backgrounds and that he welcomed diversity, his parents being born in India and himself having Pakistani relatives as well as Afghan ancestry. He described himself as an anti-imperialist writer and as pro-human rights.

19.23.4 The Respondent stated that the *"comments made about the bottle in the anus are reprehensible as are the comments made about the person's mother"* although he said that there was provocation from the person concerned which he stated was not included in the bundle.

19.23.5 The Respondent said that during the lockdown he was in a precarious financial position and lock down negatively affected his pre-existing mental health condition but he accepted that this was not an excuse for his conduct which he accepted had shortcomings. He stated that he had already apologised to William Dalrymple and was prepared to apologise to others including Mr Myerson KC and Mr Rifkind.

Response of 4 August 2022

19.23.6 On 4 August 2022, the Respondent provided his substantive response to the Notice.

19.23.7 In summary the Respondent stated that he did not have antipathy towards or discriminate against Jews on account of their ethnicity or religion, however he believed that the Zionist state itself and Zionist ideologues are racist, not the Jewish people. He took issue with the SRA's definition of antisemitism and set out his own definition and thoughts on the subject.

19.23.8 In responding to the SRA's criticism that *"to refer to a Zionist as a pig is discriminatory and offensive towards the Jewish faith and the community"*, the Respondent submitted that this failed to recognise that not all Jews are Zionist and not all Zionists are Jews.

19.23.9 He said:

> *"To suggest that criticising Zionism and the crimes committed in its name are somehow 'antisemitic' is to directly imply that Judaism requires Jews to support those crimes, including ethnic cleansing, collective punishment, apartheid and the murder of innocents. I would submit that such a suggestion is itself amounting to a grossly antisemitic view and it seems to group all those with a Jewish belief as supporting the occupation of the Palestinian state which is clearly in my submission incorrect."*

19.23.10 He says that the use of word *'Pig'* to describe a Zionist was simply because racists are often commonly called *"racist pigs"* and since Zionism is racism *"it follows that here was a reference by me to 'Zionist Pigs'"*.

19.23.11 However, he accepted that to call anyone a pig is by its nature *'mildly offensive'* and that he regretted using the word. But then he went on to say*:*

> *"In any event I do take the view that the use of this word is inspired further by the phrase 'greedy pig' used in common parlance, for those that take more than they should, for their share. That is exactly what Zionist have done in Palestine by taking over most of historic Palestine for Zionists whilst barring Palestinian [sic] from the rights to residence and movement or even to build their own homes on the land they own. Indeed, the Zionist colonisation of occupied territory after 1967 represent [sic] a breach of international law and a denial of the ability of the Palestinians to have their own state. The Israelis rejects [sic] sharing land with the indigenous Palestinians in favour of expropriation for Zionist immigrants."*

19.23.12 The Respondent stated that in his Tweets he made clear his antipathy only towards Zionists, not Jews or those of Jewish descent, for example *"Jews are not bad, just the evil Zionists are…"*

19.23.13 In relation to the comments made by the Respondent to Mr Myerson KC (including reference *to the 'Zionist lynch mob', 'Zionist shite', 'Myerson is a buffoon' and that he was still 'treating junior Barristers like Palestinians through bully boy tactics)'*, the Respondent stated that those terms were *'arguably only mildly offensive'* and *'inappropriate.'*

19.23.14 The Respondent stated*:*

> *"While the word buffoon may be considered inappropriate, it does warrant mention in my respectful submission that Mr Myerson, a Crown Court recorder, calls people "stupid" "foolish" or "racist" or "anti-Semite" and wishes physical harm to others. Therefore, for such a man to be called a buffoon is unlikely to lead to much consternation. In any event in my respectful submission the SRA should not worry overly about alleged harm done to Mr Myerson by my Tweets for the reasons stated in paragraph 15. The SRA can rest assured I do not intend to engage with such extreme right-wing fascists again on social media since these people enjoy attention and do not actually warrant any attention. Nor would I post such Tweets again since I have regrets over the amount of stress that was caused to me by the intimidation Mr Myerson subjected me to by retweeting me to his followers which is his modus operandi since he is unable to engage in a robust discussion. Further I have no wish to engage in the followers of a man who like Myerson are blinded by a racist ideology. Time needs to be used constructively and that is what I have not done. Myerson and his ilk bask in attention and confrontation. I fear also that Myerson provoked me into potentially inappropriate conduct, and I realise my communications were not professional."*

19.23.15 In respect of other Tweets, the Respondent accepted that he had addressed some people on Twitter in terms that could have been more diplomatic:

> *"but I am not a diplomat, I am an ordinary solicitor, and not a paragon of virtue, but I do not accept as alleged that inappropriate and offensive comments have been made by me"*. He states *"My failure to bite my tongue in the face of online abuse demonstrates not only human frailty on my part but that I was behaving generally badly towards a range of people of different nationalities and religions including those of the same faith and nationality or ethnic origin as myself. As such it follows that I have not engaged in antisemitism in particular or that I have a bias against any particular group because of their protected characteristics, since my pattern of behaviour was far more wide ranging"*. However, he accepted that he was likely to have caused offence to others.

19.23.16 He stated that rather than act without integrity as alleged, he has in fact acted with integrity:

> *"by challenging racists who have supported the ethnic cleansing of the Palestinian people from their land and not allowed them to return and who support Zionists to continue to confiscate Palestinian land and property for the use of Zionist."*

19.24 <u>The SRA's position on the Respondent's response and Antisemitism v Anti-Zionism</u>

19.24.1 Ms Culleton submitted that the Tweets identified above were inappropriate, offensive and pejorative, making offensive or pejorative comments relating to others' race and religion, making sexually explicit comments, using language intended to shock and in the instance of Mr Myerson KC, given the repeated and persistent nature of the Tweets, they could be said to amount to comments which sought to harass him. The Tweets

contained discriminatory content and abusive terms, irrespective of whether some of them could also be said to be antisemitic.

'Defining' antisemitism/Antisemitism v Anti-Zionism

19.24.2 Ms Culleton said that anti-Zionism may be defined as opposition to Zionism and although there are different 'types' or approaches to anti-Zionism, as a generalised and overarching 'definition' it can be described as opposition to the creation of the modern State of Israel and the movement to create a sovereign Jewish state in the region of Palestine.

19.24.3 The Oxford English Dictionary defines antisemitism as *'hostility to or prejudice against Jews'*; the Oxford Dictionary gives as its meaning *'hatred of and hostility toward the Jews'*. The Collins dictionary defines it as *'hostility to and prejudice against Jewish people'*; all three definitions therefore combine hatred, hostility and/or prejudice against or towards Jews/Jewish people.

19.24.4 In December 2016, the British Government formally adopted the International Holocaust Remembrance Alliance's (IHRA) working definition of anti-Semitism including the additional explanatory pages and examples. The definition is set out as:

> *"Antisemitism is a certain perception of Jews, which may be expressed as hatred toward Jews. Rhetorical and physical manifestations of antisemitism are directed toward Jewish or non-Jewish individuals and/or their property, toward Jewish community institutions and religious facilities."*

19.24.5 This definition is then followed by an explanation and examples of what might be considered to be antisemitic:

> *"To guide IHRA in its work, the following examples may serve as illustrations: Manifestations might include the targeting of the state of Israel, conceived as a Jewish collectivity. However, criticism of Israel similar to that levelled against any other country cannot be regarded as antisemitic. Antisemitism frequently charges Jews with conspiring to harm humanity, and it is often used to blame Jews for "why things go wrong." It is expressed in speech, writing, visual forms and action, and employs sinister stereotypes and negative character traits. Contemporary examples of antisemitism in public life, the media, schools, the workplace, and in the religious sphere could, taking into account the overall context, include, but are not limited to:*
>
> - *Calling for, aiding, or justifying the killing or harming of Jews in the name of a radical ideology or an extremist view of religion.*
>
> - *Making mendacious, dehumanizing, demonizing, or stereotypical allegations about Jews as such or the power of Jews as collective — such as, especially but not exclusively, the myth about a world Jewish conspiracy or of Jews controlling the media, economy, government or other societal institutions.*

- *Accusing Jews as a people of being responsible for real or imagined wrongdoing committed by a single Jewish person or group, or even for acts committed by non-Jews.*

- *Denying the fact, scope, mechanisms (e.g. gas chambers) or intentionality of the genocide of the Jewish people at the hands of National Socialist Germany and its supporters and accomplices during World War II (the Holocaust).*

- *Accusing the Jews as a people, or Israel as a state, of inventing or exaggerating the Holocaust.*

- *Accusing Jewish citizens of being more loyal to Israel, or to the alleged priorities of Jews worldwide, than to the interests of their own nations.*

- *Denying the Jewish people their right to self-determination, e.g., by claiming that the existence of a State of Israel is a racist endeavour.*

- *Applying double standards by requiring of it a behaviour not expected or demanded of any other democratic nation.*

- *Using the symbols and images associated with classic antisemitism (e.g., claims of Jews killing Jesus or blood libel) to characterize Israel or Israelis.*

- *Drawing comparisons of contemporary Israeli policy to that of the Nazis.*
- *Holding Jews collectively responsible for actions of the state of Israel."*

19.24.6 A House of Commons Library Briefing on the UK Government's adoption of the IHRA definition of antisemitism (October 2018):

> *"Is the IHRA definition legally binding?*
>
> *No. The May 2016 plenary meeting of the IHRA adopted what it called a "non-legally binding working definition of antisemitism", although it hoped to inspire international organisations into taking action "on a legally binding working definition".*

19.24.7 In his written statement on 12 December 2016, Sajid Javid said the Government believed that while the definition was *"legally non-binding"* it was nevertheless an *"important tool"* for criminal justice agencies and other public bodies. As Government policy, it would be for those bodies *"to implement the definition and embed it within operational guidance as relevant"*. Hate Crime Operation Guidance from the College of Policing, for example, refers to all 11 examples.

19.24.8 The IHRA definition has been accepted by the European Parliament (and thus member states) and many other countries as well as other national and international bodies and employed for use by a number of governmental and political institutions.

19.24.9 The issue of defining antisemitism was also considered in a recent SDT hearing, SRA v Mahmood, when a further definition (to those above) was suggested on behalf of The Respondent in that hearing as:

> *"hostility towards people because they are Jewish, as opposed to hostility towards people who happen to be Jewish"/"hatred or hostility towards Jews on account of their Jewish identity".*

19.24.10 In *Mahmood* the Tribunal considered that the respective definitions (Oxford English Dictionary) IHRA were extremely close to each other, the spirit of all of them being consistent, the shared element of hatred, hostility or discrimination towards Jewish people by dint of the fact that they are Jewish appears in one form or another in each definition. (See in particular, paragraphs 11 – 15 and paragraphs 43.5 and 43.6 of the *Mahmood* Judgment.]

19.24.11 As far as the approach to the issue of whether the posts were antisemitic, the Tribunal stated the following:

> "There was no statutory or accepted legal definition of antisemitism. [Paragraph 43.6 of the Judgment]
>
> *"Applying an objective consideration to a set of facts to decide whether or not the conduct was antisemitic was well within the Tribunal's competence. The Tribunal was not tasked with analysing academically challenging and complex wide philosophical concepts at high level. The facts of the case required the Tribunal to analyse the Facebook threads and there would be comprehensive documentary and oral evidence and submissions and as the ultimate judge of all facts the Tribunal would determine whether the Applicant had proved beyond reasonable doubt (the standard of proof required at that time) that the language used by Mr Mahmood was antisemitic [Paragraph 12 of the Judgment].*
>
> *Rather than preferring one definition over another, the Tribunal decided to refer to/use all definitions (and to give all three equal weight) and to test the evidence against all three definitions when making its decision [Paragraphs 13 and 43.5 of the Judgment].*

19.24.12 Ms Culleton invited the Tribunal to approach the definition of antisemitism with respect to the Respondent's Tweets in the same way as the Tribunal did in Mahmood, i.e., the shared element within the definitions of hatred, hostility or discrimination towards Jewish people by dint of the fact that they are Jewish.

19.25 The Respondent's Tweets which amount to being antisemitic

19.25.1 In respect of some of the Tweets being antisemitic, Ms Culleton said the SRA's position was that the Respondent appeared to conflate Jews with Zionists and the offending Tweets appeared to be made with intent to arouse hostility towards Jews because the Tweets in fact display prejudice towards Jewish people generally, not 'only' Zionists or Israelis.

19.25.2 The use of the word *Zionist*, in the context used by the Respondent, became a proxy for the word *Jew*, and a term of abuse used against anyone of Jewish origin especially when they held an opposing view to the Respondent.

19.25.3 The other references used by the Respondent of negative connotations and stereotyping about Jews only supported the picture that the Respondent conflated *'Jewishness'* and *Zionism* and replaced the word *Jew* for *Zionist*, thereby using it as an insult or discriminatory message.

19.25.4 *"Anti-Zionism"* morphed therefore into antisemitism; criticism of the government of Israel transitioned to anti-Zionism and then further to antisemitism. This was especially the case when combined with typically traditional antisemitic imagery or insults as well as more contemporary Israel-related antisemitism, including instrumentalisation/negative referencing or exploitation of the Holocaust, Nazi analogy and comparing or equating Israel to Nazi Germany, holding all Jews responsible for the actions of Israel and denying Israel's right to exist and denying or questioning the mechanism and reality of the Holocaust often combined further with other offensive words and insults.

19.25.5 Therefore in what could be seen as taking a legitimate and non-offensive stance of showing support for the Palestinian people, the Respondent then used language and imagery associated with an antisemitic discourse. This moved thereafter from referring to the government or state of Israel to Zionists and then Jews or other references which identify the end point of whom the prejudice and hatred is directed at, as Jews *per se* such as *'Eastern European thugs'* or *'kin'* referencing Ashkenazi Jews.

19.25.6 Essentially, what may arguably have started as a non-offensive, non-antisemitic stance became antisemitic and a demonisation of Jewish individuals.

19.25.7 The antisemitism was thinly disguised or justified by the Respondent as anti-Zionism, when in reality it was simple antisemitism in which the identified Tweets sent by the Respondent demonstrated hostility to, hatred of, or prejudice against Jews/Jewish people or a certain perception of Jews which may be expressed a hatred towards Jews.

19.26 Breaches of Principles in respect of Allegations 1.1 and 1.2

19.26.1 *Breach of Principle 5 of the 2019 Principles (Integrity).* - The Respondent's conduct in this regard amounted to a failure to act with integrity (i.e., with moral soundness, rectitude and steady adherence to an ethical code) in breach of Principle 5 of the 2019 Principles.

19.26.2 In Wingate v Solicitors Regulation Authority v Malins [2018] EWCA Civ 366, the following was set out:-

> *"In professional codes of conduct, the term "integrity" is a useful shorthand to express the higher standards which society expects from professional persons and which the professions expect from their own members. .....The underlying rationale is that the professions have a privileged and trusted role in society. In return they are required to live up to their own professional standards.*
>
> *Integrity connotes adherence to the ethical standards of one's own profession. That involves more than mere honesty. To take one example, a solicitor conducting negotiations or a barrister making submissions to a judge or arbitrator will take particular care not to mislead. Such a professional person*

is expected to be even more scrupulous about accuracy than a member of the general public in daily discourse. The duty to act with integrity applies not only to what professional persons say, but also to what they do…".

19.26.3 The Respondent failed to act with integrity in posting such Tweets on his public Twitter feed containing inappropriate, offensive and derogatory statements and references, including a considerable number of Tweets which are antisemitic. Such conduct was not acting in adherence to the ethical standards expected of a Solicitor.

19.26.4 In Beckwith v SRA [2020] EWHC 3231 (Admin), in considering how far a regulator should take action in relation to matters of private life (in that instance sexual misconduct), the High Court addressed the issue of integrity and concluded that three points of principle could be established:

- that while decisions around the application of the Principles are to be made on a case-by-case basis, it not being appropriate to attempt a comprehensive list of what is permitted and prohibited, breach of the integrity principle should, wherever possible, be grounded in one or more underlying provisions of the relevant Code of Conduct, or applicable regulatory rules or guidance.

- Integrity is a legitimate and relevant Principle for solicitors (and some other professionals) and is ingrained in the SRA Principles and through decisions ratifying the application of the principle of integrity (e.g., Malins and Wingate). This is a higher ethical standard than that which is imposed on ordinary citizens but is legitimately imposed upon solicitors as a condition of their membership of the profession.

- Solicitors and their employees are not required to be *'paragons of virtue'.*

19.26.5 At paragraph 54, the Court said:

"There can be no hard and fast rule either that regulation under the Handbook may never be directed to the regulated person's private life, or that any/every aspect of her private life is liable to scrutiny. But Principle 2 (equivalent to Principle 5 of the 2019 Principles) or Principle 6 (similar to Principle 2 of the 2019 Principles) may reach into private life only when conduct that is part of a person's private life realistically touches on her practise of the profession (Principle 2) or the standing of the profession (Principle 6). Any such conduct must be qualitatively relevant. It must, in a way that is demonstrably relevant, engage one or other of the standards of behaviour which are set out in or necessarily implicit from the Handbook. In this way, the required fair balance is properly struck between the right to respect to private life and the public interest in the regulation of the solicitor's profession."

19.26.6 The SRA's position was that there was a nexus between the Respondent's conduct, his practice as a solicitor and the standing of the profession. The public nature of the Tweets and being identifiable as a lawyer/solicitor who was expressing such views and posting such inappropriate and offensive content, was sufficient to justify and engage disciplinary action.

19.26.7 As set out above, the Respondent's Twitter feed was in a public setting for anyone to see. His conduct was very much in the public realm, rather than the private. Further, it identified him as a lawyer, and he was also identified as a solicitor by others at the time (and thus easily identifiable as such).

19.26.8 In any event, the Respondent should not have been communicating in such a way, using such language, and tweeting such inappropriate and/or offensive and/or antisemitic Tweets on a public Twitter page.

19.26.9 The quantity of such Tweets, and the period of time over which such Tweets were posted, indicated that they were the considered views of the Respondent, repeatedly expressed in a consistent manner and tone, whenever he wished to take issue with something or respond to Tweets or positions adopted by others with which he did not agree. That in turn had potential implications on how the Respondent would or might provide professional services to, or engage in professional settings with, individuals with whom he did not agree or who are from certain ethnic backgrounds.

19.26.10 As the Warning Notice, Topic Guide and Diggins v BSB, made clear, whether the conduct alleged occurred outside the workplace does not reduce the relevance or seriousness of such matters for a registered professional.

19.26.11 In Diggins, even for a non-practising barrister, it was held that there was no *"bright line"* to be drawn between that which falls purely within the private realm, and that which is sufficiently public to engage the disciplinary jurisdiction of the relevant Tribunal.

19.26.12 It was held that ultimately the question for the Tribunal in such a case is whether the conduct is likely to undermine trust and confidence in an individual professional or the profession, which is a question for assessment based on the facts of the individual case. Mr Justice Warby referring to the Bar Standard Boards submissions on appeal agreed that *"[t]he public expects, and trusts, members of the profession to exercise judgment, restraint and a proper awareness of the feelings of others."*

19.26.13 The same would be expected of solicitors. The conduct alleged in this respect engaged a standard of behaviour expected of solicitors and as expressly set out in the Warning Notice and Topic Guide such that the Respondent lacked integrity .

19.26.14 *Breach of Principle 6 (equality, diversity and inclusion).* The SRA requires regulated individuals to uphold the reputation of the profession, not only in their professional life but also in their personal life.

19.26.15 The SRA expects regulated individuals to treat people fairly, with dignity and with respect. Solicitors are responsible for making sure that their personal views are not imposed on, and do not have a negative impact on, others, in particular by expressing personal, moral or political opinions on social media which may cause offence. The conduct as set out above, including publishing Tweets to a public audience that were antisemitic, discriminatory, racist and offensive towards Jewish individuals and other nationalities or ethnicities, would have a negative impact on others who follow the Respondent's opinions on social media, and does not encourage equality, diversity and inclusion.

19.26.16 *Breach of Principle 2 (upholds public trust and confidence)* Further, the language used by the Respondent in the Tweets would diminish the trust and confidence the public places in the legal profession in breach of Principle 2 of the Principles.

19.27 Allegation 1.3 – inappropriate and offensive communications with the SRA

19.27.1 In December 2022, the Respondent sent the SRA's Investigating Officer ("IO") offensive emails when he was displeased with the course of the SRA's investigation, including the following:

> *"You are a Zionist apologist and fascist like ur organisation- look forward to the McCarthyite show trial".*
> (16/12/2022 at 11:32 in response to an email from Ms Dhillon at 11:27)

> *"You and your silly little fascist organisation do not have my consent to contact my GP. You and your Zionist racist pals can go and play with Mr Myerson".*
> (13/12/2022 5:02 pm).

19.27.2 The background to these communications from the Respondent was that on 12 September 2022, the Respondent raised a complaint about the IO, alleging that she had misrepresented his responses and was conflating Zionists with Jews.

19.27.3 He alleged she failed to take account of the positive testimonials provided and that he was given insufficient time to obtain his own psychiatric report. The Respondent also alleged that the IO was partial, due to her being (in his belief) of Indian descent.

19.27.4 His complaint included the following about the IO:-

- that she had defamed him as a homophobe;
- that she alleged he had called someone a *'twat'* without supporting evidence;
- that she had engaged in lazy clichés without evidence;
- that she should be removed from the investigation because of his view that she was of Indian descent by saying:

> *"Given the lack of engagement with the points I have raised above, I can only consider that IO who is a Sikh Punjabi is angry about comments made on Twitter by me about the Sikh national hero Ranjit Singh as a rapist of Muslim women. IO should have been excused from considering my case since she considers I am offensive to Indians and IO is very obviously an Indian."*

19.27.5 On 13 December 2022, the IO sent the Respondent an email which provided him with the decision to refer him to the SDT. The email included a request that he consent to the SRA contacting his GP due to the health concerns he had raised. He replied in the terms set out above - the 13 December 2022 email.

19.27.6 When on 16 December 2022, the IO emailed the Respondent with another letter which also included a copy of the SRA's policy on *"Managing unreasonable behaviour against SRA staff"* (dated July 2011), he replied in the terms set out above - the 16 December 2022 email.

19.27.7 The Respondent's conduct towards the IO was in direct contravention of the requirements of the SRA's Managing unreasonable behaviour against SRA staff policy and fulfils some of the examples given of unreasonable behaviour, including verbal abuse, derogatory remarks, offensive language, rudeness, inflammatory statements and raising unsubstantiated allegations.

19.27.8 The comments were made by the Respondent in response to a formal SRA notice setting out allegations of offensive communications, including comments with racist/discriminatory content and overtones.

19.27.9 In his response, the Respondent raised a complaint about the IO including that she should not consider his case because of his understanding that she is of Indian descent. He also called her and the SRA *Zionist apologists* and *Zionists/a Zionist organisation* and a *fascist/fascist organisation*, thus perpetuating the language of his Tweets against the IO because he was presumably unhappy with the outcome of the SRA's investigation at that stage.

Breaches of Principles

19.27.10 *Breach of Principle 5 of the 2019 Principles* - In communicating with the SRA in such a way the Respondent failed to act with integrity, i.e., with moral soundness, rectitude, and steady adherence to an ethical code, as per Wingate.

19.27.11 *Breach of Principle 2 and 6 of the 2019 Principles* - *S*uch communication was also not behaving in a way which would uphold public trust and confidence in the profession and in the provision of legal services and would undermine public confidence. Nor was it behaving in a way to encourage equality, diversity and inclusion.

Witnesses

20. The written and oral evidence of witnesses is quoted or summarised in the Findings of Fact and Law below. The evidence referred to will be that which was relevant to the findings of the Tribunal, and to facts or issues in dispute between the parties. For the avoidance of doubt, the Tribunal read all of the documents in the case and made notes of the oral evidence of all witnesses. The absence of any reference to particular evidence should not be taken as an indication that the Tribunal did not read, hear or consider that evidence. The following witnesses gave oral evidence:

21. Simon Myerson KC

21.1 Mr Myerson became a KC in 2003. He had a general practice including both criminal and commercial work, with some equalities discrimination work, defamation and general common law.

21.2 He is also the Chairman of the Leeds Jewish Representative Council and a Director of Azadi, a charity for helping lawyers and vulnerable women escape from Afghanistan and relocate, and Shoresh a Jewish community charity which makes grants that promote education communal unity within the Jewish community in the UK and Israel. He is also a Bencher of Middle Temple, Vice-Chair of its Education Committee and a delegate to its Equality and Diversity Committee.

21.3 In November 2012 he created the Twitter account *SCynic1*. He Tweets under his own name, as he dislikes anonymous accounts which conceal expertise or the lack of it and encourage rudeness and abuse.

21.4 His Twitter account is used for general discussions of issues of interest and some legal matters, particularly regarding advocacy and access to the Bar. In addition to the above, he regularly uses his Twitter account to promote awareness of antisemitism. He had had a long involvement in the Jewish community and considered himself well-informed about antisemitism and its dangers. He had taught Judaism and antisemitism as part of the Melton programme of adult and undergraduate education run by the Hebrew University and had written courses for those programmes.

21.5 He said he had been a dedicated anti-racist since being a student and was concerned that silence in the face of racism offered it encouragement. He was aware that there are reasonable views to the contrary.

21.6 With respect to the events which took place on 20 to 23 May 2021 he said that on 18 May 2021 he came across a Tweet from Alexandra Wilson *"EssexBarrister"*, on his Twitter feed where she expressed her interest in the conflicts in the Middle East and Israel and asked for book recommendations.

21.7 Ms Wilson had published or promoted a list of books on the topic of Israel but had not addressed the experience of Israelis from a Jewish perspective which Mr Myerson considered to be a significant omission, as in his opinion, the Holocaust was a significant factor in the creation of the State of Israel and the UN vote in its favour.

21.8 He replied to her Tweet by stating that he would have liked to recommend a book on antisemitism. Following his comment, on 19 May 2021, he received responses including a response from Faisel Sadiq. Mr Sadiq responded to his tweet with the following:

> *"Are there any books you would recommend to EssexBarrister or those who follow her that might help them get a better understanding of the history of anti-Semitism contemporary anti-Semitism"*

21.9 Mr Myerson replied directly to Mr Sadiq and Ms Wilson with his recommendation.

21.10 The following day, 20 May 2021, the Respondent replied to his Tweet stating:

> *"We also need to spend time with Palestinians and understand Al Nakba which is on-going. It is not acceptable to peddle racism in the form of Zionism a cruel and fascist ideology. Look how Israeli schools promote killing and enslaving Arabs".*

21.11 Prior to this comment by the Respondent Mr Myerson did not have any prior communication with him and he was not aware of the Respondent's Twitter account.

21.12 Mr Myerson said that he first engaged with the Respondent on this day by replying to his comment. Later that day the Respondent sent further replies to his Tweet. At this stage Mr Myerson decided not to engage any further in these chains of Tweets and comments.

21.13 Mr Myerson thought that the Respondent's views were not uncommon and, whilst his language was on the strong side of condemnation of Zionism, which Mr Myerson did not think was a fascist ideology, Mr Myerson said he had had better things to do than engage with the Respondent.

21.14 However, the Respondent continued to post comments in reply to Mr Myerson's earlier Tweet regarding Israeli schools throughout the day. The Respondent's language became inappropriate.

21.15 Mr Myerson said that he was struck that the Respondent had identified him as a barrister, that his language became steadily more abusive and that he became more personal. Later that day after numerous Tweets from the Respondent, Mr Myerson looked at the Respondent's Twitter profile where his 'bio' stated he was a lawyer.

21.16 Mr Myerson believed that the Respondent was using references to Nazi language and terminology. Equating Israel with the Nazis is antisemitic, since the Israeli state is not a fascist state and the usage was a deliberate reference to the Holocaust in which 6 million Jews were exterminated for being Jewish, including members of Mr Myerson's own family. Mr Myerson considered it was cruel to utilise these references to remind Jews of what had happened to them within living memory, and with which whole families are still struggling to deal.

21.17 The online discussion continued with the Respondent recommending a book by a man called Pappe, an Israeli anti-Zionist with a post at a British University. The Respondent began to call for the elimination of Israel.

21.18 These exchanges were taking place during an Israel incursion into Gaza, caused by the shooting of rockets at Israeli civilians and Mr Myerson's tweet was in relation to the deaths of Israeli civilians, which were widely celebrated on Twitter and in Gaza.

21.19 Mr Myerson found the Respondent's comments about him and his profession as a barrister particularly defamatory and he would have not wanted any of the juniors conducting their pupillage with him to have seen this comment and be affected by it. The Respondent was saying that he, Myerson, personally treated his juniors as he asserted Israelis treat Palestinians which, as he had made clear, was like Nazis. That type of abuse, including references to lynch mobs was wholly beyond acceptable.

22. Stephen Silverman

22.1 Mr Silverman is the Director of Investigations and Enforcement at CAA, a voluntary position that he has held since September 2015.

22.2 CAA is a registered charity that works to counter rising hatred of Jews in the UK. It does this through a number of activities, including outreach, education and promoting zero-tolerance of the law when applied to antisemitic hate crime. In the eight years he had been with CAA, he had spoken on antisemitism to public bodies and academic institutions and provided training on antisemitism to industry regulators (including the SRA), schools, corporations and multiple police forces. He is regularly interviewed by the broadcast media on matters concerning antisemitism.

22.3 He said that he had complied with his duty to assist the Tribunal on matters within his expertise and he understood that this duty overrides any obligation to any party from whom he had received instructions. He had not requested payment for providing this opinion.

22.4 The substance of the material instructions he received from the SRA on 12 July 2023 was to prepare a report in relation to the Respondent. The documents he reviewed to prepare his report consisted of:

- a bundle of extracted Tweets from the Respondent's Twitter feed;
- a separate bundle of the Respondent's entire Twitter feed;
- the original complaints against the Respondent;
- the referral decision;
- The Respondent's representations to the SRA;
- the SRA's Rule 12 statement;
- The Respondent's answer to the Rule 12 statement.

22.5 Mr Silverman said that he was asked to provide an opinion, together with the reasoning supporting his conclusions, with regard to:

- whether any of the Tweets in the extracted bundle were antisemitic;

- the assertions made by the Respondent in his written communications with the SRA about the differences between antisemitism and anti-Zionism;

- criticisms made by the Respondent about certain organisations;

- the Tweets directed by the Respondent at specific individuals known to be of Jewish heritage (Simon Myerson KC and Hugo Rifkind);

- the remarks made by the Respondent about the same individuals in his responses to the SRA.

22.6 Mr Silverman said that much of the material related to discourse about the long-standing conflict between the State of Israel and the Palestinian people (or Arab-Israeli conflict) and he concerned himself solely with matters where discussion of that issue strayed from reasonable debate into clear antisemitism.

22.7 In determining whether the Respondent had used his Twitter account to publish antisemitic remarks and opinions, Mr Silverman said he had been guided by the

International Definition of Antisemitism also known as the International Holocaust Remembrance Alliance (IHRA) Definition of Antisemitism ("the Definition").

22.8 In reaching his conclusions, he weighed each of the Tweets in the bundle, as well as the Respondent's various responses to the SRA, against the Definition. His opinion was also informed by the extensive range of antisemitic tropes and slurs that have been passed down through the centuries and survive to this day.

22.9 Mr Silverman explained that following its adoption in 2005 by the EU Monitoring Centre on Racism and Xenophobia (now the EU Agency for Fundamental Rights) as a *"working definition of antisemitism"*, this non-legally binding guide had become the definition of choice around the world for assessing allegations of antisemitism.

22.10 In 2016, it was adopted by the thirty-one countries comprising the International Holocaust Remembrance Alliance. Within the UK, those who had adopted it include the British Government, the College of Policing, the Crown Prosecution Service, all major political parties apart from the Green Party and UKIP, and a growing number of local authorities and universities. Outside the UK, it has been adopted by the European Parliament, the US Department of State and the US Senate, as well as a large number of national and provincial governments around the world. It also enjoys the support of most of the Jewish community.

22.11 The Definition consists of:

- a description of the characteristics of antisemitism;
- a summary of the way in which antisemitism manifests itself;
- a non-exhaustive list of eleven examples of behaviour that might be construed as antisemitic.

22.12 He said that of the eleven examples of antisemitic behaviour, six are relevant to this case:

> *"Example 2: Making mendacious, dehumanising, demonising, or stereotypical allegations about Jews as such or the power of Jews as collective such as, especially but not exclusively, the myth about a world Jewish conspiracy or of Jews controlling the media, economy, government or other societal institutions.*
>
> *Example 5: Accusing the Jews as a people, or Israel as a state, of inventing or exaggerating the Holocaust.*
>
> *Example 6: Accusing Jewish citizens of being more loyal to Israel, or to the alleged priorities of Jews worldwide, than to the interests of their own nations.*
>
> *Example 7: Denying the Jewish people their right to self-determination (e.g. by claiming that the existence of a State of Israel is a racist endeavour).*

Example 9: Using the symbols and images associated with classic antisemitism e.g., claims of Jews killing Jesus or blood libel) to characterise Israel or Israelis.

Example 10: Drawing comparisons of contemporary Israeli policy to that of the Nazis."

22.13 Discussion and critique of the Israeli Government, the presence of the Israeli military and Israeli civilians in the area known as the West Bank and questioning the legality of Israeli military action were not intrinsically antisemitic under the Definition, and it was wrong to suggest that they were.

22.14 Proportionate criticism of Israel expressed in a way that does not violate the Definition cannot be considered antisemitic.

22.15 Mr Silverman concluded that though the Respondent insisted that he is not an antisemite, the nature of his Tweets and the justifications he made for them in his written communications with the SRA indicated a mindset that divides Jews into good and bad, which is a common feature of antisemitic thinking. It requires Jews to conform to the way in which the antisemite believes they should behave and how they should express their identity.

22.16 Here, it resulted in the majority of Jews being placed in the *"bad Jew"* category. For believing in their right to self-determination, the Respondent freely accused Jewish individuals of racism and supremacism. He employed conspiracy theories that had led to the murder of Jews, and he had used language from Nazi Germany to tell Jews that they had become the new Nazis.

22.17 Finally, it appeared to Mr Silverman that the Respondent took issue not just with the behaviour of Israel in what is known as "the Occupied Territories", but with the very existence of Israel as a homeland for the Jewish people and in Mr Silverman's opinion this is the language of not just antisemitism but of antisemitic extremism.

An indication of the matters to which Mr Silverman was taken by the Respondent in cross-examination are set out below.

23. <u>Respondent's Application to Strike Out expert evidence</u>

23.1 During his cross examination of Mr Silverman, the Respondent made an application on notice to the Applicant, for an order that Mr Silverman's evidence be struck out on the basis that Mr Silverman had failed to adhere to his remit as an expert.

23.2 The Respondent submitted that Mr Silverman's remit was limited to commenting on matters related to antisemitism and the "*Respondent's comments about the Israeli Government, the policies and actions of the Israeli Government, the causes and conduct of the conflict, and any other purely political matters are beyond the scope of this report unless they are made using antisemitic language."*

23.3 However, the Respondent submitted that Mr Silverman had no qualifications other than his personal experience to understand antisemitism based on his experience as a Jewish person and from working in CAA .

23.4 The Respondent said that Mr Siverman lacked the necessary knowledge expected of an expert and he gave the following examples, supported by press articles provided to the Tribunal, to make his point:

- Mr Silverman detailed the 1948 Israeli war, and claimed the "Nakba"[1] occurred in a war because Israel was attacked by multiple Arab countries

- Mr Silverman did not know anything about Israeli planning laws and monetary fines on Palestinians for building without permission or for getting permission to build or for house demolishing fines.
- That Mr Benjamin Netanyahu, the Israeli Prime Minister, had blamed Palestinians for the holocaust.

- That former Israeli Prime Minister, Ariel Sharon, was a war criminal, who was blamed by Israeli Kahan Commission for the Sabra and Chatilla refugee camps massacre of 1982. To describe Sharon as a man who *"enjoyed massacring Palestinians"* was not *'blood libel'* as asserted by Mr Silverman.

23.5 The Respondent submitted that Mr Silverman had engaged in deliberately misleading the Tribunal by claiming that four Palestinian children killed in Jenin were *'terrorists'* of Palestinian Islamic Jihad. One of the boys was murdered by sniper fire as he stood waiting to give blood outside a hospital in Jenin refugee camp. It was similarly very unlikely that the other three were members of an armed Palestinian resistance faction as asserted falsely by Mr Silverman.

23.6 As to equality between Israeli Citizens, Mr Silverman mislead the Tribunal by asserting there are equal rights for all citizens of Israel. The Palestinian Bedouin, who are Israeli citizens, were being ethnically cleansed in the Negev/Al Naqab. This was being funded in part by the Jewish National Funds UK which is building settlements for Israeli Jews where the Palestinian Bedouin once lived. The CAA, Mr Silverman's organisation, is also funded by Jewish National Funds UK.

23.7 Mr Silverman was wrong to say that Zionists killing Palestinian children is blaming Jews for killing children and that this too is a *blood libel* against Jews. Mr Silverman was unable to recall one of the most infamous cases of child killing by a *'Zionist soldier'*, the soldier had been a Druze and not a Jew.

23.8 Mr Silverman, was not able to provide basic details of history in a balanced manner for the purposes of the Tribunal and he provided a highly one sided account of Israel/Palestine, by claiming there were '*counter narratives';* denying that Palestinian citizens of Israel were discriminated against in favour of Jewish Israelis and by denying that family reunion is harder for Palestinians who marry either a foreigner or a Palestinian from the West Bank, Gaza or East Jerusalem.

23.9 As an expert witness he therefore exceeded his limited remit of being able to comment on antisemitism. He was not aware of discriminatory Israeli laws against Palestinian Citizens of Israel or refused to acknowledge the same.

[1] The Nakba, which means "catastrophe" in Arabic, refers to the mass displacement and dispossession of Palestinians during the 1948 Arab-Israeli war. Before the Nakba, Palestine was a multi-ethnic and multi-cultural society

23.10 In the circumstances The Respondent contended that the 'expert' report was fundamentally flawed because it failed to detail:

- The extent to which the expert's opinion was based on material falling outside the expert's own field of expertise.

- The completeness of the information available to the expert, and whether the expert took account of all relevant information in arriving at the opinion (including information as to the context of any facts to which the opinion relates); and

- If there was a range of expert opinion on the matter in question, where in the range the expert's own opinion lies and whether the expert's preference has been properly explained.

23.11 The Respondent said that the fact that Mr Silverman failed to disclose the facts of ethnic cleansing of Palestinian Israeli Citizens to the Tribunal underlined that his evidence was unreliable and that it should be struck out.

23.12 The Respondent said that Mr Silverman had failed to satisfy Rule 30(6)(c) of SDPR 2019 and the Applicant by relying on this evidence had prejudiced a fair hearing and for this reason the substantive hearing had to be started afresh pursuant to the overriding interests of justice.

23.13 Ms Culleton opposed the application. She responded that it was to be remembered that this case was about Tweets and inappropriate, offensive, and antisemitic language alleged to have been used in Tweets on the Respondent's Twitter feed. Mr Silverman was called to assist the Tribunal with that issue and to provide an opinion as to which Tweets in the Respondent's Twitter feed were antisemitic.

23.14 This was the reason why the Tribunal gave its permission for this evidence to be admitted under Rule 30 of the SDPR 2019 at an earlier case management hearing.

23.15 The scope, remit and methodology of Mr Silverman and his approach to the task was clearly set out in his report. The Respondent's comments about the Israeli government, the policies and actions of the Israeli government and the causes and conduct of the conflict, including other, purely political matters were beyond the scope of Mr Silverman's remit unless they were made using antisemitic language.

23.16 All the points that the Respondent was seeking to make in his application did not go to a reason to strike Mr Silverman's evidence out. Instead, they went to submissions that the Respondent may wish to make in his closing submissions with respect to the weight that can be attached to Mr Silverman's evidence, or questions over credibility and expertise.

23.17 Further, it was the Respondent's questions of Mr Silverman which had drawn Mr Silverman more into politics and other contextual matters, some more relevant than others. Ms Culleton said in her submission Mr Silverman had indicated what he felt able to comment on as properly within his remit, and what was not. He also indicated where there was a range of views and he also indicated where and how context is

relevant to the Tweets and whether, in his view, they were antisemitic. He had not sought to mislead the Tribunal.

23.18 The Respondent had had every opportunity since the service of the Rule 12 statement to challenge the use of Mr Silverman as an expert, yet he had not done so until day three of Mr Silverman giving evidence.

23.19 Mr Silverman's report had been entirely properly adduced pursuant to Rule 30 SDPR 2019, and in line with the relevant principles of the Civil Procedure Rules. By way of example, expert evidence shall be restricted to that which is reasonably required to resolve proceedings, and this was what Mr Silverman had done in setting out his remit. He was not seeking to go beyond that. He had clearly set out his overriding duty to the court in terms of what his duty to the court was i.e., to assist this Tribunal. He had a proper declaration in his report to this effect.

23.20 It was a matter for the Tribunal as to the weight it attached to the evidence and if the Tribunal considered there to have been any answers by Mr Silverman which it viewed to be outside his remit or outside his field of expertise, it would no doubt discount those answers as not necessary for the proper consideration of an issue or issues in the case.

23.21 Finally, Ms Culleton said that had the Respondent wished to instruct his own expert to provide a counter-opinion, he had had every opportunity to do so since the directions that were set at the case management hearing, but he had not done so.

The Tribunal's Decision

23.22 The Tribunal characterised the Respondent's application as one in which he sought to strike-out the expert evidence, discharge Mr Silverman as an expert witness, and stop the hearing and have a re-hearing at a future date.

23.23 The application was considered very carefully in the light of all the submissions and was refused.

23.24 The Tribunal concluded that the Respondent's submissions were matters which went to the weight it should attach Mr Silverman's evidence, and to his credibility rather than whether expert evidence in this case, as a matter of principle, should have been admitted at all.

23.25 The Tribunal had made careful note of the Respondent's cross-examination and the points he had made, and it would weigh those against the evidence that Mr Silverman had given at the appropriate time in the proceedings, which would now continue. The Respondent was invited by the Tribunal to continue his cross-examination.

24. Application for the Chair to recuse himself

24.1 The application was made by the Respondent at the close of the Applicant's case.

24.2 The Respondent said that the continuation of Mr Ellerton (Chair) in this matter was not in accord with the overriding interests of justice because, in his submission, Mr Ellerton

had or was likely to have had judicial bias and that his decision making was affected by actual or apparent bias.

24.3 The Respondent said the test for determining apparent bias is set out in Porter v Magill [2002] 2 AC 357 namely, whether a fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that the judge was biased, if so, then the judge must recuse themself. That test is to be applied having regard to all the circumstances of the case. A Judge must ensure that they remain independent and that they are seen to be independent of any influence that might reasonably be perceived as compromising their ability to judge cases fairly and impartially.

24.4 The Respondent quoted Arden LJ put it in the case of Mulugeta Guadie Mengiste and Other v Endowment Fund for the Rehabilitation of Tigray and Others [2013] EWCA Civ 1003, *'to maintain society's trust and confidence, justice must not only be done but be seen to be done'.*

24.5 In summary, the Respondent asserted that the Chair demonstrated bias in the following ways:

- *Misdirecting the Tribunal in respect of allowing Mr Silverman to give expert evidence in relation to matters in which he was lacking in any qualifications (politics and history);*

24.6 The Chair demonstrated bias by allowing into evidence an expert report from Mr Silverman which exceeded its remit. Mr Ellerton acted unreasonably by failing to exclude any of Mr Silverman's evidence, even when it exceeded the limited remit permitted of his professed expert knowledge.

24.7 Mr Silverman stated in cross examination on 22 September 2023 that *"he does not follow Israeli politics"* however, he was permitted to give evidence on politics and history of Israel/Palestine. Mr Silverman has no qualifications other than his supposed expertise in antisemitism.

24.8 The Chair permitted evidence to be included from Mr Silverman, the prejudicial value of which outweighed its probative value. He also permitted Mr Silverman to make perverse criticisms of Amnesty International, Jewish academics and politicians as well as asserting positions on legal matters despite not being qualified to do so.

24.9 Therefore, the Respondent said the Chair misdirected the Tribunal in respect of allowing Mr Silverman to give *'expert'* evidence in relation to matters for which he was lacking in any qualifications whatsoever relevant to the issue.

- *Telling the Respondent that he had insulted Mr Silverman;*

24.10 The Chair was unable to give an answer when asked by the Respondent how he had insulted Mr Silverman. The Chair knew that the Respondent had a mental health problem of anxiety and depression. Further, what the Chair had said caused the Respondent much more anxiety and depression.

24.11 Ms Keen, lay panel member, interjected, and asked the Respondent whether he was applying for an adjournment because he was not fit and well to continue and the Respondent replied that he would fight this case even *'if he were on his death bed'*, but did not think that he was fit and well to proceed. Further the Tribunal according to the Respondent did not know whether he was fit to participate in the hearing either. The Respondent emphasised that the Tribunal knew he was signed off sick with depression and anxiety. The Panel decided to have a break. Upon returning from the break, the Chair asked the Respondent to continue with his cross examination of Mr Silverman and the Respondent then formally applied for an adjournment of the hearing since he was unable to continue due to his heightened anxiety and depression. The Tribunal again adjourned and upon returning from their adjournment agreed to continue the hearing again at 10am the following day. The Chair confirmed that the Respondent had properly conducted himself in robust cross examination of Mr Silverman.

- *Objecting to him laughing in response to submissions made by counsel for the SRA*;

24.12 The Respondent said that Ms Culleton had disputed the fact that Mr Silverman was not balanced and that he was deliberately misleading the Tribunal. The Respondent laughed when Ms Culleton claimed that Mr Silverman had given a range of opinions in his answers where such existed. The Respondent submitted that the Chair angrily declared to the Respondent that he was not acting appropriately and that he had challenged him over this the previous day . It appeared to the Respondent that the Chair was seeking to rescind his claim of 21 September 2023 that the Respondent had at all times properly conducted himself. The Chair expressed his criticisms in absolute terms, failing to leave room for any explanation.

- *Objecting to his cross examination of Mr Silverman in respect of his credibility;*

24.13 Mr Silverman lacked credibility. With respect to the Al Jazeera Tower Block Bombing in 2021 Mr Silverman first claimed that the Tower block building housing the Al Jazeera channel had been bombed due to ammunition being present there. Mr Silverman asserted that Hamas, a *'militant terrorist group'* used civilian sites to hide weapons. Mr Silverman withdrew his claim when the Respondent pointed out that mainstream news sources had cast doubt on this assertion. The Respondent said that this demonstrated that the claim by Mr Silverman was made in bad faith.

24.14 Mr Silverman failed to give a range of views where different views exist. On the killing of Palestinian children, in particular, with respect a two-year-old shot in the head whilst seated in the back seat of his father's car earlier in 2023, Mr Silverman claimed that when one dug into this there was often an explanation, such as attacking a soldier. This, in the Respondent's submission, was nonsense in the context of this example. The Israeli army had not asserted that it was actually under attack or about to be attacked by the two-year-old. Mr Silverman's bias was indicated by the lack of any appreciation or willingness to concede that innocent Palestinian children were being killed by Israeli forces. Therefore, the Respondent submitted that the SRA had wasted three days of hearing time by presenting a partisan witness from a campaigning group who was engaged in '*Zionist propaganda'*.

24.15 Further, Mr Silverman had falsely claimed that all Israeli citizens are equal. Mr Silverman denied the fact that those Israeli Palestinians with Israeli citizenship do not have the same rights in terms of family reunification as Israeli Jews.

24.16 Mr Silverman claimed that there were narratives and counter narratives in relation to the Sabra and Chatilla massacre. It was noticeable to the Respondent that Mr Silverman engaged in constant deflection of questions in order to try and put the best possible answer for Israel and not to accept legitimate criticism of Israel when that was very much deserved. The same was the case when the Respondent questioned Mr Silverman on the fact that when there was last a genocide in Europe, Israel was on the wrong side, supporting the Bosnian Serbs with training to kill Bosnian Muslims, which Mr Silverman again denied.

24.17 Mr Silverman also deceived the Panel by:

- Falsely claiming neighbouring Arab Countries detained Palestinian refugees in refugee camps to prevent their return to Israel/Palestine.

- That the Nakba, Palestinian expulsion occurred during the heat of war.

- The views of Illan Pappe (an Israeli historian, political scientist and former politician) on the 1948 ethnic cleansing are clear, but Mr Silverman did not put this side of the account to the Tribunal. Mr Silverman as a Zionist, failed to act as an expert witness and only gave a partisan Zionist account.

- *Objecting to his cross-examination of Mr Silverman on the basis of asserting that Mr Silverman was being antisemitic/was antisemitic;*

24.18 The Respondent asserted that it was in fact Mr Silverman who was an antisemite. Mr Silverman said that he would not dignify that question with an answer. The Chair asserted, wrongly, that the Respondent had passed a *'red line'*.

24.19 However, the Respondent contended that this question had been a legitimate one because all the Jewish, anti-Zionist, sources the Respondent had cited to Mr Silverman were branded problematic Jews and *'self-haters'* by Mr Silverman.

24.20 The Respondent contended that the question as to whether Mr Silverman, himself, was antisemitic had been a reasonable one in light of the fact that Mr Silverman '*smeared'* the good reputation of Gideon Levy, Avi Shlaim (Israeli journalist and authors) and Illan Pappe as *'self-hating Jews'* who had suffered some mental trauma so had turned on their country. Further the question of Mr Silverman's prejudices was relevant since he and his campaigning organisation had twisted the definition of antisemitism to mean criticism of Israel as opposed to hatred against and discrimination against Jews.

- *Thanking Mr Silverman at the end of his evidence;*

24.21 The Respondent submitted that the Chair did not object to the many falsehoods stated by Mr Silverman, and instead thanked him on behalf of all parties. The Chair had no basis to thank the Mr Silverman on behalf of the Respondent. Mr Silverman's evidence was tainted with significant bias and any reasonable Judge chairing a tribunal panel

who was not biased should reasonably have criticised the SRA for bringing such an inappropriate expert belonging to a partisan campaigning organisation which had been funded by hardline Zionist groups like the Jewish National Fund UK.

- *Allowing Mr Silverman to ask questions of him (the Respondent).*

24.22 Mr Silverman was purported to be an expert witness able to conduct himself properly during a tribunal hearing. However, he constantly asked the Respondent questions during cross examination, and the Respondent repeatedly told Mr Silverman that the purpose of cross examination was not for him to ask the Respondent questions, but it was for the Respondent to ask him questions. Despite this on 22 September 2023 Mr Silverman again asked the Respondent if he knew the Haredi sect named *Neturei Karta*.[2] The Respondent told Mr Silverman that he was conducting the cross examination and that it was not for him to ask him questions.

24.23 The Chair stated that the Respondent had to answer Mr Silverman's question. The Respondent replied firmly that this was highly irregular and that during cross examination the witness could not put questions to the lawyer. The Chair insisted that the Tribunal had the jurisdiction to give latitude and that the Respondent should respond. The Respondent shook his head in the negative. In the *'awkward silence'* that followed Mr Silverman answered that for the benefit of the audience he would explain that *Neturei Karta* are the Haredi sect who reject Israel and even attended events with *'antisemites'* such as the Quds day events held in London and attended a holocaust denial conference with Mr Ahmadinejad in Tehran.

24.24 The conduct of the Chair in not preventing Mr Silverman from disrupting the Respondent's cross examination, undermined the cross examination and he humiliated the Respondent by an insistence that the Respondent answer Mr Silverman's question.

24.25 Additionally, the Respondent submitted the following:

- The words used by Mr Ellerton were humiliating, degrading and intimidating and designed to create hostile offensive environment to prevent the Respondent from actively representing himself by deliberately seeking to attack his mental health.

- An expert witness may be challenged for their dishonesty and Mr Ellerton was wrong to suggest otherwise. Mr Ellerton shielded Mr Silverman's evasiveness by failing to order him to answer the Respondent's question as to whether he would give an interview to the English Defence League (EDL). Instead, Mr Ellerton allowed Mr Silverman to interrupt the Respondent's lines of questioning with his own questions and at no time did Mr Ellerton direct Mr Silverman to properly understand his role by telling him that there was no entitlement for the expert to attempt to turn the tables during cross examination and instead conduct his own cross examination.

- Further, there was nothing wrong with suggesting that Mr Silverman was '*weaponising'* the IHRA definition. Numerous academics and commentators had made that argument.

[2] 'Guardians of the City' is a religious group of Orthodox Jews which is anti-Zionist, founded in 1938.

The Applicant's Submissions in opposition

24.26 Ms Culleton did not accept that Mr Ellerton, as Chair, demonstrated bias, actual or apparent towards the Respondent.

24.27 Ms Culleton submitted that the Respondent's application was misconceived, and in some instances simply inaccurate and that a correct application of the relevant principles would lead to the conclusion that what the Respondent was in fact taking issue with entirely appropriate case management decisions of the proceedings by the Chair. Mr Ellerton made appropriate interventions and was courteous to the witness. Mr Ellerton also expected appropriate levels of conduct and courtesy by both parties to the proceedings.

The Law

24.28 The well-established authority of Porter v Magill [2001] UKHL 67/2002] 2 AC 357 sets out the test to consider/determine judicial bias:

"The question is whether the fair- minded and informed observer, having considered the facts, would conclude that the tribunal was biased".

24.29 Ultimately, each case turns on its own facts (Rasool v GPhC [2015] EWHC 217 (Admin)) and as Carnwath LJ observed in Mahfouz v GMC [2004] EWCA Civ 233, the underlying question is whether the proceedings are fair and seen to be fair.

24.30 In addition to Porter v Magill, Ms Culleton said that the following authorities provided assistance in how such an application for a panel member to recuse themselves due to bias should be approached in general terms:

- In Helow v Secretary of State for the Home Department [2008] UKHL 62, the House of Lords clarified that the fair-minded and informed observer *"is neither complacent nor unduly sensitive or suspicious"* (paragraph 39) and that they are someone who takes a balanced approach to any information they are given, takes the trouble to inform themselves on all matters that are relevant, and are "*the sort of person who takes the trouble to read the text of an article as well as the headlines"* and is able to put information into its overall social, political or geographical context (paragraph 3). Such a person reserves judgment until they have seen and understood both sides of the argument.

- The position of the fair-minded and informed observer is not to be confused with that of the person making the allegation of bias; such a litigant lacks the objectivity which is the characteristic of the fair-minded and informed observer (Harb v HRH Prince Abdul Aziz bin Fahd bin Abdul Aziz [2016] EWCA Civ 556, at paragraph 69).

- In Resolution Chemicals Ltd v H Lundbeck A/C [2013] EWCA Civ 1515, the Court of Appeal emphasised that there must be a real possibility of bias; although the standard of probability does not have to be reached, the test is not whether there is *"any possibility"* of bias (paragraph 36).

- In Locabail v Bayfield [2000] OB 451, the Court of Appeal held that *"The mere fact that a judge, earlier in the same case or in a previous case, had commented adversely on a party or witness, or found the evidence of a party or witness to be unreliable, would not without more found a sustainable objection".*

- A judge asked to recuse himself or herself should do so only where the case is properly made out. It must be borne in mind that, in our system, litigants are not permitted to choose their judges. In Dobbs v Tridios Bank NV [2005) EWCA 468 Chadwick LJ (with whom Longmore and Neuberger LJJ agreed) declined to recuse himself on grounds of bias. He said: "*But it is important for a judge to resist the temptation to recuse himself simply because it would be more comfortable to do so. The reason is this. If judges were to recuse themselves whenever a litigant - whether it be a represented litigant or a litigant in person - criticised them (which sometimes happens not infrequently) we would soon reach the position in which litigants were able to select judges to hear their cases simply by criticising all the judges that they did not want to hear their cases. It would be easy for a litigant to produce a situation in which a judge felt obliged to recuse himself simply because he had been criticised - whether that criticism was justified or not. That would apply, not only to the individual judge, but to all judges in this court; if the criticism is indeed that there is no judge of this court who can give Mr Dobbs a fair hearing because he is criticising the system generally. Mr Dobbs' appeal could never be heard".*

24.31 With respect to a Chair, or panel's, approach in regulatory/disciplinary proceedings, Ms Culleton said that Porter v Magill is the confirmed leading authority on bias in the regulatory arena and in terms of a Chair, or Panel's approach, in disciplinary proceedings, CRHP v Truscott: Ruscillo v CRHP [2004] EWCA Civ 1356, held that:

> *"The disciplinary tribunal should play a more proactive role than a judge presiding over a criminal trial in making sure that the case is properly presented and that the relevant evidence is placed before it".*

24.32 In Ms Culleton's submission there was nothing objectionable in a panel Chair:

> *"intervening from time to time to make sure that he has understood what the witness is saying, to clear up points that have been left obscure, to make sure that he has correctly understood the technical detail, to see that the advocates behave themselves, to protect a witness from misleading or harassing questions, or to move the trial along at an appropriate pace by excluding irrelevancies and discouraging repetition"* (Hadi Jemaldeed v A-Z Law Solicitors [2012] EWCA Civ 1431.

24.33 In respect of the behaviour or attitude of the panel, it was useful and relevant to refer to Aaron v Law Society [2003] EWHC 2271, in which Auld LJ concluded that in applying the test of Porter v Magill, there had been:

> "*nothing in the circumstances of the case, in particular, not in anything done or said by the Tribunal .... that would lead a fair-minded and informed observer to conclude that there was a real possibility that it was biased".*

In this case, the solicitor and his counsel threatened to leave the hearing to force an adjournment and a degree of frustration on the part of the tribunal. Auld LJ observed that:

> "*Irritation with those appearing before them, is sadly the common lot of most courts and tribunals from time to time, and is not of itself a basis, subjectively or objectively, for requiring them to recuse themselves on account of bias from further proceedings between the same parties*".

24.34 Auld LJ also noted:

> *"It is important to remember in claims of objective or apparent bias, that, although an accused's fear of bias is important, it is not decisive. What is decisive is whether his fear can be objectively justified ..."*.

24.35 In Smart v NMC [2015] EWHC 1807 (Admin), the appellant alleged that the panel Chair engaged in criticism of his cross-examination of a witness and that this demonstrated that the Chair was biased. Having looked at the transcript, Picken J said, at [111] - [115], that nothing remotely wrong was said by the Chair. The fact that the appellant had been reminded by the Chair to ensure that his cross-examination remained relevant was entirely unexceptional and indeed, entirely appropriate. A passage in which the Chair thanked a witness for coming to give evidence, referring to that witness having *'had a long two days'* giving evidence, entailed no criticism by the Chair of the appellant, the Chair, on behalf of the panel, was merely demonstrating courtesy to the witness. The Judge held that the conduct of the panel, including its Chair, was scrupulously fair.

24.36 Ms Culleton addressed the Respondent's complaints directly as follows:

Misdirecting the Tribunal in respect of allowing Mr Silverman to give expert evidence in relation to matters in which he was lacking in any qualifications (politics and history)

24.37 This was a repeat of the Respondent's application for the evidence of Mr Silverman to be struck out (which occurred at the outset of 22 September 2023). In the present application it was framed in terms of asserting that the Chair had erred in misdirecting the Tribunal in this respect, presumably leading the Tribunal to make what the Respondent would say is the wrong decision of refusing his application to strike out Mr Silverman's evidence.

24.38 This did not correctly fall within this application for the Chair to recuse himself, instead it appeared to be a route for the Respondent to seek to go behind a decision already made by the Tribunal. The matters that he referred to could be raised by him in his evidence to the Tribunal, and in closing submissions, and go more to what weight should be attached to Mr Silverman's evidence rather than to striking it out, or by a review of a decision already made by the Tribunal (as a whole). This application was not the appropriate route to seek to challenge a decision already made by the Tribunal to not strike out Mr Silverman's evidence.

- *The Chair telling The Respondent that he had insulted Mr Silverman*

24.39 On 21 September 2023 during cross-examination of Mr Silverman by the Respondent, the Chair said "*No, Mr Husain, I think you're sort of bordering on being abusive at times to Mr Silverman and I think you really need to be careful what you say. So do you want to ask him a clear, direct question about that tweet or do you want to move on to the next one?"* **[**Page 66 of the transcript of 21 September 2023 lines 4 - 7].

24.40 This had come about following the Respondent asking Mr Silverman whether he would give an interview to a fascist, in the context of the Tweet directed towards Hugo Rifkind's interview of William Dalrymple, and the Respondent stating that he would not expect Mr Dalrymple to give an interview to a Zionist, just like surely Mr Silverman would not give an interview to a fascist [Lines 21 - 26, page 65 of the transcript of 21 September 2023]. Mr Silverman then responded following which it was further suggested to him that Mr Silverman would not give an interview to someone from the English Defence League ("EDL"). This led to Mr Silverman saying that he wasn't *"going to dignify that with an answer"*. The Respondent then said *"Well, I'm dignifying you with questions, sir"*, leading to the Chair's intervention as set out above. It was therefore this context and this tone of questions from the Respondent which immediately led up to the intervention complained about by him.

24.41 Further questions were then put to Mr Silverman and the Chair then asked the Respondent to move on to the next Tweet. It was at this point the Respondent then asked the Chair to point out how he had been abusive to Mr Silverman. The Chair responded that he could not *"now because my mind has moved on. I just picked up earlier on something which I thought was too borderline, my apologies. I can't now immediately rewind to what I was thinking. Let's move on. As I said it's a cross-examination; everybody knows that, and you are entitled to be pretty direct on cross-examination ... "*.

24.42 The Chair further said that it was '*absolutely not his intention to intimidate the Respondent'* when this was suggested. However, the Chair did reiterate that whilst he was taking account of the Respondent's health, giving him extra time, extra breaks and extra leeway, if he did *"perceive that what you're saying goes beyond what's acceptable, notwithstanding your condition, I will point that out"*.

24.43 After a break at that stage, the Chair provided one example that the Respondent had made a comment about a *"cruise missile or something like that"*, which as Tribunal Chair he thought was wording going beyond cross-examination and was verging into being inappropriate for cross-examination. This had been earlier in the day. However as set out above it was the Respondent suggesting that Mr Silverman would not give an interview to a fascist or to the EDL, in the context of the Respondent being critical of William Dalrymple giving an interview to a Zionist (referring to Hugo Rifkind) and that as he was dignifying Mr Silverman with questions, Mr Silverman should answer that, that led to the Chair's intervention at that point. As for Mr Hussain's comment about a missile, this can be seen at page 46 [lines 29 - page 47 - line 7] as follows:-

> *Q. You, Mr Silverman, are the equivalent of a patriot missile wiping out free speech in England and Wales, aren't you? [The Respondent having suggested that Mr Silverman weaponized the interests of Israel through the IHRA]*

A. I'm sorry - [Crosstalk]

A. You're just being silly now.

CHAIR: No, that is a step too far, to put it mildly, Mr Husain. So, do you want to ask Mr Silverman anything else about that particular Tweet which Mr Silverman, in my view, has contextualised and explained why he thinks that is antisemitic? Is there anything else that you want to say about that, to Mr Silverman?

24.44 Potential other examples of where the Respondent had strayed from appropriate cross-examination of Mr Silverman, are when he said to Mr Silverman "*I know that you don't have any qualifications, but you can read English .... "* and, when Mr Silverman was attempting to answer a question and being interrupted by the Respondent, who indicated to the Chair that Mr Silverman was prevaricating. The Respondent also asserted to Mr Silverman that he had become an apologist for Israel and subsequently he did not let Mr Silverman answer a question and said that he did not want to respond to all the red herrings that Mr Silverman was throwing up. There had, in Ms Culleton's view, been a wider background and context leading up to the Chair's intervention as well as the nature and tone of the questions immediately beforehand.

24.45 Ms Culleton said that a regulatory/disciplinary tribunal, such as the SDT, is expected to take a proactive role in managing a hearing, which includes ensuring that questions asked are appropriate, that conduct towards witnesses is appropriate and intervening where they are not, including to protect a witness from "*misleading or harassing questions, or to move the trial along at an appropriate pace by excluding irrelevancies and discouraging repetition".*

24.46 Ms Culleton said that this was precisely the role which the Chair was fulfilling and that it was not the case that his conduct in so doing demonstrated bias towards the Respondent. Rather, it demonstrated that he was intervening in an entirely normal and expected way of Chairs/panels to ensure the smooth running of hearings as much as possible and to make sure the conduct of all parties remained appropriate.

24.47 In respect of the Respondent's indication of health matters the Tribunal made reasonable adjustments from day one of the hearing, as requested by him, notwithstanding that he had not evidenced his health matters to the usual expected standards and as required by the Tribunal's rules and guidance.

24.48 The Chair informed the Respondent that:

> *"on the whole, you have conducted the cross-examination entirely capably, particularly that you're unrepresented and you've told us the issues that you suffer from. So, we've seen nothing that would suggest that we can't proceed".*

- *Chair objecting to The Respondent laughing in response to submissions made by counsel for the SRA.*

24.49 The Respondent laughed at one point during counsel for the Applicant's submissions in response to the Respondent's application to strike out Mr Silverman's evidence [lines

20 21, page 9 of the transcript for 22 September 2023]. When counsel for the Applicant responded to this by asking the Respondent to go on mute whilst she was making submissions, the Chair intervened stating:

> *"Mr Husain, please. I picked you up yesterday and you wanted a specific example of when I considered that your behaviour crossed a line, and that is an example. So, laughing at the point where Ms Culleton's making her submissions, that does cross that line, so please go on mute."*

The hearing then continued.

24.50 In accordance with the authorities Ms Culleton said , there is nothing objectionable in a panel/ Chair *"intervening from time to time ..... to see that the advocates behave themselves ..... "* (Hadi Jemaldeed v A-Z Law Solicitors [2012] EWCA Civ 1431. In this instance, Ms Culleton said this was all that the Chair was doing, and it was to be expected that a Chair will intervene if a party to proceedings, or an advocate, is conducting themselves unprofessionally or disrespectfully. In fact, the Respondent apologised for his conduct in this respect, indicating an awareness and acceptance that such conduct had not been appropriate.

- *Objecting to the Respondent's examination of Mr Silverman in respect of his credibility*

24.51 In his application the Respondent indicated that he had asserted to Mr Silverman that he had lied about an incident he was describing and that he was deliberately misleading the Tribunal. It was perhaps one thing to suggest that an expert witness is mistaken or wrong in respect of their position on an issue, or that they are not being impartial or objective or correctly discharging their duty to the tribunal; it is another to suggest that they are being dishonest and seeking to deliberately mislead the Tribunal. It was this that the Chair objected to. Ms Culleton submitted that this had been a correct intervention by the Chair to manage the proceedings and to ensure that cross-examination was conducted in a proper way.

- *Objecting to the cross-examination of Mr Silverman on the basis of asserting that Mr Silverman was being antisemitic/was antisemitic.*

24.52 The Respondent asserted that he was not allowed to cross-examine Mr Silverman on whether Mr Silverman is in fact antisemitic. That was not true, he did cross-examine Mr Silverman on that and he was not prevented from putting that question to Mr Silverman by the Chair.

24.53 This occurred at paragraph 28 on page 55 of the transcript of the 22 September 2023 and the exchange was as follows:

> *Q. In relation to the allegation that there are tropes against Jews for being aligned to Israel or engaging in grandiose conspiracies, now I put to you, Mr Silverman, that it is, in fact, you who are engaging in the antisemitic trope that there's a collection of Jews who are self-haters, who have turned against their nation and are spouting wild conspiracy theories. You are wrong, aren't you, Mr Silverman?*

A. Are you accusing me of being an antisemite?

Q. Yes.

A You are.

Q. Yes.

24.54 Mr Silverman then answered this assertion and addressed the issue in some detail. There was no such expression by the Chair that the Respondent had *'passed a red line'* on this matter and in fact the Chair encouraged Mr Silverman to answer the question and expand on the issue.

- *Thanking Mr Silverman*

24.55 As per Smart v NMC [2015) EWHC 1807 (Admin), it is not unusual, and not an indicator of bias, to thank a witness. This merely demonstrates courtesy to the witness.

- *Allowing Mr Silverman to ask questions of him (the Respondent)*

24.56 When the Respondent suggested that Mr Silverman himself was an antisemite, as part of his response Mr Silverman posed the question (almost a rhetorical question) *"Are you familiar with Neturei Karta?"* [Line 11 page 56 in the transcript for 22 September 2023]. The Respondent objected to being asked a question and when asked by the Chair if he wished to finish the point he was making, Mr Silverman said in explanation at lines 31 - 33 on page 56 *"Yes, please. Maybe what I should have said is that I would like to explain Neturei Karta for the benefit of everyone else who is here because I don't expect you to be aware of this".*

24.57 The posing of a question in response to the Respondent's questions was therefore a turn of phrase, or a rhetorical question in order to be able to expand on the issue/ explain his position.

24.58 The Chair did not therefore allow Mr Silverman to ask the Respondent questions, nor can it be said that Mr Silverman disrupted the Respondent's cross-examination or that the Chair allowed that. The situation did not unravel in the way that the Respondent had sought to present in his application.

The Chair's Decision on Recusal

24.59 Mr Ellerton said that he had read all the documents provided to him and listened to the submissions put forward by the Respondent in conjunction with the assistance provided by the case law to which he had been directed by the parties.

24.60 Mr Ellerton was not persuaded that there was any reason based on actual or presumed bias for recusing himself from the case and he would remain as Chair. This decision was supported and endorsed, without dissent, by the full panel.

24.61 Mr Ellerton said that as Chair, he had the responsibility for ensuring that the substantive hearing progressed in a timely way and that the parties conducted themselves in a

courteous and respectful manner towards the witnesses, each other, and to the Tribunal itself, which acted on behalf of the profession and the public.

24.62 In ensuring that there was a fair and productive hearing, Mr Ellerton did not consider he had stepped outside the bounds of reasonable trial management such to raise a reasonable suspicion of bias, actual or apparent, viewed by the fair-minded observer, as envisaged by Porter and Magill. In fact, he had granted the Respondent significant latitude in presenting his case and in the cross -examination of the witness.

24.63 Mr Ellerton, however, had rightfully been unyielding on not ignoring discourtesy on the Respondent's part towards Mr Silverman and Ms Culleton. For example, it had not been unreasonable for Mr Ellerton, as Chair, to tell the Respondent to refrain from laughing when Ms Culleton was making her submissions or from using undignified and potentially insulting words when addressing the witness. This was a matter of maintaining the integrity of the trial process and not a demonstration of bias towards a particular person. Mr Ellerton would act in like manner should the Respondent have been exposed to similar behaviour from the Applicant or a witness.

24.64 The matters raised by the Respondent with respect to Mr Silverman's evidence was, in reality, another attempt to have Mr Silverman's evidence struck out, upon which the Tribunal had already ruled, i.e., the evidence would not be struck out and that it would be a matter for the Tribunal to decide the weight to place upon it at the appropriate time when it came to consider its findings of fact.

24.65 Thanking Mr Silverman for his evidence had been a simple matter of courtesy for the time he had taken in attending the Tribunal and it was something any Judge would do in any other court. It was not an indication as to the credibility or weight which would be applied by the Tribunal to Mr Silverman's evidence as this was a matter for consideration and discussion by the entire Panel.

25. Applications ancillary to the recusal application

Individuals and organisations impugned by Mr Silverman

25.1 The Respondent submitted that permission should be given for a right to reply to those individuals and organisations Mr Silverman, had in his view, been impugned by Mr Silverman in his evidence before the Tribunal.

Apology to the Respondent

25.2 The Respondent said that the Tribunal and the Applicant should apologise to him for turning the hearing into a *'charade'* by allowing an unqualified Zionist campaigner to pass himself off as an 'Expert'.

25.3 Ms Culleton objected to the applications for reasons which had already been ventilated.

The Tribunal's Decision

25.4 Both applications were refused. There was no application before it from any third organisation to intervene and upon which the Tribunal could decide. Further, as stated

previously it was a matter for the Tribunal to decide the weight to place upon Mr Silverman's evidence. The hearing was still in train and it had yet to hear the Respondent's points developed in his closing speech.

25.5 The hearing was being conducted fairly, in accordance with the law, the Tribunal's own rules and natural justice and there was no reason on the part of the Tribunal to make any apology to the Respondent.

Application for Mr Silverman to return for further cross examination.

25.6 The Respondent applied for Mr Silverman to be ordered to return to the Tribunal for further cross examination on whether comments by the Respondent were antisemitic in light of condemnation of Israel by UN lawyer Craig Mokhiber, who condemned Israel as committing genocide.

25.7 The Respondent, applied also to have disclosed to him the Applicant's letter of instruction to Mr Silverman.

25.8 Ms Culleton opposed the application on the basis that this was unnecessary as the Respondent had had ample opportunity over 3 days to cross-examine closely and he had done so.

25.9 Ms Culleton affirmed that the Applicant had no objection to disclosing its letter of instruction to Mr Silverman.

The Tribunal's Decision

25.10 The Respondent's application was refused by the Tribunal on the basis that he had cross-examined Mr Silverman over a period of 3 days and had put his case fully to Mr Silverman.

25.11 The Tribunal understood the nature of the Respondent's disagreement with matters set out by Mr Silverman in his testimony and it would not be assisted by further cross-examination.

25.12 The Tribunal noted the position regarding disclosure the Applicant's instructions to Mr Silverman and its agreement to provide him with a copy.

Leave to obtain expert report and representation, both to be funded by the SRA.

25.13 The Respondent said that the Tribunal should direct the Applicant to fund an expert's report to counter that of Mr Silverman's evidence which the Respondent considered to be unbalanced, prejudicial and not objective.

25.14 The Respondent submitted that the Tribunal had an obligation to ensure that the matter was properly conducted with relevant evidence being produced and that the Tribunal had not done so hitherto, primarily because it had permitted him, the Respondent, to represent himself when it had knowledge that he was mentally unwell, evidenced by his GP medical records. Also, the Tribunal had failed to ensure that specialist psychiatric medical evidence was obtained.

25.15 The Respondent contended that, the Tribunal had failed to make reasonable adjustments to assist to put him on the same footing as the Applicant and that could only be achieved with the funding of legal representation by the Applicant for the Respondent. The Respondent maintained that it was a breach of Rule 4 of the SDPR 2019 and the overriding interests of justice, to allow a hearing to continue where a vulnerable Respondent with poor mental health was allowed to attempt to represent himself.

25.16 The Respondent referred the Tribunal to case of SRA v Sancheti SDT Ref:11143-2013 wherein the Applicant gave an undertaking to pay the Respondent's travel expenses from India to attend at the Tribunal.

25.17 Ms Culleton opposed the applications.

25.18 She submitted that within this jurisdiction a Respondent paid their own legal costs and met their own disbursements, including payment for an expert. It was not for the Applicant to cover the Respondent's costs in a case being brought against him by his regulator.

25.19 In any event since the service of the proceedings (May 2023) the Respondent had had sufficient time to locate and instruct his own, independent expert. This was a matter he could have raised for attention at the Case Management Hearing (CMH) on 30 June 2023, in good time before the substantive hearing, but he chose not to do so.

25.20 Ms Culleton said that the Respondent had referred to the case of SRA v Sancheti without placing the Tribunal or Applicant on notice that he intended to do so. However, having now reviewed that decision she said that it provided no precedent for the course urged upon the Tribunal and the Applicant by the Respondent as it raised a different scenario. In Sancheti, a case heard before the advent of remote hearings, there had been an offer by the Applicant to pay reasonable travel fees from India, and not an offer to cover the cost of ensuring the Respondent was represented.

The Tribunal's Decision

25.21 Both applications were refused. There was no precedent, provision, or power for the Tribunal to direct the Applicant fund any aspect of the Respondent's defence. The issue of expert evidence was a matter to which the Respondent could reasonably have addressed his mind at a much earlier stage of the proceedings and there was no reason why the hearing should be adjourned at the mid-point for him to do so.

26. **The Respondent's Case**

26.1 The Respondent denied all the allegations.

26.2 The Respondent said that the SRA essentially did not agree that laws which violate international human rights law are wrong and this could be seen in the SRA's default position which is that the state agrees with the IHRA definition of antisemitism so accordingly that definition is just and correct.

26.3 The fact that Israel excluded the vast majority of Palestinians forced out of 1948 Palestine by *Zionist death squads* from returning to their land was a breach of the right

to return enshrined in refugee law. However, the Respondent submitted that morality appeared not to matter to the SRA. Nor did the fact that Palestinians did not have full civic rights within their historic territory including the respect for the right to life or to be able to reside in their ancestral land.

26.4 The Respondent disputed the Applicant's working definition of antisemitism and he submitted that there was a central problem with the IHRA definition. This is a conservative definition which favours muzzling critics of the colonial settler state established upon Palestine. A more appropriate definition of Zionism is needed than that expressed by the SRA, whose favoured definition lacked nuance and depth.

26.5 A better definition could be found from the Jewish Voice for Peace (JVP) which states as follows:

> *"While it had many strains historically, the Zionism that took hold and stands today is a settler-colonial movement, establishing an apartheid state where Jews have more rights than others. Our own history teaches us how dangerous this can be.*
>
> *Palestinian dispossession and occupation are by design. Zionism has meant profound trauma for generations, systematically separating Palestinians from their homes, land, and each other. Zionism, in practice, has resulted in massacres of Palestinian people, ancient villages and olive groves destroyed, families who live just a mile away from each other separated by checkpoints and walls, and children holding onto the keys of the homes from which their grandparents were forcibly exiled."*

26.6 Not only does JVP condemn Zionism as being racist towards Palestinians, but it also declares that Zionism is racist towards non-European Jewish people:

> *"By creating a racist hierarchy with European Jews at the top ... Jewish people of colour - from the Arab world, North Africa, and East Africa - have long been subjected to systemic discrimination and violence by the Israeli government. That hierarchy also creates Jewish spaces where Jews of colour are marginalized, our identities and commitments questioned & interrogated, and our experiences invalidated. It prevents us from seeing each other - fellow Jews and other fellow human beings - in our full humanity."*

26.7 Zionism is therefore defined as having the elements of:

- A racist settler-colonial movement
- Establishing an apartheid state where Jews have more rights than others.
- Palestinian dispossession and occupation by design.
- Zionist oppression and impoverishment of Palestinians.

Jewish academics critique of IHRA

26.8 The Respondent said that Jewish academics have voiced their concerns over the fact that seven of the eleven definitions relate to Israel.

> "*Ample evidence shows that these examples are being weaponised to discredit and silence legitimate criticism of Israel's policies as antisemitism…The Israeli Government would be emboldened and enabled to escalate its campaign against UN bodies and experts, by weaponizing and leveraging the IHRA WDA as a UN standard 'establishing' that UNRWA, the ICC, the Human Rights Council and bodies like the Commission of Inquiry are antisemitic. By extension, human rights defenders and organisations challenging Israel's violations would be fully exposed to smear campaigns based on bad-faith allegations of antisemitism harming their freedom of expression and other fundamental rights protected and promoted by the UN"*:

26.9 The fact that the SRA weaponised this dubious definition of antisemitism against him illustrated the fact that, in his opinion, the SRA is a discriminatory and underhand organisation in so far as it deals with minorities which disproportionately are subject to its disciplinary procedures.

Anti-Zionism is not Anti-Semitism

26.10 Opposition to Zionism cannot and should not be conflated with antisemitism but should be seen to be what it is which is opposition racism by those who hold Zionist beliefs.

26.11 What is demeaning to Jewish people is the stance of the SRA that equates being Jewish with Zionist and thereby implicating the wider Jewish community in the horrific human rights abuses taking place in historic Palestine.

26.12 This was pointed out to the SRA and to the IO who did not address this issue since it was clear that she had wanted to play the pro-Israel line with a view to punishing the Respondent for his political stance.

26.13 It was said that the IHRA definition is in favour by the British Government which supports it. However, the Respondent asserted that the British Government supported the ethnic cleansing of Palestine, and it was not ashamed of itself for doing so and the creation of 6 million Palestinian refugees. Therefore, the stance of the British Government did not demonstrate human rights compliance or an ethical stance demonstrating integrity.

26.14 <u>Allegations 1.1 and 1.2</u>

26.14.1 As to the fact of the case against him the Respondent said that on 17 May 2021, two days after the anniversary of the Nakba, Alexandra Wilson tweeting as @EssexBarrister retweeted a book list for Palestine which came under attack by Zionists including Myerson. The tweet stated:

> *"Some book recommendations, courtesy of @MerkyBooks There's no excuse not to educate yourself.*
>
> *#SolidarityWithPalestine PS "*

26.14.2 Clearly the hashtag solidarity with Palestine was going to irk Zionists and she came under attack.

26.14.3 According to Myerson, Ms Wilson was both *"foolish"* and *"discriminatory"*. These are his stock weapons of attack against pro-Palestinian activists. There is not a 'conflict' in historic Palestine, because the Palestinians do not have the means to defend themselves from Israeli colonialism. Therefore, for Myerson to suggest there was a conflict as opposed to colonialism was disingenuous.

26.14.4 There was then another attack from a Muslim Zionist, named Faisel Sadiq, who tweeted in reply to Myerson:

> *"Spending time in Israel/with Israelis led me to conclude that is (sic) is not really possible to fully understand what is going on in the Middle East without an understanding of the history of antisemitism and the Holocaust."*

26.14.5 As the Zionists piled into the attack, one sensible Barrister Neil Baki, expressed his indignation at how Ms Wilson was being bullied by stating:

> *"I find this sort of "pile on" by senior Barristers on younger members totally unedifying. It was an innocently sent tweet of a reading list. If you have suggestions then give them in a helpful and supportive way .... "*

26.14.6 Faisel Sadiq then sought to excuse his tweet by claiming:

> *"I wasn't seeking to pile on. I have lots of respect for @EssexBarrister. The conflict in the region is complicated and her proposed reading list was not balanced. I thought that it would be helpful to suggest additional reading. Apologies if my tweet came across otherwise."*

26.14.7 Given that according to Illan Pappe, a British Israeli historian, there is not a *'conflict'* in the region or even *'occupation'* but settler colonialism which has lasted for more than 75 years the Respondent tweeted in defence of Ms Wilson to Mr Sadiq and that Tweet also went to Myerson:

> (May 20, 2021)
>
> *"We also need to spend time with Palestinians and understand Al Nakba which is on going. It is not acceptable to peddle racism in the form of Zionism a cruel and fascist ideology. Look how Israeli schools promote killing & enslaving Arabs See how the teachers in Israeli school have taught their learners how to treat Arabs and Palestinians, And their parents are definitely involved too ... #IsraeliTerrorism"* (A video clip from the school was included).

26.14.8 At 11.51am on 29 May 2021 the Respondent received his first reply from Myerson who stated:

> *"An Israeli school. This was the subject of some investigation about 3 years ago. The result (from recollection an independent body) was that the majority of Israeli schools taught well and a majority of Palestinian schools taught badly. Let's not generalise from one example."*

26.14.9 The Respondent replied:

> *"Given your taste in reading I am not going to take your word for it. Palestinian schools are underfunded in the so call 1948 borders and in the COLONISED 1967 region Palestinians education gets a fraction of what Israeli Jewish schools get since Israeli Society = RACIST/ZIONIST"* (12:53 PM . May 20, 2021)

26.14.10 The Respondent then Tweeted in favour of Ms Wilson's reading list and Myerson retweeted the Respondent's Tweet stating*:*

> *"@EssexBarrister is able to make sensible choices - Pappe's book is excellent depicting the true reality of RACIST Israel . The Zionist ideology is not amenable to multiculturalism or Palestinian Muslim or Christian rights." Simon tweeted: "I think that Farrukh helpfully makes the point for me regarding the list of books Alexandra recommended. I merely point out that the Muslim Supreme Court Judges and Police Commanders from Israel would disagree. The Jewish equivalents in Arab countries do not, of course, exist."*

26.14.11 The Respondent then sent a reply to Mr Sadiq, which also went to Myerson:

> *"The conflict in the region is not a 'conflict' it is an occupation and treatment of the colonised as sub-humans by the occupying power. It is very simple ZIONISM is a FASCIST APARTHEID STATE IDEOLOGY."* (11:52 AM . May 20, 2021)

26.14.12 Given that Myerson had taken the liberty of mentioning the Israeli 'police' it was important to detail how the 'police' abuse Palestinians so the Respondent tweeted:

> *FarrukhHUSAIN1969 @Najeeb01249662*
> *https://Twitter.com/i/status/1393310382643625987 As can be seen from the clip above my ever so learned friend, the Israeli police are going round 1948 occupied Palestine attacking Palestinians for no reason. ISRAEL = RACISM= ZIONISM it is time to end this APARTHEID STATE.*

26.14.13 At 11.57 Myerson retweeted the Respondent's earlier tweet in a patronising manner by referring to "pupils":

> *"Farrukh is apparently a lawyer. So pupils, please learn that YOUR POINT ISN'T IMPROVED BY SHOUTING.*"

26.14.14 The Respondent's reply to @FaiselSadiq and Myerson was:

> *"The conflict in the region is not a 'conflict" it is an occupation and treatment of the colonised as sub humans by the occupying power. It is very simple ZIONISM is a FASCIST APARTHEID STATE IDEOLOGY."*
> 11:57 AM . May 20, 2021

26.14.15 At this point the Respondent said he continued tweeting about abuses of the Israeli police:

May 14, 2021:

> *"The self defence narrative is growing more and more indefensible no? Cuz what the hell did he do?*
> *https://Twitter.com/alaa_salaymeh/status/1393309969081057290/video/1*
> 11:58 AM . May 20, 2021

26.14.16 The Respondent then tweeted about an Haaretz Journalist who was describing what the 'police' were doing to ordinary Palestinians going about their business in Jaffa on channel 4 news:

> "*You luv to talk of the Israeli Police - they are fascists too according to an Israeli Journalist re: Jaffa Asaf Ronel "When right wing mob comes the police do not stop them. ... Without any need for a far right mob the police are abusing the entire population, the entire Palestinian population ... they are stopping every Palestinian going round on a scooter they are taking out the keys and they are throwing the keys in the bushes in the middle of the night, they are breaking the scooters, every one that say one word or even looking at a policeman in the wrong way they get beaten up, they are shooting teenagers with rubber coated bullets to the chest on a daily basis. You can see teenagers comparing their wounds on a daily basis here in Jaffa", Channel 4 News 18/5/21 1:04 PM*
> May 20, 2021

26.14.17 In the Respondent's view Myerson had denigrated Palestinian schools, lauded the Israeli legal system and mentioned the 'police' commanders.

26.14.18 To re-dress the balance the Respondent sought to deal with the question of Palestinian schooling under the occupation and how it was being undermined by Israel.

26.14.19 The Respondent Tweeted:

> *"Our learned friend makes the point "majority of Palestinian schools taught badly" is that because Israeli Apartheid regime starves Palestinians schools of funding? haaretz.com Arab students in Jerusalem get less than half the funding of Jewish counterparts Municipality transfers less to East Jerusalem schools than the budget provided by the Education Ministry.* 1:36 PM - May 20, 2021
>
> *"The conflict in the region is not a 'conflict' it is an occupation and treatment of the colonised as sub humans by the occupying power. It is very simple ZIONISM is a FASCIST APARTHEID STATE IDEOLOGY".*

26.14.20 The Respondent's Tweet replied to Mr Sadiq and also went to Myerson since he had initiated this particular conversation. The Respondent said his views are similar to those of many non-Zionist Israeli academics and thinkers as well as human rights organisations such as Human Rights Watch and Amnesty International.

26.14.21 In relation to Neil Baki's tweet the Respondent replied supporting him:

> *"It is called Zionist trolls acting to arm twist others who present an accurate picture of the RACIST IDEOLOGY OF ZIONIS, South African Apartheid ended*

- Israeli apartheid needs to end. A colonial settler state by Europeans in 1948 - the age of decolonialism is an anomaly."

26.14.22 To Faisel Sadiq, who had tweeted spending time with Israelis was important to *"fully understand what is going on in the Middle East"* the Respondent tweeted:

> *"We also need to spend time with Palestinians and understand Al Nakba which is ongoing. It is not acceptable to peddle racism in the form of Zionism a cruel and fascist ideology. Look how Israeli schools promote killing and enslaving Arabs and tweeted a tweet about how Israeli teachers teach racism towards Palestinians.*"

26.14.23 In the video link, an Israeli child is asked what they feel when they see a Palestinian child in Jerusalem, the child answers *"I feel I want to kill them (Palestinian kids)"* another states *"Arabs will be slaves"*. Myerson unsurprisingly tweeted in defence of Israeli schools, *"the majority of Israeli schools taught well and a majority of Palestinian schools taught badly"* - this was an essentially racist proposition equating Israeli with 'good' and Palestinian with 'bad'. It was very black and white and untrue given the reasons behind Palestinian schooling perhaps not being as good as other schooling in the region being due to a lack of resources from which the schools are starved by Israel.

26.14.24 The Respondent then produced more information about Israeli schools promoting hate by referencing a school in which Israeli females were told *"not to 'hang around with Arabs'"*. He Tweeted in relation to this:

> *"I reiterate the point with more evidence so as not to allow our learned friend and 'venerable' QC to pull the wool over our eyes that Israeli schools teach Israeli students to hate Palestinians because Israeli =FASCISM."*

26.14.25 The Respondent tweeted:

> "*See how the teachers in Israeli school have taught their learners how to treat Arabs and Palestinians. And their parents are definitely involved too ... #IsraeliTerrorism"*
> 11:49 AM . May 20, 2021"

26.14.26 Myerson then retweeted the Respondent's Tweet:

> *("The conflict in the region is not a 'conflict' it is an occupation and treatment of the colonised as sub humans by the occupying power. It is very simple ZIONISM is a FASCIST APARTHEID STATE IDEOLOGY")*

and patronisingly stated:

> *"Farrukh is apparently a lawyer. So pupils, please learn YOUR POINT ISN'T IMPROVED BY SHOUTING."*

26.14.27 The Respondent said that Myerson always re-Tweets Tweets that he does not like so that people are targeted by his followers. This is a deliberate strategy he uses to intimidate those that oppose him.

26.14.28 The Respondent then replied:

> *"Gosh even u r apparently a lawyer, but ur understanding of morality and law seems to part way when it comes to the apartheid state which treats Palestinians like Untermenschen and their land like Lebensraum."*
> 12:55 PM . May 20, 2021.

26.14.29 The Respondent then received the following which included a retweet of his '*Lebensraum'* Tweet, which he could not make head or tail of from Myerson:

> *"Tweet See new Tweets Conversation Simon Myerson KC @SCynic1 Myerson's law #95 2021. Quote Tweet FarrukhHUSAIN1969 @Najeeb01249662 May 20, 2021 Replying to @SCynic1 Gosh even u r apparently a lawyer, but ur understanding of morality and law seems to part way when it comes to the apartheid state which treats Palestinians like UNTERMENSCHEN and their land like Lebensraum*."
> 12:57 PM . May 20, 2021

26.14.30 After Myerson had retweeted the Respondent's tweet the Respondent came under attack by someone since Myerson had retweeted his earlier tweet to his followers and this person was probably irked at the Respondent's critique of Israel and claimed:

> *"German isn't your strongpoint"*
> 1:02 PM - May 20, 2021

and the Respondent responded:

"Morality is not yours"

1:05 PM - May 20, 2021.

26.14.31 This person then queried*: "How do you know"* and the Respondent replied:

> *"Implicit in what you are challenging me over is that you are a ZIONIST (RACIST) ISRAEL supported. You therefore choose to attack me on my German usage since u can't attack me for criticising FASCISM/ZIONISM ISRAELI SOCIETY."*
> 1:30 PM . May 20, 2021.

These Tweets would also have gone to Myerson.

26.14.32 The Respondent said that he then turned his attention back to Myerson since he needed to understand disparities between Israeli and Palestinian schools since it was necessary to teach Myerson about the problems Palestinian schools faced. These included being provided less resources and coming under attack from Israelis, including a school being repeatedly flooded with excrement. The Respondent sent the following Tweets:

> *"Our learned friend makes the point "majority of Palestinian schools taught badly" is that because Israeli Apartheid regime starves Palestinians schools of funding? haaretz.com Arab students in Jerusalem get less than half the funding of Jewish counterparts Municipality transfers less to East Jerusalem schools than the budget provided by the Education Ministry.*"
> 1:36 PM - May 20, 2021.

26.14.33 The Respondent then Tweeted:

> *"Or is it because ZIONIST FASCISTS are full of SHIT and flood Palestinian schools with their faeces. I hope Myerson was not trying to imply that Palestinian teachers teach poorly since he states "majority of Israeli schools taught well" ???" https://middleeastmonitor.com/20181102-israel-settlers-dump-sewage.on-palestinian- school-in-galgiliva/"*
> 1:38 PM . May 20, 2021

26.14.34 Myerson had put out a Tweet and that Tweet needed to be analysed, it appeared that Myerson did not like the fact that his biased views were put under scrutiny and logically undermined. The Respondent then tweeted:

> *"I reiterate the point with more evidence so as not to allow our learned friend and 'venerable' QC to pull the wool over our eyes that Israeli schools teach Israeli students to hate Palestinians because Israeli =FASCISM: https://ceasefiremagazine.co.uk/israelis-teach-children-hate/ Do Israelis Teach Their Children To Hate? Last week's revelation that an official Israeli civics exam instructed Jewish girls not to 'hang around with Arabs' is part of a long-running, systemic pattern of racism and dehumanisation against ... "*
> 1:58 PM - May 20, 2021

26.14.35 The Respondent then Tweeted at 2.20pm retweeting Myerson's comment about Israeli schools being good and Palestinian bad and cited a Save the Children report on the numbers of Palestinian kids attacked at school by Israelis:

> *"Three quarters of children reported that their schools have been attacked. This figure rises to 93% of children in Nablus. Three-quarters of children fear encountering military personnel or settlers on their way to school, who they are afraid may verbally abuse them or threaten them with tear gas or physical assault. A quarter of all students don't feel safe at school, and many suffer from anxiety and stress which manifests in physical symptoms including uncontrollable shaking, fainting, loss of self-confidence, and despair. Almost a third of children reported having difficulty concentrating in class due to the issues they regularly face. 80% of them cited "fear' as the main reason they struggled with their schoolwork*"
> Tweeted at 2:20 PM . May 20, 2021.

26.14.36 The Respondent then tweeted an article from Save the Children on the distress Palestinian children suffer from Israeli brutalisation:

26.14.37 He then Tweeted:

https://savethechildren.org.uk/news/media-centre/press-releases/Tear-gas-use-against- West-Bank-students Palestinians kids are brutalised by Israeli forces and settlers on the way to and at school which causes them anxiety alarm and distress that prevents their learning experience being positive along with poor school funding ZIONISM is PURE vicious RACISM. savethechildren.org.uk Coronavirus restrictions see tear gas incidents on students drop to zero After tear gas use against West Bank students doubles, coronavirus restrictions see incidents drop to zero"
2:23 PM - May 20, 2021

26.14.38 Therefore, by doing this the Respondent felt he had provided sufficient evidence to Mr Myerson that the position in relation to education in historic Palestine was not one which was simply Israeli education good, Palestinian education bad as he had so outrageously negatively posited at the outset.

26.14.39 The Respondent said that he also got a Tweet back from one of Mr Myerson's followers at 2.23pm:

"Hugh Bigly-No jabs, no passports, no compliance @HughBigly May 20, 2021
"Oh dear. The allusion to Naziism (sic) is misapplied. Hamas seeks to perpetrate a Jewish genocide, the Nazis did perpetrate a Jewish genocide."

Mr Bigly very 'kindly' sent the Respondent a photo of Hitler with a Palestinian religious leader named Al-Husseini.

26.14.40 The Respondent then sent Myerson a final tweet on 20 May 2021 at 4pm on the destruction of the Islamic cultural heritage in Palestine to prove the point that Israel was fascist.

"FarrukhHUSAIN1969 @Najeeb01249662 https://haaretz.com/1.4950011 Israeli forces have been destroying mosques since 1948 this is called Israeli = FASCIST= Zionism. Thank god for authors Israelis like Illan Pappe who are given the ability to safely lecture in the UK to expose the sordid reality of Israeli ethnic cleansing haaretz.com

History Erased
During the 1950s, the nascent state and IDF set about destroying historical sites left behind by other cultures, particularly Muslims."
4:00 PM - May 20, 2021

26.14.41 The Respondent said that none of his comments were objectively abusive or personal. In relation to *Lebensraum* and *Untermenschen* those were terms explored in the context of the Zionist colonial enterprise by A US Californian lawyer Osho Neumann, whose parents experienced the holocaust, and he used these terms to explore the Palestinian experience. Therefore, to use these terms to describe what is actually happening on the ground was not "cruel" as Mr Myerson claimed and what was actually "cruel" is to treat Palestinians inhumanely.

26.14.42 The Respondent said that he is the son of people who were ethnically cleansed. His father left his Muslim majority city in the clothes that he stood in, and his mother left

her city with just her copy of the Quran. The Respondent therefore knew what persecution and lynchings meant, since some of his relatives were murdered for their beliefs.

26.15 Allegation 1.3

26.15.1 The Respondent denied this allegation and said he had not been rude and abusive towards the IO. On the contrary the IO had been intellectually dishonest and had attempted to stereotype the Respondent as a racist and homophobe, when he was neither.

26.15.2 He had had no idea that the IO was applying the IHRA definition and he only understood the case against him when he was presented with the Rule 12 Statement.

26.15.3 As to his view of Nazism the Respondent said that one of his grand uncles was captured during the Second World War at the fall of Tobruk, shipped to Italy and incarcerated in a German POW camp and forced to labour on one piece of bread a day. Therefore, the Respondent had no illusions about Nazis.

26.15.4 The Respondent said he was not a racist, however, he takes an anti-nationalist perspective and anti-imperialist view on matters. He did not see the development of the modern nation state with concepts of citizenship, linked with restrictive immigration rights as being positive.

26.16 Closing Submissions

26.16.1 The Tribunal permitted the Respondent's closing submissions to be made in writing.

26.16.2 The Respondent invited the Tribunal to dismiss the allegations made against him.

26.16.3 The Respondent asserted that this had been an objectionable prosecution, which had been commenced and pursued in an inappropriate and oppressive way. The Tribunal certified a case to answer because it was given a Rule 12 statement which misstated the "legal framework", failed to mention Article10, failed to disclose authorities and material which were adverse to the Applicant's case and relied upon an inappropriate and tendentious "expert" report.

26.16.4 The Tribunal failed to exclude that "expert" evidence, despite being invited to do so. Despite its own overriding objective, which is intended to ensure that the parties are on an equal footing, it managed the trial in a way which maximised the distress caused to an unrepresented, depressed respondent.

26.16.5 As to the core issues as set out in the allegations, the questions for the Tribunal were as follows:

- Were any of the Tweets offensive? If so, which ones and why?
- Were any of the Tweets antisemitic? How does the Tribunal define antisemitism for the purpose of making that judgment?

- If any of the Tweets were offensive/antisemitic, does that amount to professional misconduct? This necessitates careful consideration of (among other things) the Respondent's Article 10 rights (on which, see Adil v GMC [2023] EWCA Civ 1261, at [45]), the high level at which the bar must be set before a regulator can properly seek to interfere with a professional's Article 10 rights (Holbrook v BSB, BTAS, 5 March 202235) and the distinction between things said/done as a solicitor and things said/done in a private capacity (Beckwith v SRA).

- If it does amount to professional misconduct, what is the appropriate way of dealing with it?

26.16.6 The Respondent asserted that the Tribunal must not inhibit the rights of solicitors to speak their minds on important humanitarian and political topics and urged the Tribunal to dismiss this prosecution on the grounds that:

(i) The allegations had not been made out on the evidence;

(ii) The trial had not proceeded in a manner consistent with the Respondent's Article 6 rights;

(iii) The prosecution had been a grossly disproportionate attempt to interfere with the Respondent's (and any solicitor's) right to freedom of expression (Article 10(2));

(iv) The Respondent submitted that this had been an oppressive prosecution arising out of matters which (if necessary) could and should have been dealt with by some words of advice to him by the Applicant.

26.16.7 The Respondent was extremely knowledgeable about Israel/Gaza and had profound beliefs about what he perceived as the repression of Palestinian people. It was the Respondent's position that his comments were plainly intended to be about Zionism, not Jews in general. If any of his Tweets could be construed as antisemitic, that was the result of bad or hasty drafting in the context of an online forum which thrives upon instant reactions and limits the length of Tweets.

26.16.8 The Supreme Court has made clear that:

> *"…it is wrong to engage in elaborate analysis of a tweet…the imperative is to ascertain how a typical (ie an ordinary reasonable) reader would interpret the message. That search should reflect the circumstance that this is a casual medium; it is in the nature of conversation rather than carefully chosen expression; and that it is pre-eminently one in which the reader reads and passes on."* Stocker v Stocker [2019] UKSC 17, at [43].
>
> *"The well-known features of Twitter - its character limits, its pace and evanescence, its offer of anonymity, its multivalency and its constant contextual flux - may well not be conducive to contests of ideas which are sustained, reflective or nuanced. Nor does it naturally foster a respectful, engaged and empathetic approach to differences of perspective. It has a reputation for fostering disinhibition and the consolidation of polarised and antagonistic*

group-thinking...": Collins Rice J in Miller v Turner [2023] EWHC 2799 (KB), at [5].

26.16.9 Indeed, the Stocker approach was expressly approved (when considering the disciplinary consequences of a lawyer's Tweets) in Diggins v BSB [2020] EWHC 467 (Admin). As set out below, the Respondent submitted that the Rule 12 statement failed to draw these authorities to the attention of the Tribunal when seeking to introduce Mr Silverman's report.

26.16.10 The Respondent contended that it was oppressive and offensive to assert that those Tweets were antisemitic in circumstances where equivalent statements and views had been expressed in proceedings which were filed by South Africa at the International Court of Justice ("ICJ") and the Respondent invited the Tribunal to read South Africa's application to the ICJ, to obtain an understanding of the relevant historical background and therefore to put his Tweets in the proper context.

26.16.11 Mr Silverman's report was fundamentally flawed, and it failed to do anything to discharge the burden of proof (which rested squarely upon the Applicant).

26.16.12 The Respondent submitted that the evidence of Mr Silverman (i) did not put those Tweets in any (or any adequate) context and (ii) involved looking at matters through a prism which gave Israel a clean bill of health in respect of all the serious complaints and concerns which (a) gave rise to the Tweets in the first place and (b) are now the subject of South Africa's 84-page application to ICJ.

26.16.13 In summary it was the Respondent's case that he was at all material times acting in a personal capacity, not a solicitor/professional capacity and this fact would have been obvious to anyone reading the relevant Tweets.

26.16.14 It was also the Respondent's case that he was entitled to exercise his right to free speech. Making comments which cause (or may cause) offence to others (or which may be insulting to others) is part and parcel of the right to free speech (Handyside v UK (1976) 1 EHRR 737, Norwood v DPP [2003] EWHC 1564 (Admin) (at [22]2); Dmitriyevskiy v Russia (ECHR, 3 October 2017, application no. 42168/06, at [106]) and Scottow v CPS [2020] EWHC 3421 (Admin)).

26.16.15 In Bar Standards Board ("BSB") v Holbrook, a finding that a barrister's tweet "*would not only cause offence but could promote hostility towards Muslims as a group"* was not enough to merit a finding of professional misconduct. The case of Holbrook showed, that making comments which cause (or may cause) offence to others is certainly not in itself professional misconduct, especially in circumstances where the comments were not made in any *solicitorial* capacity. See also Beckwith v SRA [2020] EWHC 3231 (Admin), where the High Court emphasised the need for the SDT to avoid confusing a solicitor's personal life with his professional life.

26.16.16 The Bar Tribunals and Adjudication Service ("BTAS") upheld Mr Holbrook's appeal, amongst other things on the grounds that the BSB's Independent Decision-Making Panel ("the IDP") was unlawful under the common law and human rights law which protects freedom of speech and the IDP's conclusion that the tweet *"would not only cause offence but could promote hostility towards Muslims as a group"* set the bar too

low to ground a finding that Mr Holbrook had behaved in a way likely to diminish the trust and confidence which the public places in him or in the profession.

26.16.17 To take a further example, the Bar Standards Board declined to take any action against Franck Magennis (a practising barrister) following a complaint made to it by Mr Silverman's organisation (the CAA). Mr Magennis had tweeted that:

> *"Zionism is a kind of racism. It is essentially colonial. It has manifested in an apartheid regime calling itself 'the Jewish state' that dominates non-Jews, and particularly Palestinians. You can't practise anti-racism at the same time as identifying with, or supporting, Zionism."*

26.16.18 Mr Silverman's organisation described the BSB's refusal to take action against Mr Magennis as *"disgraceful"*, language which illustrates that the CAA is not dispassionate.

26.16.19 The Respondent referred the Tribunal to the guidance issued by the ECHR: Guide on Article 10 - Freedom of expression (coe.int) and also the discussions of Article 10 contained in R (Robinson) v Buckinghamshire Council [2021] EWHC 2014 (Admin), at [55] to [60] and Hayden v Dickenson [2020] EWHC 3291 (QB), at [44]; and Stocker v Stocker (below):

> *"… Free speech includes not only the inoffensive, but the irritating, the contentious, the eccentric, the heretical, the unwelcome and the provocative provided it does not tend to provoke violence. Freedom only to speak inoffensively is not worth having…"…"any curtailment of freedom of expression must be convincingly established by a compelling countervailing consideration, and the means employed must be proportionate to the end sought to be achieved"* (quoting from, respectively, Redmond-Bate and Reynolds v Times Newspapers Ltd [1999] UKHL 45).

26.16.20 For a recent restatement of the relevant principle, the Respondent referred the Tribunal to Phillips v Secretary of State for Foreign, Commonwealth and Development Affairs [2024] EWHC 32 (Admin), at [42] to [46].

26.16.21 The Respondent said his Tweets related to discussions about the behaviour of the state of Israel towards Palestine and that was the context in which they had to be seen. It was not correct to take them out of that context and put each of them in isolation. Most (if not all) of the Tweets amounted to comments which could not sensibly be regarded as either antisemitic or objectionable, because equivalent comments/sentiments have been expressed by (among many others) the UN Secretary General (Antonio Gutteres), the UN Special Rapporteur on the occupied Palestinian territories (Francesca Albanese), the (now resigned) Director of the New York Office of the UN High Commission for Human Rights (Craig Mokhiber) and South Africa (in the proceedings which it has instituted against Israel in the ICJ).

26.16.22 The Respondent said that if Mr Silverman was right, then all the above named would appear to have made antisemitic comments. The Respondent said that he was is entitled to express his honestly held views in robust terms and the Tribunal could not properly judge him by a standard more demanding than that which the UN had applied to people

such as Mr Gutteres, Ms Albanese and Mr Mokhiber, none of whom had faced any disciplinary action for his/her comments.

26.16.23 In any event, the Respondent could not reasonably have foreseen that making comments which are supported by numerous UN reports might amount to misconduct (see Adil v GMC, below).

26.16.24 The Tribunal had to make findings about whether any of the Tweets were antisemitic. In circumstances where most or all of the relevant Tweets expressly refer to Zionism/Zionists (not Judaism/Jews), no such finding could be made unless the Tribunal was satisfied that, when the Respondent said Zionism/Zionist, (i) he actually meant Judaism/Jew and (ii) he was evincing hatred of Jews as Jews. The Respondent's position was that there was no evidence to show either of those things.

26.16.25 The Respondent further stated that Mr Silverman and the SRA had urged the Tribunal to treat Zionist as a "proxy word" for Jew, but that is a facile approach (and is no more than a submission, not evidence). In cross-examination, it was consistently Ms Culleton (not the Respondent) who tried to conflate Zionist and Jew. If the cross-examination of the Respondent established anything, it established that "Zionist" was being used by the Respondent as shorthand for someone who supports the behaviour of the Israeli state towards Palestine, not as a euphemism for "Jew". This was evident in Ms Culleton's cross-examination of the Respondent when she said the Respondent in a particular tweet had referred to the "Jewish" 'right of return'. It was left to the Respondent to disabuse her by highlighting the fact that this was a reference to the Israeli Law of Return of 1952 which gave world Jewry the right to 'return' to Israel, irrespective of the fact they had never actually left Israel themselves. Therefore, there had been a reference to "Jewish" by the Respondent instead of "Zionist".

26.16.26 Much of Mr Silverman's commentary involved reading into the Tweets words which were simply not there and on no view could that properly be described as expert evidence.

26.16.27 Since he gave his evidence, Mr Silverman's organisation had repeatedly called for the banning of marches in support of Palestine (and had even called for the army to be sent in to stop such marches). Mr Silverman himself had now written to the BBC to press for disciplinary action against Gary Lineker for posting a tweet which called for Israel to be excluded from international football tournaments. Therefore, as its name suggests, the CAA is a campaigning organisation. The evidence of its director of enforcement should not have been presented as dispassionate expert evidence by the SRA/Capsticks.

26.16.28 As well as presenting the views of the enforcement director of a pressure group as dispassionate expert evidence, the Applicant failed in their prosecutorial duty to put before the Tribunal material which does not support reliance upon the IHRA definition of antisemitism (including, for example, the opinions/views of Hugh Tomlinson KC; Geoffrey Robertson KC and Sir Stephen Sedley). The UN's Special Rapporteur on the occupied Palestinian territories, Francesca Albanese (herself a lawyer), has been highly critical of the IHRA definition.

26.16.29 In 2021 Emeritus Professor of International Relations at the University of Oxford, Avi Shlaim, wrote that:

"Scholars and legal experts have convincingly argued that IHRA's definition is incoherent, vague, vulnerable to political abuse, and not fit for purpose. It fails even to meet the most elementary requirement of a definition, which is to define. The decisive role of pro Israel advocacy groups in drafting and promoting the definition has also been established…" "The examples [referred to in the IHRA definition], falsely represented as part of the IHRA definition13, have been used to delegitimise and censor legitimate criticism of Israel and, more broadly, to curtail free speech on Israel. This shields Israel from accountability for its serious human rights abuses, which consequently continue unchecked."

26.16.30 In 2018 Mr Silverman's own organisation described the opening paragraph of the IHRA definition as *"very generalist and vague"*.

26.16.31 Mr Silverman based his views upon the IHRA definition working of antisemitism and upon no other definition. If (as the Respondent submitted it should) the Tribunal declined to apply the IHRA definition, Mr Silverman's views would fall away entirely, because as Mr Silverman put it, he had *"weighed each of the Tweets…against the [IHRA] Definition"*. However, the Respondent said that in reality, he had not even done that and in his report he had sought to slot the Tweets into one or more of the 11 examples which accompany (but do not form part of) that definition. It was striking that Mr Silverman omitted the operative words of the IHRA definition altogether. Those operative words require hatred towards Jews. That is an extremely high test, which Mr Silverman failed to consider when giving his views on the Tweets as nowhere in his report did he state that any of the Tweets met that stringent test.

26.16.32 Mr Silverman's evidence was not dispassionate expert evidence and admitting it was not "necessary", that being the test laid down in Rule 30(3) SDPR 2019.

26.16.33 The Courts had repeatedly made clear that it is wrong to engage in elaborate analysis of Tweets and that evidence is not admissible when determining their meaning: for example, Stocker v Stocker [2019] UKSC 17, Koutsogiannis v Random House Group Ltd [2019] EWHC 48 (QB) and BSB v Diggins [2020] EWHC 467 (Admin).

26.16.34 Dictionary definitions are not to be used (Stocker); still less can it be appropriate to use a highly controversial definition adopted by someone from a campaign group. Despite its prosecutorial duty of candour, and the duty of any advocate to draw attention to authorities which do not help his/her case, which it had failed to carry out, the Applicant failed also to point the relevant authorities out to the Tribunal, with the results (i) the case was certified as showing a case to answer on the basis of evidence (Mr Silverman's report) which should not have been admitted, (ii) The Respondent was subjected to a trial process which was legally flawed, oppressive and unfair and (iii) three days of the Tribunal's time was taken up with inappropriate "expert" evidence.

26.16.35 The Rule 12 statement relied heavily on the IHRA definition, while failing to disclose to the SDT the fact that that definition is highly controversial. It also relied heavily upon Mr Silverman's report, while failing to disclose that (i) his organisation has been the subject of complaints to the Charities Commission that it is politically partisan and (ii) he had delivered training to the SRA.

26.16.36 The Rule 12 statement misstated the "legal framework" and failed to make any mention at all of Article 10 European Convention on Human Rights ("ECHR"). Omitting from a Rule 12 statement material which damages (or might damage) the Applicant's case is not a minor matter, because a Rule 12 statement is an *ex parte* application for the certification of a case.

26.16.37 He concludes his report with a wholly inappropriate comment to the effect that the Respondent is an antisemitic extremist. However strong the pre-existing relationship between the SRA and Mr Silverman, Capsticks should not have allowed such a report to be presented to the Tribunal; and, having been presented with such a report, the Tribunal should have excluded most or all of its contents. There was a regrettable impression that the Tribunal had allowed its processes to be used as a vehicle for attempting to stifle free speech and advance the views/agenda of a pressure group, without ensuring that the parties are on an equal footing.

26.16.38 The Applicant could have chosen from a wide variety of individuals if it wished to ignore the Supreme Court's decision in Stocker and adduce expert evidence. Instead of choosing someone with relevant qualifications, or from academia, or with a history of published articles/papers on antisemitism, it chose someone who holds no relevant qualifications, is an enforcer within a campaign group and made the unlikely claim (in cross-examination) that he does not take much interest in day-to-day Israeli politics. The Applicant appeared to have chosen him because it had a pre-existing connection with him, as he had delivered "training" to it on antisemitism.

26.16.39 Credible experts are those who have no preconceived views or agenda, are not linked to pressure groups, have not delivered "training" to their client, are not wedded to one point of view, are open to persuasion and do not write reports free of charge. After he gave his evidence, Mr Silverman's organisation called for the banning of marches supportive of Palestine. That was a clear indicator of the level of his independence. Expert evidence is supposed to be *"objective, unbiased opinion in relation to matters within [the expert's] expertise"* (Ikarian Reefer [1993] 2 Lloyd's Rep 68, at 81 to 82)

26.16.40 For the reasons set out above, no (or minimal) weight should be attached to Mr Silverman's evidence, which represented no more than the views of one individual who has no relevant academic qualifications, belongs to a pressure group and has delivered "training" to the Applicant a fact which he failed to disclose in his report.

26.16.41 The comments made in the relevant Tweets engaged the Respondent's right to free speech (Article 10). Many of the views expressed in the Tweets have now been reflected in statements made by the UN and South Africa (in the 84-page document by which it has instituted proceedings in the ICJ).

26.16.42 If the Tribunal considered that any of the Tweets were offensive/antisemitic, they must be seen in context. They were made on Twitter, during online discussions between educated adults. As so often seems to happen on the internet, even educated adults make the mistake of losing their temper with each other and saying things which would have been better not said. The Respondent showed considerable insight at the end of his cross-examination of Mr Myerson KC, when he (the Respondent) took the time to apologise to Mr Myerson for any distress which he had caused. As was clear from his oral evidence, the Respondent genuinely considers Mr Myerson to be an online bully.

That is his view and he is entitled to express it. The fact that he is a solicitor does not prevent him from doing so.

26.16.43 In his Answer (and his evidence), the Respondent had accepted that a small handful of his comments might have been offensive. He did not accept that anything which he said was antisemitic. He firmly and genuinely believed that he is not an antisemite. He is someone who holds strong views (as do the likes of Mr Silverman and Mr Myerson) and (correctly) regards it as his fundamental right to express those views largely in favour of human rights and equality. If the manner in which he expressed himself went too far, he regretted that. That does not mean that he committed professional misconduct. Still less did it mean that he should be tarred with the label of antisemite.

26.16.44 The Respondent made clear to the Tribunal that he was not in the best of (mental) health and was not finding the trial process easy. The Tribunal's response was to take breaks. That response was (with respect) woefully inadequate. The Tribunal takes regular breaks in every case, even if the parties are in good health and represented by senior lawyers. In the case of this Respondent, what was needed was to structure the trial in a way which did not cause him unnecessary distress or worsen his depression/anxiety. If that meant arranging some representation for him, that is what should have happened. What took place was a meandering, unfocused trial, which lasted almost twice as long as the time estimate and which took a toll on the Respondent's mental health.

26.16.45 One thing which was almost guaranteed to make the Respondent's situation (and mental health) worse was to put him in a position in which, as a litigant in person, he was confronted with the task of cross-examining an "expert" whose lack of independence is such that he is the enforcer for a campaign group which would like to see pro-Palestine marches banned. That was a regrettable and inappropriate piece of case management, which was only ever going to result in distress to both the Respondent and the witness.

26.16.46 Interjections from the Chair gave the strong impression that the Respondent was not being allowed to put his case to Mr Silverman in the way he wanted to. He was repeatedly asked how long he expected to take in asking questions, which put him under further pressure. The overall impression was that Mr Silverman was being shielded, at the expense of the Respondent's right to put his case fully. On various occasions the Chairman indicated that the Respondent was capable of representing himself (despite his mental health problems), while repeatedly criticising the way in which the Respondent was attempting to put his case.

26.16.47 When on 21 September 2023 the lay member (Ms Keen) very properly intervened to check whether the Respondent was in a position to continue, the Tribunal rose to consider matters. In a moment which lacked any transparency at all, the Panel then returned and gave no explanation of what it had been considering (or what, if anything, it had decided). It showed no concern for the Respondent, who was asked to continue his cross-examination of Mr Silverman.

26.16.48 Such was the resulting pressure on the Respondent that he felt he had no alternative but to ask that the trial be adjourned to a later date. That request was refused, with minimal explanation. Nothing was said to the Respondent to make clear that he could make a renewed request for an adjournment if he obtained medical evidence. He was put in a

position in which he had to continue the trial, despite the fact that the trial was clearly going to overrun and be adjourned part-heard the following day in any event.

26.16.49 When the trial reconvened (on 18 December 2023), the Tribunal refused to allow him to rely upon expert psychiatric evidence. That decision was wholly inappropriate; it was not adequately reasoned by the Tribunal at the time and amounted to a complete failure to apply the overriding objective correctly. The fact that the evidence was 'late' was vastly outweighed by its importance in ensuring a fair trial and a fair outcome. The correct course of action was not to push him to continue his cross-examination of Mr Silverman on 22 September 2023, but to adjourn the trial and reconvene it in a form/manner which ensured fairness to the Respondent and removed inappropriate pressure from him.

26.16.50 The Rule 12 was a misleading document, it referred to the SRA's "Warning Notice" and "Topic Guide", which it seeks to present as part of the "legal framework". Neither of those documents is part of any "legal framework" or has any binding effect upon solicitors or the Tribunal. Neither of them refers to a solicitor's Article 10 rights (which is the most fundamental part of any relevant "legal framework"); neither of them makes any mention of the IHRA definition or indicates that the Applicant is going to try to apply that definition in order to make allegations of antisemitism; and neither of them has been updated to reflect the judgment of BTAS in Holbrook.

26.16.51 The Rule 12 statement which was an *ex parte* invitation to the Tribunal to certify a case to answer misstated the relevant "legal framework", failed to draw the SDT's attention to authorities and other material (including Article 10, ***Stocker*** and ***Holbrook***) which were/are adverse to the Applicant's case and sought to rely upon an "expert" and heard in an inept and unfair manner. Where the Supreme Court has made clear that Tweets are to be interpreted without resorting to dictionary definitions or external evidence, the Tribunal should not be admitting "expert" evidence on the meaning of Tweets.

26.16.52 Where a respondent is telling the Tribunal that he/she has mental health problems, it must ensure that appropriate medical investigations are undertaken. It cannot rely upon an unrepresented respondent, who is saying that he/she is mentally unwell, to obtain expert medical evidence (or, indeed, any expert evidence at all). When such a respondent eventually manages (through his/her own efforts and at his/her own expense) to obtain such evidence from a psychiatrist, it should admit that evidence and attach appropriate weight to it, not reject it on the basis that it is too late and be used for mitigation only.

26.16.53 The fact that the trial lasted almost twice as long as scheduled (and ended up being spread over three separate blocks of time, with the Respondent being left in purdah for a month) is a clear sign that this case was inadequately managed, which served only to make matters even more difficult for a depressed, unrepresented respondent. The trial proceeded as though the overriding objective (and, in particular, the need to ensure that the parties are on equal footing) did not exist, leaving the Respondent to struggle through, over an extended period of time. As the Court of Appeal has pointed out: *"Simply because an applicant can struggle through 'in the teeth of all the difficulties' does not necessarily mean that the procedure was fair"* (R (Gudanaviciene) v Director of Legal Aid Casework [2014] EWCA Civ 1622, at [46].

26.16.54 The Respondent's views on the relevant matters have no bearing at all upon how he professes to serve the public. As the Tribunal's own guidance makes clear, Principle 6 is aimed at *"how you run your firm and the services you provide, interact with the people you work with, including your employees [and] meet the diverse needs of your clients and others"*. Nothing in the words of Principle 6 allows it to be read as governing expressions of opinion or interactions which have nothing at all to do with the workplace: where appropriate, matters of that kind may, instead, engage Principle 2.

26.16.55 Insofar as the SRA's guidance on Principle 6 refers to "social media platforms", it confuses Principle 6 with life, there can be no conviction unless the conduct realistically touches upon his practice of the profession or the standing of the profession in a way that is demonstrably relevant (Beckwith, at [54]; Wingate, at [102]).

26.16.56 As the Divisional Court stressed in Beckwith:

> *"[r]egulators will do well to recognise that it is all too easy to be dogmatic without knowing it; popular outcry is not proof that a particular set of events gives rise to any matter falling within a regulator's remit"* (at [54]).

26.16.57 Solicitors who draw attention to injustices (or perceived injustices) are enhancing the reputation of the profession, not damaging it. Penalising them for speaking out would damage public trust and confidence, especially at a time when the UN and South Africa (and many others) are expressing concern about genocide and ethnic cleansing. The Respondent's Tweets were part of a cut-and-thrust dialogue.

26.16.58 If the Tribunal thinks that solicitors who speak out about such things have done so in terms which are too strong, it is hard to see how that could merit anything more than some constructive words of advice.

26.16.59 It is submitted that the Tribunal must not (and, as a result of Article 10, may not) impede any solicitor from exercising his or her right to speak freely and robustly about such important topics; any measure which does interfere with that right must be the least restrictive option possible. As ***Holbrook*** shows, the fact that someone might take offence at something said by a person who happens to be a lawyer is not a disciplinary offence: it is part of the price of free speech:

> *"Freedom of expression constitutes one of the essential foundations of [a democratic] society, one of the basic conditions for its progress and for the development of every man. Subject to paragraph 2 of Article 10 (art. 10-2), it is applicable not only to 'information' or 'ideas' that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population. Such are the demands of that pluralism, tolerance and broadmindedness without which there is no 'democratic society'. This means, amongst other things, that every 'formality', 'condition', 'restriction' or 'penalty' imposed in this sphere must be proportionate to the legitimate aim pursued"*: Handyside, at [49].
>
> *"Freedom means…the right to say things which 'right-thinking people' regard as dangerous or irresponsible. This freedom is subject only to clearly defined exceptions laid down by common law or statute…It cannot be too strongly*

> *emphasised that outside the established exceptions…there is no question of balancing freedom of speech against other interests. It is a trump card which always wins."*

26.16.60 The above quote was from R v Central Television Plc [1994] 3 All ER 641, at 652, and applied in Livingstone v Adjudication Panel for England [2006] EWHC 2533 (Admin), in which the High Court held that the then Mayor of London (Ken Livingstone) was within his Article 10 rights when asking a Jewish reporter whether the reporter was a German war criminal and likening him to a concentration camp guard (which the Court described as *"offensive abuse"*, at [36]):

> *"Surprising as it may perhaps appear to some, the right of freedom of speech does extend to abuse. Observations, however offensive, are covered"* (Collins J, at [36]).

26.16.61 Penalising the Respondent would be likely to have a *"chilling effect"* upon other solicitors who wish (and are entitled) to express views on Israel/Palestine: "[t]he concept of a chilling effect…is…extremely important, particularly where it concerns speech on controversial matters of public interest": Phillips, at [42], quoting from R (Miller) v College of Policing [2021] EWCA Civ 1926, at [68].

26.17 Allegation 1.2

26.17.1 For reasons which had not been explained there were matters in the Rule 12 statement which were not the subject of any "expert" evidence from the Applicant. Instead, the Applicant was content to make allegations purely on the basis of its own speculation and supposition. To take two examples:

> "*Such a tweet would clearly be offensive to Chinese people. The reference to 'Uighar' appears to be a reference to Uighurs which are a Muslim minority allegedly currently being held in detention camps in Xinjian province and allegedly having been systematically raped. The tweet associates the detention and rape of the Uighurs with China and thus Chinese people generally, being racist and discriminatory as well as plainly offensive."*

> *"On 28 September 2020, the Respondent published the tweet: 'I am sure Yusufzai like you were busy screwing as well. You know what Kushal Khan Khattak was right about you. You have no honour you would sell your women for gold. What is ur obsession with Punjabi, is u so desperate for tor makel go to HiRA MANDI. If u need help VIAGRA for u.' This refers to the red light district in Lahore, Pakistan (Hira Mandi) and a Yusufzai is a Pakistani minister - the tweet thus suggesting being offensive towards such individuals/Pakistanis and their conduct towards 'their' women and visiting an area known for prostitutes."*

26.17.2 The Applicant has seen fit to speculate upon the meaning of the Tweets quoted in paragraph 73 of its Rule 12 Statement without seeking input from any expert and without putting forward any relevant witness statement(s). That is unacceptable, for the following reasons:

(1) The Applicant is treating Jewish people differently from the other peoples referred to in paragraph 73: it is treating alleged antisemitism as more worthy of its (and an "expert's") time/effort than alleged racism towards other races/peoples. That is self-evidently a breach by the Applicant of (i) its own Principle 6 and (ii) section 28 of the Legal Services Act 2007 (which emphasises the need for regulatory activities to be "consistent").

(2) If (as the Applicant contends) the Tribunal needs to take into account expert evidence in order to decide whether something is antisemitic, it plainly also needs to take into account expert evidence in order to decide whether something is "racist" or "discriminatory" in relation to other peoples. The Applicant cannot have it both ways. If the Tribunal does not need expert evidence to decide whether something is "racist" or "discriminatory" towards people who are (for example) Chinese or Pakistani, it does not need to (and should not) place any weight or reliance upon Mr Silverman's evidence.

(3) Paragraph 73 amounts to nothing more than the Applicant's own speculation about what a tweet means, what can/cannot be read into it and whether/whom it might offend. Such speculation is not evidence. The test for admitting expert evidence in the Tribunal is whether it is *"necessary"* (Rule 30(3)SDPR 2019). The test is necessity, not desirability, with the result that Rule 30(3) cannot be interpreted to mean that the Tribunal can receive expert evidence (i) simply because the Applicant would like it to or (ii) because the Tribunal considered that such evidence might turn out to be helpful. The "*necessity"* test in Rule 30(3) is considerably more stringent than that which it applies (under CPR 1998 Rule 35.1) in the civil courts. The Tribunal must be satisfied that the evidence is "necessary" before there can be any question of deciding what weight to attach to the evidence. The Tribunal gave no (or no adequate) consideration to this point when (i) granting permission for expert evidence and (ii) rejecting the Respondent's application to exclude Mr Silverman's evidence.

(4) Phrases like *"this appears to be a reference to"* and *"such a tweet would clearly be offensive to"* do not come close to discharging the burden of proof.

26.17.3 For the avoidance of doubt, the Respondent accepted that the Tweets referred to in paragraph 73 of the Rule 12 statement might have been offensive and would have been better not posted (or written differently). As he described them in his oral evidence, they were in the nature of a *"trade-off of insults"*. As their tone suggests, they were written at a time when he was not well mentally; he regrets posting them. However, in the absence of any proper evidence from the Applicant (which bears the burden of proving its allegations), he does not accept that they did in fact cause anyone any offence and he does not accept that they are racist or discriminatory.

26.17.4 The Applicant adduced no evidence upon which the Tribunal could properly conclude that any of the Tweets referred to in paragraph 73 is anything beyond vulgar abuse (which the Respondent regrets and for which he apologises). As explained above, the

fact that someone might be offended by something said by a person who happens to be a lawyer does not mean that professional misconduct has occurred.

26.17.5 Trading insults on Twitter is unfortunate and would (in an ideal world) not happen, but it does happen and does not connote professional misconduct. It is something which, if necessary, could and should have been dealt with by some constructive words of advice, not by a lengthy hearing in the Tribunal. In her cross-examination of the Respondent, Ms Culleton described the relevant Tweets as *"rude and using bad language and offensive terminology"*. That was the Applicant's case. The most cursory reading of Holbrook shows that, regrettable though such language may be, it does not amount to professional misconduct.

26.17.6 The Rule 12 statement in this case is in the nature of a detailed, 36-page skeleton argument, the aim of which appears to be to (i) present the Applicant's assertions/views/speculations as probative, (ii) not draw the Tribunal's attention to material or authorities (including a decision of the Supreme Court, Stocker) which might undermine or harm the Applicant's case or cast doubt upon the admissibility of Mr Silverman's report, (iii) argue the case in the SRA's favour and (iv) secure a conviction. Those are not the functions of a Rule 12 statement, being a document which is filed (a) by a prosecutor which owes a duty of candour and (b) on an *ex parte* basis.

26.17.7 Allegation 1.3 related to two comments made by the Respondent in correspondence with the Applicant. Paragraph 118 of the Rule 12 statement sets out the two comments:

> "*You are a Zionist apologist and fascist like ur organization - look forward to the McCarthyite show trial." "You and your silly little fascist organisation do not have my consent to contact my GP. You and your Zionist racist pals can go and play with Mr Myerson."*

26.17.8 Solicitors who consider that they are wrongly accused of misconduct by the Applicant are entitled to (i) be upset at being the subject of such accusations, (ii) refute the accusations and (iii) defend themselves in robust terms. They may say silly things, especially when they are unrepresented. That does not mean that they have committed any misconduct.

26.17.9 Further, there was no evidence that anyone was offended by anything said by the Respondent in his correspondence with the Applicant. Thus it had chosen not to serve a witness statement from the relevant Investigation Officer. If the IO was offended, it would have been a simple matter for the Applicant to obtain a short witness statement from her. Even if there were evidence that anyone was offended by the Respondent's correspondence, that would not in itself constitute a disciplinary matter.

26.17.10 Being offensive is not itself professional misconduct. The test is a great deal higher than whether something is *"offensive"*. The entire trial seemed to proceed on the basis of a misunderstanding (created by the Applicant's failure to make any or any proper attempt to draw the Tribunal's attention to Article 10 and Holbrook) that being offensive amounts to culpable professional misconduct.

26.17.11 Allegation 1.3 seemed to have been included as a "makeweight" allegation, an impression which is reinforced by the fact that the Applicant did not take the time to

obtain a witness statement from the IO. The High Court has made clear to the SRA that an allegation should not be referred to the Tribunal unless the allegation is (on its own) sufficiently serious to merit that step.

26.17.12 The Respondent entreated the Tribunal to bear in mind that, by its own actions, the Applicant created a situation in which many solicitors do not have insurance policies which cover them in respect of disciplinary investigations/proceedings. Having created a situation in which many solicitors have to represent themselves in profoundly stressful circumstances, it was not surprising if the Applicant sometimes receives correspondence which is less emollient than that which an external lawyer might have composed. There is in any event no requirement for a lawyer to correspond with his/her regulator in emollient terms if he/she is accused of misconduct. His/her Article 10 rights apply with just as much force to his/her correspondence with the Applicant. Any unrepresented person (lawyer or otherwise) can be expected to reply in strong terms if he/she believes that unfair accusations are being made.

26.17.13 Paragraph 123 of the Rule 12 statement did not disclose a case to answer, because the Applicant's policy on *"managing unreasonable behaviour against staff"* forms no part of the regulatory arrangements: it is simply a statement of its internal policy, aimed at members of the public as much as at solicitors. In any event, there is no evidence that anyone felt "*intimated, threatened or abused"* by the correspondence. it is not considered acceptable when that anger becomes aggression directed towards staff". The correspondence evinced frustration and annoyance but did not come close to being *"aggression"*.

26.17.14 The Respondent accepted that some of his correspondence was written in a frustrated and intemperate way, for which he apologised, but he denied that that amounted to a breach of Principle 2, 5 or 6. The words quoted in paragraph 118 of the Rule 12 statement may have been intemperate/silly, but it was impossible to see how those words can be said to evince any lack of integrity, or do anything to bring the profession into disrepute, or do anything to discourage equality, diversity or inclusion: it was simply the Respondent trying to stand up for himself, in circumstances where he was depressed, felt that he was being bullied and did not have the benefit of an external lawyer to temper his mode of expression.

26.17.15 The Respondent asked the Tribunal to bear in mind that (a) he was extremely upset by the accusations being made against him, (b) he felt that the Applicant was taking the wrong side in an important political debate and should have shown greater respect for his right to free speech, (c) he had no representation and (d) he was suffering from depression when corresponding with the IO.

26.17.16 There cannot be a finding of misconduct unless it was:

> *"reasonably foreseeable [to the Respondent] that the [Respondent's] particular conduct was professional misconduct and might attract disciplinary sanction"* Adil v GMC [2023] EWCA Civ 1261, at [79].

26.17.17 No solicitor can be expected to foresee that he might be accused of antisemitism (or other misconduct) for making statements and expressing views which are consistent

with (and substantiated by) reports/views published by the UN (as summarised in South Africa's application to the ICJ, at paragraphs 21 to 42).

26.17.18 The worst which could possibly be said of the Respondent is that, in the emotional furnace that is Twitter, he expressed legitimate views and beliefs immoderately on a handful of occasions. Seen in context, and in the light of the content of South Africa's pending proceedings in the ICJ, that is not something which merits or requires any finding of professional misconduct against him.

26.17.19 It was submitted that the correct course of action in these circumstances is as follows:

(1) The Tribunal should conclude that it cannot properly say that it is satisfied that the Respondent had a fair trial.

(2) It should therefore dismiss the charges against the Respondent.

(3) There be no order as to costs.

26.17.20 If the Tribunal genuinely believed that the Respondent had a fair trial, the evidence was inadequate to show that he committed any professional misconduct. Moreover, (i) the Respondent is (and was at all material times) patently mentally unwell, (ii) his comments were made in a private (not in a solicitorial) capacity, (iii) he had admitted that some of his comments were offensive and should not have been made, (iv) he had not repeated any of the comments online, (v) he lost his job with Bevan Brittan as a result of his comments, (vi) he apologised to Mr Myerson in the Tribunal and (vii) the trial process has plainly caused him significant distress (which might be regarded as punishment enough).

26.18 <u>Ms Culleton misleading the Tribunal</u>

26.18.1 The Respondent submitted that Ms Culleton had mislead the Tribunal by stating in her response to the Respondent's closing that Mr Silverman had not given training to the Applicant at a time before the present matter had been investigated and referred to the Tribunal.

26.18.2 The Respondent had carried out research on this issue in the intervening days and he had found information online which clearly contradicted Ms Culleton's response, which was to be considered egregiously misleading in the light of that information and undermined the *bona fides* of the Applicant's case to the extent that the case should be struck out .

26.18.3 Ms Culleton accepted that she misspoke, and she apologised to the Tribunal and the Respondent for falling into error on this point. There had been no intention on her part to mislead the Tribunal.

26.18.4 She clarified that, having checked the records, she was now aware that Mr Silverman and or his organisation had indeed provided some training to the SRA prior to matters being instigated against the Respondent. However, no such training had been provided to Capsticks, the firm she worked for and who had been instructed by the Applicant to represent its position before the Tribunal. Also both Ms Culleton and Capsticks had

not been made aware of the training having been previously provided to the Applicant and those at the Applicant who provided instructions to Capsticks had also not been aware of the previous training by Mr Silverman.

The Tribunal's Decision

26.18.5 The Tribunal noted that the Respondent had quite correctly raised the issue that the Applicant's expert first delivered training to it prior to the drafting of both the Rule 12 Statement and the submission of the expert's own report.

26.18.6 This had been contrary to the submissions made by Ms Culleton who informed the Tribunal that such training was delivered after the Rule 12 and the expert report were finalised.

26.18.7 The Tribunal noted that those submissions were made in error and that Capsticks and Ms Culleton were not aware, until it was pointed out by the Respondent, that the expert had delivered prior training to the Applicant.

26.18.8 The Tribunal's finding in relation to this was that whilst it was regrettable that submissions were made which were inaccurate this was done inadvertently and that both Capsticks and Ms Culleton were unaware of the prior training and therefore there was no attempt to deliberately mislead the Tribunal.

26.18.9 The Tribunal allowed the Respondent's supporting material into evidence disclosing the fact of the prior training given by the expert on an earlier date and this was a matter which the Tribunal would consider when deciding the weight to give to the evidence of Mr Silverman.

26.19 The Equality Act 2010

26.19.1 The Respondent submitted that S.15 of the Equality Act 2010 provided a complete and freestanding defence to the proceedings on the basis that the proceedings themselves were discriminatory and unlawful.

26.19.2 The Respondent said that he is disabled, and that the Applicant had discriminated against him. To this end, the Respondent relied on the psychiatric evidence of Dr Nuruz Zaman which he said supported his contention that his alleged disability led him to post Tweets which were less measured than they would otherwise have been.

26.19.3 The Respondent argued that by virtue of Section 15(1)(b) of the Equality Act 2010 it was for the Applicant to show that the disciplinary prosecution before the Tribunal was a proportionate means of achieving a legitimate aim. He submitted that the Applicant had not discharged this burden and that the prosecution was unnecessary, oppressive, discriminatory, and unlawful and it should fail under the Equality Act 2010.

26.19.4 The Respondent sought to rely on his letter dated 31 January 2024 to the Applicant and the Tribunal. In his letter the Respondent suggested that, based on the defence provided by S.15 Equality Act 2010, the Tribunal should either stay the current proceedings until the Employment Tribunal had ruled on the S.15 point or an Agreed Outcome be entered into on certain terms which he set out in his letter.

26.19.5 Ms Culleton opposed the basis of the Respondent's application for the following reasons:

- S.15 of the Equality Act 2010 is a definitions provisions that does not of itself provide a defence or a free-standing cause of action.

- S.15 of the Equality Act 2010 ("the Act") is found in Part 2 of the Act (entitled *"Part 2 Equality: key concepts"*), and is part of Chapter 2, *"Prohibited conduct"*. This section, just as Chapter 1 *"Protected Characteristics"*, is a definitional section, and s.15 simply sets out the statutory definition of discrimination arising from disability. It does not provide any defence nor does it provide for any liability, but merely defines that concept.

- S15 of the Act, provides:

  (1) A person (A) discriminates against a disabled person (B) if- (a) A treats B unfavourably because of something arising in consequence of B's disability, and (b) A cannot show that the treatment is a proportionate means of achieving a legitimate aim. (2) Subsection (1) does not apply if A shows that A did not know, and could not reasonably have been expected to know, that B had the disability.

26.19.6 Part 5 of the Act is entitled *"Work"*, and s.39 within Part 5, sets out various prohibited conduct that an employer must not commit. Part 9 of the Act deals with Enforcement, and s.120(1)(a) provides for jurisdiction of the Employment Tribunal to determine contraventions of Part 5.

26.19.7 However, s.120(7) provides:

> *"Subsection (1)(a) does not apply to a contravention of s.53 in so far as the act complained of may, by virtue of an enactment, be subject to an appeal or proceedings in the nature of an appeal.*

26.19.8 Accordingly, in Ms Culleton's submission, it was clear that insofar as the Respondent was complaining about matters before the Tribunal, the Employment Tribunal had no jurisdiction to hear such complaints. The Respondent had a statutory right of appeal by virtue of s.49 of the Solicitors Act 1974 to appeal the Tribunal's decision to the High Court. The jurisdiction of the Employment Tribunal was therefore ousted by s.120(7) of the Equality Act 2010.

26.19.9 This position was clear, and repeatedly confirmed by cases, including at the highest level.

26.19.10 In Khan v General Medical Council [1994] IRLR 646 (Court of Appeal), Dr Khan was refused registration by the General Medical Council and was unsuccessful in applying for a review of the GMC's decision to a Review Board. He was unable, because of what is now s.120(7) of the Act, to make a complaint of discrimination to an Employment Tribunal because the right to apply to the Review Board (under s.29 of the Medical Act 1983) were *"proceedings in the nature of an appeal"*.

26.19.11 This analysis was approved by the Supreme Court in Michalak v General Medical Council [2017] UKSC 71, [2018] IRLR 60 (at 29).

26.19.12 In Ali v Office of Immigration Service Commissioner [2021] IRLR 84, the Employment Appeal Tribunal held that given the appellant could have advanced his allegations in the relevant forum, the Employment Tribunal had no jurisdiction. Further, the Employment Appeal Tribunal noted that the FTT (being the relevant appeal body) had the power to put the appellant back on the register, which the Employment Tribunal did not have. Furthermore, s. 120(7) did not require that the appeal procedure should contain the same provisions on burden of proof as those available in the Employment Tribunal or provide similar remedies.

26.19.13 It was clear, therefore, that the Employment Tribunal had no jurisdiction to hear the complaint which the Respondent stated he would bring there.

26.19.14 Notwithstanding the above, it was not the Applicant's position that the Tribunal did not have jurisdiction to hear a complaint of discrimination. The Tribunal could potentially take such matters and allegations into account, subject to relevance, and if they had been properly and fully ventilated.

26.19.15 However, the Applicant's position on jurisdiction was that the Employment Tribunal did not have jurisdiction to hear the claim apparently posited by the Respondent.

26.19.16 The assertion that there was a claim for disability discrimination was wrong. Not only had no such claim never been set out with any coherence or particularity by the Respondent, but the Respondent did not get over the initial hurdle of showing that he actually had a disability, defined by s.6 of the Equality Act, as a physical or mental impairment which has a *"substantial and long-term adverse effect on P's ability to carry out normal day-to-day activities"* (see section 6(1)(b) of the Act).

26.19.17 Although the Respondent had belatedly put in a report by a psychiatrist, there had been no opportunity for the Applicant to obtain its own report in response, nor had there been full disclosure of his medical history (but rather elements selected by him). Most significantly, the Respondent's own medical evidence did not address the statutory test of whether any impairment had a substantial and long-term adverse effect on his ability to carry out normal day-to-day activities.

26.19.18 As the parties were aware, before proceedings were instigated at the Tribunal, the Respondent responded to the Applicant's Notice which set out its allegations against the Respondent, which included reference to his mental health at the material time.

26.19.19 The SRA Authorised Decision Maker (ADM) who considered and referred the matter to the Tribunal was aware of the Respondent's response and referenced the *'adverse influence which his mental health had at the material time and the adverse impact which the allegations have had on his mental health'* . The ADM also noted that the Respondent had provided a letter from his GP which stated that his symptoms had *'an impact on how he reacted to difficult situations'*. It was noted that no further evidence had been provided.

26.19.20 In Ms Culleton's submission the ADM, quite properly, took into account what the Respondent was asserting, but that what he said fell far below the relevant threshold for determining that he was suffering from a disability for the purposes of the Equality Act.

26.19.21 The Respondent submitted in his Answer [at para. 112] that his depression caused him "*a lot of anger, sometimes towards myself, and others. This is given voice to in my Tweets"*. Ms Culleton made the point that simply being angry, and thereafter sending Tweets, fell short of a disability for the purposes of the Equality Act.

26.19.22 At the CMH on 30 June 2023 the Respondent was directed to file medical evidence by 27 August 2023, however, he did not comply with this direction.

26.19.23 On 14 September 2023, the Respondent disclosed two bundles of medical records and articles about depression. On 16 December 2023 he made an application under Rule 4 to adduce a report from his expert psychiatrist dated 12 December 2023. That report dealt with *"circumstances at the time of the reported comments'* at paragraph 64 and stated at paragraph 70 that *'Mr Husain has at times suffered from recurrent episodes of moderate to severe depression with suicidal ideation"*.

26.19.24 At paragraph 77, Dr Zaman stated:

> *"At the material time of Mr Husain engaging in Twitter conversations leading to reported abuses and communication with the SRA, Mr Husain was affected by observation of images of death from the Middle East. He had been on a reduced dose of his anti-depressant medication which required subsequent increase and re-titration by his GP. He had the time a relapse of his depression during which his symptoms and levels of agitation and irritability increased, making him more liable to escalations in confrontation with those around him. On balance the relapse of his depression is likely to have led to him acting without his normal due measure and control"*.

26.19.25 Ms Culleton said that this assessment did not deal at all with the relevant statutory test for disability. There was no assessment in the expert report at all of what, if any, normal day-to-day activities had been affected by any impairment he had. On the contrary, the report noted the Respondent's employment, that he remained in practice as a solicitor, and that he was able to conduct his own defence of the SRA allegations.

26.19.26 It was noted that the expert did not meet the Respondent in person but conducted a 2-hour video link interview. Further, he did not have all Mr Husain's medical notes, but only a *"summary"* and the letter of instruction as drafted by the Respondent.

26.19.27 Ms Culleton said that for any discrimination claim based on disability to succeed, the burden is on the party making the allegation to show, on the balance of probabilities, something in the nature of an *'impairment'*, whether it is a mental or physical condition. If the Respondent wished to advance in the Tribunal a contention that he has been discriminated against, the burden was on him to prove he had a disability.

26.19.28 The Equality Act Guidance on matters to be taken into account in determining the question of disability provides examples of when adverse effects on the ability to carry out normal day-to-day activities could amount to a disability. It was noted that the

Respondent had not referred to this at all, and it was also noted that the examples provided therein, in respect of mental impairments were much more significant than anything he claimed to have.

26.19.29 Accordingly, there was no basis for the Tribunal to conclude that the Respondent was disabled. Absent such a finding, he was not entitled to rely on the provisions of the Equality Act which prevents discrimination against disabled people.

26.19.30 Even if it was presumed (and it should not be) that the Respondent was disabled for the purposes of the Act, Ms Culleton said it was plain that the substantive allegations made by the Respondent had no merit.

26.19.31 The SRA is the independent regulatory body responsible for the regulation of solicitors and law firms in England and Wales pursuant to arrangements in accordance with the Legal Services Act 2007. One of the regulatory objectives as set out in section 1 of the Legal Services Act 2007 is *'promoting and maintaining adherence to the professional principles'*. Section 3 also refers to the professional principles, specifically under (a) that, *'authorised persons should act with independence and integrity'*.

26.19.32 The SRA's position is that carrying out the alleged course of conduct that the Respondent did, i.e. Tweeting as alleged in the Rule 12 statement, he acted in breach of Principles 2, 5 and 6 of the SRA Principles 2019. The SRA's aim is to serve the public interest and protect customers of legal services by giving the public full confidence in the solicitors' profession.

29.19.33 It drafts the rules of professional conduct to make sure that the public interest is protected. The SRA Principles comprise the fundamental tenets of ethical behaviour that the SRA expects all those regulated to uphold and a matter of principle, it could not possibly be correct that the SRA is unable to carry out its statutory functions because a regulated individual, who has apparently acted in contravention of the SRA Principles 2019, might, shortly before or during a Tribunal hearing, claim that he is disabled.

29.19.34 Further, there was no causative link shown by the Respondent and there was no basis for assuming that any disability he might have been suffering from, had a material effect on the Tweets in respect of which this Tribunal is concerned.

29.19.35 The evidence provided by the Respondent was insufficient for the purposes of evidencing that his Tweets arose as a consequence of a disability, and much less that his health had caused the misconduct, and that in proceeding against him, the SRA had acted outside of its legitimate aims under the statute.

26.19.36 The psychiatric evidence upon which the Respondent now sought to rely was served on the parties 18 December 2023, notably during a late stage of the Tribunal's proceedings.

26.19.37 Albeit that the Applicant did respond to the Respondent's point about the causative link between his conduct and the misconduct, its position was that it objected to the report being admitted so late and outside the directions set, but that if it was admitted, no issue would be taken with what it could assist with in terms of reasonable adjustments or for mitigation purposes. However, the report did not assist with a defence to the allegations.

26.19.38 The allegations, as drafted, did not require intent, the Respondent's state of mind or intent was not pleaded in any of the allegations and the Respondent's state of mind was only relevant to mitigation and not any factual finding the Tribunal was required to make.

26.19.39 In any event, Ms Culleton said that the Respondent's contentions were bound to fail. He now stated that he sent the Tweets because of his depression. However, this conflicted with his own case, and his own instructions to the expert:

a) In the Respondent's Answer at para. 112, he asserted that if he was offensive, it was due to his mental health. However, he then went on to assert that he does not discriminate against anyone (so plainly understood that he must not do so), and he asserted that his views on Palestine were based on his *"strongly held sense of justice"*. On his own case, therefore, his Tweets on this issue were based on what he still asserted were his coherent and justified views, rather than because of his asserted depressive illness, and this was also consistent with the evidence he gave to the Tribunal.

b) The Respondent doubled down on this point at para. 116: *"I am entitled to freedom of expression for my political views unless these are seriously offensive which I contend my views are not."* His Tweets were legitimate on his case, because of his freedom of expression. The Respondent is justifying his position, rather than asserting that he is wrong to have sent the Tweets but that he did so because of his disability.

c) In his closing submissions at para. 42, he made a similar statement. Albeit he accepted that *"some of his comments were offensive and should not have been made"* and that *"he apologised to Mr Myerson in the SDT"* (which might be seen as an acceptance that he should not have sent the Tweets although this did not appear to in fact be his position when he himself gave evidence), he went on to assert *"If any of his Tweets could be construed as antisemitic, that was the result of bad or hasty drafting in the context of an online forum which thrives upon instant reactions and limits the length of Tweets"*. The antisemitism arises, on the Respondent's case in this paragraph, not because of his disability, but because of *"bad or hasty drafting"*. Quite apart from that not providing any legitimate excuse, it contradicts his assertion that his antisemitism arose because of a disability.

d) His own instructions to the expert state *"Mr Husain believes that his anger was motivated by the racism and anti-human rights positions of those he targeted"*. Like many Twitter users, he was simply angry. He put his anger down to what he attributed as the motivations or politics of others, rather than his illness. As a regulated solicitor, however, he may not simply Tweet offensive of racist material because he is angry.

26.19.40 It cannot be correct that any respondent can claim that they rely on a disability to justify their own discriminatory conduct. That would run entirely contrary to the Equality Act. In any event, in this case, even the Respondent's own medical evidence comes nowhere close to asserting he has an actual disability.

26.19.41 Even if the Respondent's condition was considered causative of the misconduct alleged it did not mean that the SRA should not have exercised its statutory function in proceeding as it did. The SRA followed the statutory processes by referring this matter to the Tribunal to promote and maintain adherence to the professional principles set out by the Legal Services Act which is a proportionate means to achieving a legitimate aim, namely, to maintain standards in the profession by adherence to the professional principles and to ensure that the SRA complies with the regulatory objectives set out in the Legal Services Act. Nothing short of this application would have been proportionate, given the gravity of the Respondent's conduct, and his continued justification of his position.

26.19.42 As to the question of whether the proceedings should *"be stayed until an Employment Tribunal (or other appropriate court/ tribunal) hears and rules upon those arguments"*, the Applicant's position was that there should be no stay for the following reasons:

a) There was plainly no jurisdiction for the Employment Tribunal to hear a complaint based on the arguments the Respondent was now advancing. Therefore, there should be no stay in favour of an alternative forum which had no jurisdiction.

b) In any event, as a matter of good case management, it would be entirely wrong to accede to a stay pending alternative proceedings, in circumstances in which the application itself is made after the proceedings have been completed, notwithstanding that the Respondent raised the issue of his mental health in the Respondent's Answer and in his early dealings with SRA (as above).

If the Respondent had thought that these proceedings should await alternative proceedings, he was obliged to make such an application at the earliest opportunity, and not after the 11th hour (as he had done). Such an approach was wrong in principle and would have the effect of wasting huge amounts of time and costs.

c) Even if the Employment Tribunal had jurisdiction to hear a claim (which it did not), only the Tribunal had jurisdiction to sanction the Respondent in respect of this application. The application for a stay was merely an attempt to frustrate the proper purpose of the Tribunal.

d) There was no basis for ordering a stay, when there were no alternative proceedings, nor any reason for thinking that there would ever be any such proceedings. In the Employment Tribunal, it is common for stays to be granted where overlapping High Court proceedings are in train. But it was held in Lycatel Services Ltd v Schneider [2023] IRLR 668 at [49] (in reliance on Court of Appeal authority) that "*A stay of Employment Tribunal proceedings will not, however, be granted where no proceedings have been instituted in the High Court, even if such proceedings have been intimated in pre-action correspondence"*.

The Tribunal's Decision

26.19.43 The Tribunal was assisted by the Applicant's detailed and close analysis of the Equality Act 2010 and the extent of its impact upon the proceedings. There was little or no evidence before the Tribunal that the Respondent suffered from a disability such as to engage the Equality Act 2010. The report of Dr Zaman had been admitted into evidence by the Tribunal for the purpose of making reasonable adjustments and mitigation only.

26.19.44 The Tribunal adopted the Applicant's reasoning, set out at length above, which it considered to be the appropriate and correct application of the law with respect to the Respondent's case.

26.19.45 For those reasons the Tribunal accepted and ruled that the Employment Tribunal's jurisdiction was ousted by virtue of s.120(7) Equality Act 2010. There was no basis for a stay and the Respondent's remedy was by way of statutory appeal to the Administrative Court once the Tribunal had given judgment on the substantive matters before it.

26.19.46 The Tribunal noted that the Applicant had declined to enter into an Agreed Outcome with the Respondent. It was not the Tribunal's role to impose an Agreed Outcome upon the parties and it remained within the Applicant's prerogative to refuse to consider an Agreed Outcome on terms it considered unacceptable, and in any event was well beyond the prescribed time limits for such an outcome.

27. The Tribunal's Findings

Opening Observations

27.1 The Tribunal noted that the matters which it had been asked to consider arose from discussions on Twitter between the Respondent and others relating to contemporary and historical events taking place between Palestinians and Israelis.

27.2 During the hearing the Tribunal was addressed at length upon the context of the conflict by the Respondent and the witnesses, which it found useful in its understanding of this complex subject.

27.3 Whilst it was important to have a grasp of the context, it was no part of the Tribunal's role in the present proceedings to make any finding upon the rights and wrongs of the underlying conflict other than to state that the events unfolding in that disputed region were a tragedy that had rightly attracted international and humanitarian concern for its victims on both sides.

27.4 Similarly, it was no part of the Tribunal's role to prevent or hinder an individual's right to act according to their conscience, their deeply held views, and their beliefs, including legitimate criticism of the nation state of Israel and its policies. Solicitors, and lawyers generally, had a noble history of showing moral courage and leadership when taking a stand against the Goliaths of power and oppression which rise before ordinary people from time to time.

27.5 The Tribunal directed itself that its role was a discrete one, to determine whether the allegations, if made out factually, revealed any breach of the Codes of Conduct, Principles and Rules that a solicitor is expected by his profession and the public to uphold.

The Standard and Burden of Proof

27.6 The Tribunal had due regard to The Respondent's rights to a fair trial and to respect for his private and family life under, respectively, Articles 6 and 8 of the ECHR.

27.7 The Tribunal applied the civil standard of proof, as it was required to do. The burden of proof lay entirely with the Applicant. The Tribunal carefully considered the evidence it had heard and read. The Tribunal also noted there is no 'sliding scale' with respect to the standard of proof and the balance of probabilities always meant '*more likely than not'*.

Article 10 ECHR

27.8 An individual's rights of freedom of expression are enshrined within Article 10 ECHR.

27.9 The exercise of this freedom carries with it duties and responsibilities, and it may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

27.10 The Tribunal had regard to the decision in Adil v GMC [2023] EWCA Civ 1261, and that there remains a high bar to restrictions on freedom of speech for professionals. However, not all free speech is protected. For example, an authority may be allowed to restrict an individual's freedom of expression if, for example, they express views that encourage racial or religious hatred, and/or express views which are plainly baseless (rather than a contribution to a legitimate debate), positively dangerous or lean on a professional's status and credibility as a member of a profession to promote them.

27.11 The Tribunal's task was not to make any decision upon on the Respondent's right of freedom of expression *per se* but to make findings of fact as to whether the Respondent's specific mode and manner of that expression had crossed from legitimate debate into antisemitism and/or the use of offensive, or inappropriate language, resulting in a breach of his professional duties and responsibilities, and if so found, whether the seriousness of such a breach required sanction.

27.12 In reaching a decision upon matters relating the Respondent's Article 10 rights, the Tribunal was mindful that as a mechanism of legitimate and free expression, Twitter is a dynamic, robust, and fast paced medium in which users may be more liberal and fractious with their language than in any face-to-face dialogue. However, the Tribunal noted that a member of a regulated profession, identifying themselves as such was in a qualitatively different position to an unregulated individual with no professional affiliations, duties, and obligations, particularly in circumstances where there is a risk that the exchanges may escalate and become vicious and offensive.

Professional/private life

27.13 The Tribunal recognised that individuals are entitled to a private and family life, as set out in Article 8 ECHR.

27.14 Article 8 protects an individual's right for their private life, family life, home, and their correspondence (letters, telephone calls and emails, for example). This could include arguably posts on social media.

27.15 However, as with Article 10 ECHR, the rights provided under Article 8 aree not absolute and were qualified in much the same way as in Article 10.

27.16 As to matters of concern arising in a solicitor's private life the Tribunal noted that the decision of the High Court in Beckwith v SRA [2020] EWHC 3231 (Admin) signified that the codes of professional practice may reach into an individual's private life when the conduct, which was arguably part of a person's private life, realistically touched on their practise of the profession or upon the standing of the profession in the eye of the public.

27.17 The Tribunal accepted the proposition that the closer any behaviour or alleged wrongdoing touched realistically upon the individual's practice or reflected how a solicitor might behave in a professional context, the more likely it was that the conduct may impact on the individual's professional integrity or the trust in the profession and even where no such connection existed the individual may still be subject to the rules of the profession where the conduct was sufficiently serious and morally culpable as to call into question whether the individual met the high personal standards expected from a member of the solicitor's profession.

27.18 Whilst solicitors and their employees are not required to be *'paragons of virtue'* they are subject, legitimately, to a higher ethical standard than that which is imposed on ordinary citizens. This is a condition of their membership of the profession.

27.19 The Tribunal noted that in Diggins v BSB [2020] EWHC 467 (Admin), Warby J (as he then was) held there was no 'bright line' between that within the private realm, and that which was sufficiently public to engage disciplinary action.

27.20 The Tribunal noted that in the case of Mr Diggins' his Twitter profile had identified him as a barrister. In the present case the Respondent's Twitter profile described him as *"SOAS alumni, lawyer and author of 'Afghanistan in the Age of Empires', enjoy public speaking, collecting art and antiques from the Islamic world"* and in several Tweets the Respondent referred to himself as an employment solicitor, or there was reference to the profession.

27.21 The Respondent had volunteered the fact that he was a solicitor and the nature of his practice. It was not an unreasonable assumption on the part of the Tribunal that he had used his membership of the profession to add a level of legitimacy and gravitas to his public profile and to the arguments he propounded on Twitter as the Respondent would have known that the *'solicitor brand'* is something in which the public places great store. Had the Respondent been using Twitter in a purely personal capacity then he would have had no reason to refer to his membership of the profession.

27.22 On the basis of this finding the Tribunal considered that it was permissible to analyse the Tweets to determine whether they were, individually and/or collectively antisemitic and/or offensive or inappropriate, as set out in Allegations 1 and 2, and if it decided they were, then whether there had been breaches of the SRA Principles and professional conduct.

The Tribunal's working definition of antisemitism

27.23 The Tribunal noted that there is no agreed legal and/or statutory definition of antisemitism. The IHRA definition to which they had been referred by Mr Silverman had no binding legal status. Nevertheless, it carried with it a persuasive force on the basis that it had been adopted by many states and institutions, such that it could not be ignored or discounted.

27.24 However, it was not the only definition and the Tribunal adopted in large measure the approach taken by a different constitution of the Tribunal as set out in its judgment, SRA v Majid Mahmood SDT 11625-2017. In that case the Tribunal used a synthesis of three definitions of anti-antisemitism, the IHRA definition and the examples of contemporary antisemitism, the Oxford English Dictionary definition ("OED") and one by Professor Gus John ("the GJ definition") who had been presented to the earlier constitution as an expert in the field.

27.25 The IHRA definition and OED definitions are set out the preceding paragraphs of this judgment. The GJ definition referred to antisemitism as *"hatred or hostility towards Jews because they are Jewish not because they happen to be Jewish"*.

27.26 In keeping with the path taken by the other constitution of the Tribunal, the Tribunal in the present matter would *"therefore test the evidence against all three definitions when making its decision."[Mahmood para.13]*.

27.27 Also, the Tribunal would retain and invoke the discretion, where appropriate and necessary, *"to develop its own definition, which was an unlikely outcome but an option nevertheless."[Mahmood para. 15]*.

27.28 When applying its working definition of antisemitism to the Tweets the Tribunal considered that, essentially, there was the necessity for the Tweets in question to demonstrate a hatred or prejudice to Jews as an over-riding requirement.

An objective test

27.29 Having settled upon working definitions of antisemitism, the Tribunal next considered how it would apply the definition to the facts. To this end, the Tribunal was assisted by the guidance provided in PSA v GPhC & Zaman Ali [2021] EWHC 1692 (Admin) as follows:

> *"10. The FPC accepted the following advice which was provided by its legal advisor: " ... the Committee was advised to consider the Registrant's comments in the context in which they were said, having regard to all the relevant circumstances ... The Committee was advised to take into account all the oral and documentary evidence, the two video footages viewed, and the character*

references submitted on behalf of the Registrant. It was for the Committee to decide what weight to attach to these references, taking into account everything it had heard about the Registrant and his evidence. The Committee was reminded of the Registrant's good character and that it was relevant at this stage of the proceedings."

11. The test applied by the FPC was whether a reasonable person with all the relevant information would consider the words to be antisemitic: "The "reasonable person" in the Committee's mind therefore is someone who is in possession of all the facts and knows the context; someone with no particular characteristics ... This reasonable person therefore would know what a Zionist is and how that is defined; would know the IHRA definition of anti- Semitism and its associated guidance; would know the dictionary definition of "antisemitism" etc. This reasonable person would have no strong views on the Israel/Palestinian question; would not otherwise be unduly sensitive; would be open-minded, balancing what they had heard and seen before reaching a conclusion. ... "

27.30 A finding of antisemitism was therefore an objective assessment of the words in their context save that as stated in Zaman Ali consideration of the Respondent's good character was neither relevant nor required to assist with this assessment and neither was an understanding of his subjective intention when he used them, nor indeed the reaction of "*other audiences in other contexts."* Therefore, here, as in Zaman Ali, it was an obvious conclusion that words used by a professional person could be labelled objectively antisemitism even if it was shown that the person had not intended to be antisemitic.

Method of analysis

27.31 In assessing whether any statements posted by the Respondent were antisemitic and/or offensive and/or inappropriate, the Tribunal considered individual phrases both in isolation and also by taking account of their cumulative impact, bearing in mind the guidance on the approach to be adopted in making the assessments provided by the Supreme Court in Stocker v Stocker [2019] UKSC 17.

27.32 Whilst Stocker was a case relating to defamation, the core principle underscoring the judgment in that case equally applied to the Respondent's case, namely that it was essential to consider context, and to take into account the medium, style and environment in which the statements were made. In Stocker the fact the statement was made in a post on a Facebook wall was an important factor to be taken into account as people scroll through posts quickly and gain fleeting impressions of the posts made. The same could be said, therefore, for how an ordinary reasonable reader would come to determine meaning.

27.33 Stocker referred to an earlier decision, Jeynes v News Magazines Ltd [2008] EWCA Civ 130 and the eight propositions made in that case by Sir Anthony Clarke MR in para 14. Other than stressing the importance of context, the Supreme Court did not criticise the propositions emerging from Stocker which are as follows:

"(1) The governing principle is reasonableness.

(2) The hypothetical reasonable reader is not naïve but he is not unduly suspicious. He can read between the lines. He can read in an implication more readily than a lawyer and may indulge in a certain amount of loose thinking but he must be treated as being a man who is not avid for scandal and someone who does not, and should not, select one bad meaning where other non-defamatory meanings are available.

(3) Over-elaborate analysis is best avoided.

(4) The intention of the publisher is irrelevant.

(5) The article must be read as a whole, and any "bane and antidote" taken together.

(6) The hypothetical reader is taken to be representative of those who would read the publication in question.

(7) In delimiting the range of permissible defamatory meanings, the court should rule out any meaning which, "can only emerge as the produce of some strained, or forced, or utterly unreasonable interpretation…"

(8) It follows that "it is not enough to say that by some person or another the words might be understood in a defamatory sense."

27.34 With those propositions in mind the Tribunal embarked upon an examination of the Tweets in a staged process as follows:

- It would consider each Tweet in turn to determine whether their meaning was inherently antisemitic, offensive, or otherwise inappropriate;
- Next, it would stand back and look at the context of the Twitter conversation to determine whether this would undermine or support the initial conclusion;
- Finally, it would view all the Tweets on a macro/cumulative level to determine recurring and persistent patterns of expression, and/or coded language;
- Notwithstanding the above, the Tribunal would seek to avoid any over-elaborate analysis when making an assessment.
- Where there were grounds for reasonable debate in determining whether a Tweet was or was not antisemitic, according to the working definition of what constitutes antisemitism used by the Tribunal, then any doubt would be resolved in the Respondent's favour.

Witness Evidence

27.35 *Expert evidence from Mr Silverman*

27.35.1 The Tribunal noted that in contrast to the Tribunal in *Mahmood* it received evidence from an expert. Whilst the Tribunal considered that it was entirely competent to apply the definitions set out above to the facts to reach its own conclusions it was not fettered by the actions of another, earlier constitution of the Tribunal, and it had been open to the Tribunal to decide that expert evidence was necessary to understand the important contextual background. It had also been open to the Respondent to call his own expert, and in fairness to him, any application to do so would likely have been granted. In the event, the Respondent did not to call expert evidence.

27.35.2 The Tribunal remained mindful of its position as the *"ultimate judge of all the facts"[Mahmood para.12]* and while it found Mr Silverman to be, on the whole, a satisfactory and dispassionate witness it viewed his evidence as informative only and not determinative of the issues which fell to be considered in this case.

27.35.3 The Tribunal carefully considered the weight to be attached to all of the evidence including that of Mr Silverman and in relation to the expert found ultimately his evidence to be helpful in providing the wider context of what may be considered antisemitism but beyond that the Tribunal came to its own conclusions as to whether the Tweets were, on an objective test, antisemitic.

27.35.4 So, in practical terms his assistance was as a guide e.g., the Tribunal found Mr Silverman's assistance regarding an antisemitic trope which asserted that Jews in Israel originated from Eastern Europe to be very helpful.

27.35.5 In a divergence from Mr Silverman's opinion the Tribunal concluded that expressing anti-Zionist views alone was not necessarily antisemitism without this also demonstrating a hatred or prejudice towards Jews, with this latter being engaged where, for example, the anti-Zionist views were couched in Nazi terminology or by reference to well-known Jewish slurs, stereotypes and tropes and/or called for the wholesale destruction/abolition of Israel as a country as opposed to engaging in a political debate regarding its borders and/or the actions of the Israeli government vis a vis Palestinians and/or Hamas.

27.36 *Mr Myerson*

27.36.1 The Tribunal considered this witness to be very credible and he gave his evidence in a clear and compelling way. He brought to the Tribunal an understanding of how a British Jew would have read and interpreted the Tweets and the impact they would have had upon such an individual, and indeed, the impact the Tweets had upon him from the perspective of their potentially antisemitic and their otherwise offensive nature.

27.37 *The Respondent*

27.37.1 The Tribunal found the Respondent to be ardent and passionate in his beliefs. He was knowledgeable about the history of the region and of the conflict about which he was able to question Mr Silverman effectively and at length.

27.37.2 The Tribunal noted the Respondent's hitherto unblemished disciplinary record. However, whilst this may have assisted in considering issues relating to credibility this was a case where evidence as to his intent was not relevant to the meaning of the words,

although perhaps his evidence as to the general context of Twitter and its use as fast and rowdy medium of expression was potentially relevant.

27.37.3 However, as in the case of Zaman Ali the critical issue was the meaning of the words that the Respondent had used and the fact that he had no previous convictions or misconduct findings recorded against him was not relevant to an assessment of the objective meaning of the words he used, which the Tribunal were required to determine based on the Allegations presented by the SRA.

27.37.4 In his written material and in his oral evidence the Respondent had demonstrated considerable understanding and knowledge of the history of the region along with the associated nuances, subtleties, and complexities of the subject. Therefore, he was not to be viewed as an *'innocent abroad'* in this field and his use of language could not be viewed as any other than a precise expression of his thinking; it had not been accidental.

27.37.5 It was the Respondent's position that he was not antisemitic and that in those Tweets of concern to the Applicant antisemitism had not been present, albeit he accepted some may have been offensive for which he was now apologetic . On his account such Tweets were to be interpreted in a way which was not antisemitic and instead they had been demonstrable of his rightful and angry commentary on the plight of Palestinians and the policies of the Israeli government towards them. However, if such Tweets were considered offensive, then that was part and parcel of freedom of speech, and something within the robust nature of Twitter, where insults are traded.

27.37.6 The Tribunal found that for some Tweets this contention on the Respondent's part may have had some validity, and he was to be given the benefit of the doubt regarding them. Indeed, during its examination of the Tweets the Tribunal found some where the Respondent had expressed his position bluntly and robustly yet without recourse to offensive language e.g.:

> *"..The plight of Palestinians is analogous to that of what happened in Germany and what happened to Palestinians has occurred since 1917 British occupation...* [26/5/21]

And

> *"And anti Zionist Jewish journalist Ms Wilders ejected from her job for being a pro-Palestine activist when she was a student. Combine that Trending with deep pockets of Aipac bankrolling US politicians then u have a pro-Israel political climate. White racial bias favours Israel too."* [26/5/21]

And

> *"Thanks but there is no equivalent to the violence by Israel against Palestinians the numbers speak for themselves. Israel violence ls disproportionate and Israel is the aggressor, this has nothing to do with God bout human rights abuses.* [24/5/21]

27.37.7 However, the Tribunal also saw examples where the Respondent appeared to set out his view where he crossed the line from blunt commentary e.g., upon Israeli policy, to creating Tweets which could be viewed as objectively antisemitic, albeit in some cases written in a way to obscure the true meaning which lay beneath, and others where overtly offensive language was used, some with crude sexual references, examples of which will be set out in subsequent paragraphs.

27.37.8 The Tribunal placed no weight upon the contention that the Respondent's state of mental health played a part in his Tweets. There had been no evidence before the Tribunal to allow it to do so. The report of Dr Zaman had been served late and it had been admitted for the specific purpose of deciding upon reasonable adjustments and mitigation.

27.38 Allegations 1.1 and 1.2

27.38.1 The Tribunal went through each Tweet sent by the Respondent set out in the Rule 12 Statement and in the exhibits pertaining to the allegation.

27.38.2 The Tribunal found that expressing anti-Zionist views was not in itself necessarily antisemitic unless such Tweets also demonstrated a hatred or prejudice towards Jews. The Tribunal found a number of Tweets which fell into this category and were objectively antisemitic both when viewed individually and collectively. Examples of such Tweets were ones directed to a Jewish individual, and which drew upon highly offensive and (in the Tribunal's findings) antisemitic slurs and tropes including references to a Jew as being a *"pig"* and equating the treatment of Palestinians directly with the Jewish experience of Nazi Germany and the holocaust. The Tribunal found that such Tweets, individually directed, would be viewed as antisemitic by an objective observer and demonstrate an underlying prejudice and/or hatred of Jews as opposed to a legitimate commentary on the events in Israel and Gaza.

27.38.3 The Respondent's references to '*Eastern-European kin'* and *'having walls'* and *'wanting to take ur money'* were both historical and modern connotations, references or stereotypes often used against Jews. In this context, tThe word Zionist appeared to be as a substitute for Jew. The Tribunal accepted that references to pigs had been frequently used to de-humanize Jews.

27.38.4 The Tribunal also found that the Respondent often conflated antisemitism, anti-Zionism and opposition to the Israeli government. The legitimate conclusion to be drawn from the Tweets when viewing them collectively was that they demonstrated hostility towards Jews because they are Jewish, not because they are Israeli/pro the Israeli government or Zionist in their ideology or supporters of the Zionist movement.

27.38.5 The Tribunal found that some of the Respondent's Tweets demonstrated hostility to, hatred of, and/or prejudice against Jews.

27.38.6 Furthermore, some of the Tweets also engaged aspects of the International (IHRA) Definition of Antisemitism including denying the Jewish people their right to self-determination (e.g. by claiming that the existence of a State of Israel is a racist endeavour) and the drawing of comparisons of contemporary Israeli policy to that of the Nazis.

27.38.7 Therefore, in accordance with its own method of analysis (as set out in preceding paragraphs) it found the following examples, individually, to be antisemitic in accordance with the definitions to which the Tribunal had been referred.

Date	**Respondent's Tweet**	**Finding:** ***cited Tweet may have engaged more than one example of antisemitism as set out under IHRA***
2/10/20	*How terrible 1300 Zionist criminals coming to steal the land of Palestine and turn the Palestinians into refugees by those East Europeans who kicked the Palestinians out of their homes and took up residence in them. PALESTINES, ETHNIC CLEANSING, that continues to this day. SHAME*	Denying the Jewish people their right to self-determination (e.g. by claiming that the existence of a State of Israel is a racist endeavour) AND Drawing comparisons of contemporary Israeli policy to that of the Nazis.
3/5/21	*No Muslim should buy The Times, it is a bigoted pager with numerous Zionists working for it like David Aaronovich, Daniel Finkelstein etc. Earlier Cage was awarded damages against this Zionist mouthpiece*	Making mendacious, dehumanising, demonising, or stereotypical allegations about Jews as such or the power of Jews as a collective — such as, especially but not exclusively, the myth about a world Jewish conspiracy or of Jews controlling the media, economy, government or other societal institutions. Accusing Jewish citizens of being more loyal to Israel, or to the alleged priorities of Jews worldwide, than to the interests of their own nations.
10/5/21	1. *A problem created by Britain - u don't want Eastern Europeans here but exported a murderous bunch of Eastern European Zionists to Palestine and armed them. Yes u don't want peace & not in ur blood Nick and Dominic. That is why u been arming Israel since 1968* 2. *Most Jews did not leave Palestine, they remained in Roman times & are there today Palestinians who converted to Islam. The Europeans have always believed in a mono- culture that is why E.Europeans Zionist believe in ethnic*	A trope that Jews do not originate from Israel but instead from Eastern Europe. Reference to Ashkenazi Jews from central and Eastern Europe is also an attempt to delegitimise the existence of the state of Israel by asserting that Jews originate from Europe rather than the Middle East. Also using Zionist as a place holder word for Jew.

Date	Respondent's Tweet	Finding: ***cited Tweet may have engaged more than one example of antisemitism as set out under IHRA***
	cleansing Palestinians and stealing their lands and homes	
12/5/21	1. *The people of Israel - a bunch of Eastern European thugs who ethnically cleansed Palestine* 2. *When will the East European Terror groups leave Palestine? Palestine is occupied and you should leave and go back to Poland/Hungary whence you came*	Holding Jews collectively responsible for actions of the state of Israel. A trope that Jews do not originate from Israel. Also using Zionist as a place holder word Jew.
13/5/21	*100 percent of your ancestor Zionist ass are from Eastern Europe.*	A trope that Jews do not originate from Israel. Also using Zionist as a place holder word Jew.
15/5/21	1. *You deny that you are a fascist who believes in the right of the "promised" people to Palestine? You deny the Nakba and the reality of Apartheid Israel? Live your illusion in your own little foolish world* 2. *Only a Zionist idiot would call a hotel a war zone but then again for Zionists Al Jazeera offices are fair game so are UN schools which you hit with white phosphorous. Zionism is fascism and has no moral qualms What's happening about war crimes/genocide of Palestinians*	Denying the Jewish people their right to self-determination (e.g. by claiming that the existence of a State of Israel is a racist endeavour Denying the Jewish people their right to self-determination, e.g., by claiming that the existence of a State of Israel is a racist endeavour
16/5/21	1. *If you want to know the reality of what you are it is a Zionist PIG who spreads hate and believes in massacring Palestinian kids* 2. *This is port and parcel of being brought up as a racist Zionist in apartheid othering and killing Palestinians is what they've been doing since Palestinian, before 19:48 when Brits encouraged Jewish migration in line with Balfour declaration.*	These Tweets used the trope that Jews do not originate from Israel. Also using Zionist as a place holder word Jew and referring to "pig" which is an known offensive Jewish trope Denying the Jewish people their right to self-determination (e.g. by claiming that the existence of a State of Israel is a racist endeavour

Date	Respondent's Tweet	Finding: ***cited Tweet may have engaged more than one example of antisemitism as set out under IHRA***
	3. *It has not been quiet since Brits started arming Zionists who stole Palestinian land and built settlements on it. Not quiet even after suppression of 1937 first Intifada and British disarming of Palestinians* 4. *Zionist squatters should leave Palestine and head back to E.Europe, there is no place for them in Palestine. Why do Israeli threaten world with annihilation if Palestinian's take back their land? Why Palestinian can't return 2 Palestine but Jew welcome to return*	
19/5/21	1. *Oh yes Israel can kill every day of the week and ethnically cleanse Palestinians to make way for the master race, the promised people Palestinians have right to life and defence as Zionist are Aggressors.* 2. *Israel also bombed another Gaza journalist yesterday killing him so there is a policy to kill journalists, medical staff and destroy infrastructure to create hopelessness in the Gara concentration camp.*	Drawing comparisons of contemporary Israeli policy to that of the Nazis As above
20/5/21	1. *Gosh even u r apparently a lawyer, but ur understanding of morality and law seems to part way may when it comes to the apartheid state which treats Palestinians like UNTERMENSCHEN and their land like Lebensraum* 2. *Implicit in what you are challenging me over is that you are a ZIONIST (RACIST) ISRAEL supporter. You therefore choose to attack me on my German usage since you can't attack me for criticising FASCISM/ZIONISM ISRAELI SOCIETY.*	Drawing comparisons of contemporary Israeli policy to that of the Nazis Denying the Jewish people their right to self-determination, e.g., by claiming that the existence of a State of Israel is a racist endeavour. As above

Date	**Respondent's Tweet**	**Finding:** ***cited Tweet may have engaged more than one example of antisemitism as set out under IHRA***
	3. *We also need to spend time with Palestinians and understand Al Nakbe which is on going it is not acceptable so peddle racism in the form of Zionism a cruel and fascist ideology. Look how Israeli schools promote killing and enslaving Arabs*	
22/5/21	*Israel wants to sing at Eurovision so they should relocate to Eastern Europe where Netanyahu and his vile kind along with Turds like Yitzhak Shamir emerged from*	The trope that Jews do not originate from Israel.
23/5/21	1. *The Times now reduced to being the back orifice of Zionism has this idiot*[Mr Rifkind] *writing for it. A once quality paper has become cancerous with Zionist writers like Daniel Finkelstein/Frankenstein and David Aahronovich* (sic) *[23/5/21]* 2. *That land belonged to Palestinians from time immemorial not to Eastern European's. It is Israel that has destroyed Palestine and obliterated Gaza driving The Majority of Palestinians into exile in 1948.*	Making mendacious, dehumanising, demonising, or stereotypical allegations about Jews as such or the power of Jews as a collective — such as, especially but not exclusively, the myth about a world Jewish conspiracy or of Jews controlling the media, economy, government, or other societal institutions. The trope that Jews do not originate from Israel.
26/5/21	*Israelis do not live by Talmud they are murderers and thieves.*	Holding Jews collectively responsible for actions of the state of Israel.
2/6/21	1. *Yeah the land of Poland by Jews and Palestine with Palestinians* 2. *Let ur people return to East Europe and Palestinian refugees return their lands*	Trope that Jews do not originate from Israel.
4/6/21	*Typical Zionist always have damn walls and want to take ur money*	References to walls could be a reference to the Western/Wailing Wall and references to money is the

Date	Respondent's Tweet	Finding: ***cited Tweet may have engaged more than one example of antisemitism as set out under IHRA***
		connotation or trope of greed and avarice.
5/6/21	*Maybe because the only Eastern part of ur people is Eastern Europeans Your geography is skewed go back to Poland cos Palestine is Islamic land*	Trope that Jews do not originate from Israel.
6/6/21	1. *U r the one who started ur sort like to start and cry wolf typical Zionist shite* 2. *"And Rifkind is a Zionist pig supporting theft of Palestine for his Eastern European kin* 3. *You Zionists invent ownership papers. If we are silly enough to believe u never ethnically cleansed Palestine* 4. *Why don't you Eastern Europeans go home to Poland since Palestine is for Palestinians. Why don't you pay rent for squatting in Palestine?* 5. *Why can't you end the occupation- it is Palestinian land, it is their home they are not illegal Ashkenazi Immigrants*	Zionist used as a place holder for Jew and the trope that Jews did not originate in Israel . Also, the trope relating to avarice and greed.

28.39.8 The Tribunal found the accretion of the Respondent's Tweets over a spread of months; their frequency, sustained intensity, and the cumulative impact of the language used by the Respondent made it more likely than not that when viewed collectively the Tweets were founded on hatred or hostility towards Jews.

27.38.9 As an observation, it was notable that no one who engaged with the Respondent in the Tweets used racist or bigoted language against him and this tended to negate the Respondent's submission that the Tweets had been part of fast moving and robust dialogue in which insults were traded.

27.38.10 Contrary to his assertions, it was clear to the Tribunal that in a number of his Tweets he had not acted rashly whilst in the heat of argument, but he had instead picked his words very carefully to deliver a particular message to Mr Myerson and Mr Rifkind whilst simultaneously attempting to occlude his true, underlying, meaning from the casual reader. Whilst the Respondent's subjective intent was not relevant to the actual meaning of the words it was more likely than not that he had wished to obtain some plausible deniability if he was to be later picked up on the Tweets in the way which latter happened.

27.38.11 In some of the Tweets however, the Tribunal found that there was no nuance or subtlety and no attempt to obscure their meaning with such Tweets being plainly and deliberately crude and offensive.

27.38.12 Findings of antisemitism made the Tweets inherently offensive and/or inappropriate.

27.38.13 With respect to Allegation 1.2 the Tribunal found that some Tweets directed at Mr Myerson and Mr Rifkind, which may have included an element of antisemitism, were also found to be starkly offensive, absent any taint of antisemitism. There were also other Tweets which were of a more general nature which would have been offensive to people of other ethnicities and sexualities.

27.38.14 Such Tweets as referred to above included the following:

Date	**Tweet**
4/1/21	*Who let the mentally challenged out of the hospital.*
15/4/21	*What do you expect from a Zionist retard.*
8/5/21	*That is why some Pakistani have slave mentality. They like the one who raped their great great great grandmothers.*
18/5/21	*But my TALIB blow up doll with additional strap on manhood is a best seller and Brigitte said she'd be ordering a replacement because her current one has holes in all the wrong places.*
21/5/21	*if u were anti-racist Myerson u would not be Zionist which is racism. You reek of white privilege that's why you cry about Reading lists circulated by Barristers whose principles decry fascism.* *What's wrong Myerson – still treating junior Barristers like Palestinians through bully boy tactics?* *Another Zionist Oik obviously shines Myerson's shoes with his tongue* *Myerson is waiting for you to pick the dandruff off his wig and clean his shoes*
30/5/21	*To hell with your Yuan and to hell with your Chinese empire. U will be remembered as the new Mongols and cursed for ur stupidity. You implemented gender imbalance in ur own country via aborting females and stole Uighar women for rape to breed ur race* *Brother don't you have any self respect? This Chinese was raping Muslim women and had enslaved one million Muslims in the concentration camp. Whoever supports China is a traitor and a person with weak faith."*
30/9/21	*You dirty Gujar, who r u to speak for Pashtun. You are the biggest bacha BAZ.* *If there are so many disappeared, how come the Army has not taken your butt and shoved some bottles up it and filled your mother's hole with some baby juice?*

Date	Tweet
3/6/21	*Was he black aboriginal or one of those European white guys who get jobs in the legal profession with their broad white European 'Aussie' smile*
6/6/21	*Matthew Standon was on the ground crying like a baby because he pissed his pants with no nappy on. The Israeli terror forces got upset cos they'd have to clean Standon with a Greek shower and baton clean Standon's Rear. Next time keep ur dummy in mouth and stand down Standon.*

27.38.15 Whether the Respondent was attempting satire, irreverence and/or humour, the Tweets had been nonetheless puerile, hurtful, and gratuitously offensive.

27.38.16 Having found on the balance of probabilities that the Respondent had sent Tweets which were antisemitic and/or inoffensive and inappropriate, and having also found that conduct of this nature in which the Respondent had volunteered information regarding his status as a solicitor on a public forum brought the conduct into the sphere of professional regulation as touching upon his practise, the Tribunal next went on to consider the alleged breaches of the SRA Principles with respect to Allegations 1.1 and 1.2.

Principle 5 (integrity)

27.38.17 Integrity connotes adherence to the ethical standards of one's own profession. It is a wider concept than honesty alone. The duty to act with integrity applies to the essence of what it means to be a solicitor and is perhaps the source from which all other professional attributes spring. Integrity must include a moral compass and the dignified way in which this is expressed outwards to other professionals and the public.

27.38.18 The Respondent failed therefore to act with integrity in posting such Tweets on his public Twitter feed which contained inappropriate, offensive and derogatory statements and references, including a considerable number of Tweets which were antisemitic. Such conduct was not acting in adherence to the ethical standards expected of a Solicitor.

27.38.19 The Tribunal found on the balance of probabilities that the Respondent had breached Principle 5 with respect to Allegations 1.1 and 1.2.

Principle 2 (public trust)

27.38.20 It followed that the public would not expect a solicitor to send antisemitic Tweets and/or Tweets using language and imagery of an offensive nature to anyone would diminish the trust and confidence the public places in the legal profession.

27.38.21 The Tribunal found on the balance of probabilities that the Respondent had breached Principle 2 with respect to Allegations 1.1 and 1.2.

Principle 6 (encouraging equality, diversity and inclusion)

27.38.22 A solicitor is expected to treat people fairly, with dignity and with respect. Solicitors are responsible for making sure that their personal views are not imposed on, and do

not have a negative impact on, others, in particular by expressing personal, moral or political opinions on social media which may cause offence.

27.38.23 The Tribunal found that the Respondent by publishing Tweets to a public audience that were antisemitic, discriminatory, racist, and offensive towards Jewish individuals and other nationalities or ethnicities, would have had a negative impact on others who followed the Respondent's opinions on social media. His conduct did not encourage equality, diversity and inclusion.

27.38.24 The Tribunal found on the balance of probabilities that the Respondent had breached Principle 6 with respect to Allegations 1.1 and 1.2.

27.38.25 The Tribunal found on the balance of probabilities Allegations 1.1 and 1.2 proved in full including all the breaches of the cited Principles.

27.39 Allegation 1.3

27.39.1 The Tribunal found this allegation to be qualitatively different to Allegations1.1 and 1.2 as it related to messages sent by the Respondent to an employee of the Respondent's regulator. The employee was therefore carrying out her work and it could not be said that she was a person who had voluntarily engaged in a political discussion on Twitter with the Respondent.

27.39.2 Examples of the messages sent by the Respondent to the IO were as follows:

Date	**Message**
December 2022	*You are a Zionist apologist and fascist like ur organisation- look forward to the McCarthyite show trial*
	You and your silly little fascist organisation do not have my consent to contact my GP. You and your Zionist racist pals can go and play with Mr Myerson
	Given the lack of engagement with the points I have raised above, I can only consider that IO who is a Sikh Punjabi is angry about comments made on Twitter by me about the Sikh national hero Ranjit Singh as a rapist of Muslim women. IO should have been excused from considering my case since she considers I am offensive to Indians and IO is very obviously an Indian.

27.39.3 In correspondence between a solicitor and his regulator the observance of the formalities of business-like communication was required and the Respondent would have had a justifiable ground of complaint had the IO sent messages couched in similar terms to the Respondent or responded in kind to the messages he sent to the IO. Whilst it was noted that the Respondent considered that the IO had been disrespectful to him there was no finding by the Regulator to substantiate this claim.

27.39.4 There appeared to be no cause for the Respondent to have sent messages to the IO which had racist/discriminatory content and overtones such as the ones he did send.

27.39.5 The Tribunal found on the balance of probabilities, the messages were intrinsically and overtly offensive.

27.39.6 The Tribunal next went on to consider the alleged breaches of the SRA Principles with respect to Allegations 1.3. To this end and given the Tribunal's findings on Allegations 1.1 and 1.2 it adopted the comments set out in the Rule 12 Statement.

27.39.7 In communicating with the SRA in such a way the Respondent failed to act with integrity *(Principle 5)*, i.e. with moral soundness, rectitude and steady adherence to an ethical code, as per Wingate as set out above.

27.39.8 Such communication was also not behaving in a way which would uphold public trust and confidence in the profession and in the provision of legal services and would undermine public confidence *(Principle 2)*. Nor was it behaving in a way to encourage equality, diversity and inclusion *(Principle 6)*.

27.39.9 The public does not expect a solicitor to express themselves publicly in such an offensive way. The public expects a solicitor to act with restraint, judgment and complete courtesy even in circumstances where they are being challenged and placed under pressure. To behave in such a way would not curtail a solicitor from advancing arguments in a forceful or principled way.

27.39.10 The Tribunal found Allegation 1.3 proved in full, on the balance of probabilities, including all the breaches of the cited Principles.

27.40 The Respondent's health and absence on the day the Tribunal considered and announced sanction

27.40.1 On the day when the Tribunal reconvened to consider sanction (23 February 2024) the Respondent did not attend. On the previous day the Respondent sent the following e-mail to the Tribunal:

> *"Dear Sirs*
> *I am not feeling well enough to attend the hearing tomorrow, as is explained in the attached note from my GP. I do wish this matter to be concluded without further delay/distress to me and am content for the Tribunal to proceed in my absence, on the basis of the submissions and documents which I shall file today and the report of Dr Zaman which you have already.*
>
> *When the hearing has finished, please send me a copy of the audio recording of it.*
>
> *Yours faithfully..."*

27.40.2 The letter dated 22 February 2024 from the GP set out the following:

> "…*Mr Husain has a diagnosis of anxiety and depression and takes regular anti-depressant medication. Mr Husain has consulted with us multiple times over recent months due to deteriorating mental health in relation to recent disciplinary action at work. He tells me that he is due to attend another hearing tomorrow (23rd February). Mr Husain feels unable to attend this hearing due to a decline in his mental health and I am concerned that attending this hearing*

could cause further deterioration. I would be grateful for your support in this matter."

27.40.3 The Respondent submitted written submissions on mitigation and further submissions as to the use of Dr Zaman's report by the Tribunal as follows:

27.40.4 The submission made on behalf of the SRA (and set out at length above) was wrong. This was clear from BSB v Howd [2017] EWHC 210 (Admin), to which Ms Culleton did not draw the Tribunal's attention. Whether the allegations pleaded *"intent*" was irrelevant: what mattered was whether the relevant conduct was caused (or significantly contributed to) by a medical condition.

27.40.5 The Tribunal's decision to allow the Zaman report to be relied upon only for the purposes of reasonable adjustments and mitigation was based upon the SRA's mistaken submission, which overlooked Howd.

27.40.6 The effect of the Tribunal's decision was to deprive the Respondent of the opportunity to put forward a substantive defence (based on the Zaman report), in accordance with Howd. When the Tribunal's decision was announced, the Respondent pointed out that it had misdirected itself in terms of the law. Paragraph 77 of the Zaman report stated that, in Dr Zaman's expert opinion, the offensive conduct was caused by the Respondent's medical condition. This was exactly what happened in Howd, where the respondent's conduct was caused or *"significantly contributed"* to by his medical condition. As Lang J made clear in Howd there is no culpability in such circumstances:

> *" ... I am satisfied that the Tribunal's conclusions on Mr Howd's medical condition were mistaken, and that they misunderstood and misapplied the medical evidence, when they concluded that his medical condition did not make a significant contribution to his conduct, and that it was caused by excessive consumption of alcohol ... "* (at [21]).
>
> *"If the public was aware that his behaviour was a consequence of a medical condition, and so lacked any reprehensible or morally culpable quality, it would be unlikely to diminish their trust and confidence in the profession or in Mr Howd as a barrister, provided he was fit to practise ... "* (at [48]).
>
> *"The medical evidence established, on the balance of probabilities, that his inappropriate, and at times offensive, behaviour was a consequence of his medical condition ... In these circumstances, Mr Howd's behaviour plainly was not reprehensible, morally culpable or disgraceful, as it was caused by factors beyond his control. In my judgment, it did not reach the threshold for a finding of serious professional misconduct"* (at [55]).

27.40.7 Therefore, the Respondent submitted that his medical condition (as explained in the Zaman report) provided him with a substantive (and complete) defence to all the allegations pleaded in the Rule 12 statement, not merely a mitigation argument.

27.40.8 Excluding the Zaman report for any purposes other than reasonable adjustments and mitigation was a fundamental error, brought about by the inaccurate submission made on behalf of the SRA.

27.40.9 The Respondent submitted that the Tribunal could correct its error in accordance with the procedure set out in The Supreme Court's decision in Re L and B (Children) [2013] UKSC which makes clear that a decision can be corrected until such time as that decision is recorded in the form of a perfected (that is, sealed) order. Therefore, the Tribunal was in a position to retract its unperfected decision to uphold the allegations and, instead, dismiss them, as required by Howd).

27.40.10 If, despite Re L and B, the Tribunal took the view that it could not now change its decision to convict, it could mitigate the prejudice/damage caused to the Respondent, by making no order against him whether by way of sanction or costs. This was the practical outcome required by Howd and the Tribunal's overriding objective.

27.40.11 With respect to proceeding in the Respondent's absence Ms Culleton referred the Tribunal to the well-known authorities relating to proceeding in a party's absence, General Medical Council v Adeogba; General Medical Council v Visvardis [2016] EWCA Civ 16231 which in turn approved the principles set out in R v Hayward, R v Jones, R v Purvis QB 862 [2001], EWCA Crim 168 [2001] namely that proceeding in the absence of the Respondent was a discretion which a Tribunal should exercise with the upmost care and caution bearing in mind the following factors:

- The nature and circumstances of the Respondent's behaviour in absenting himself from the hearing;
- Whether an adjournment would resolve the Respondent's absence;
- The likely length of any such adjournment;
- Whether the Respondent had voluntarily absented himself from the proceedings and the disadvantage to the Respondent in not being able to present his case.

27.40.12 It was held in Adeogba that in determining whether to continue with regulatory proceedings in the absence of the accused, the following factors should be borne in mind by a disciplinary tribunal:-

- the Tribunal's decision must be guided by the context provided by the main statutory objective of the regulatory body, namely the protection of the public;
- the fair, economical, expeditious and efficient disposal of allegations was of very real importance;
- it would run entirely counter to the protection of the public if a respondent could effectively frustrate the process and challenge a refusal to adjourn when that practitioner had deliberately failed to engage in the process; and
- there was a burden on all professionals subject to a regulatory regime, to engage with the regulator, both in relation to the investigation and ultimate resolution of allegations made against them. That is part of the responsibility to which they sign up when being admitted to the profession.

27.40.13 In this case the Respondent had not applied to adjourn, and he was content for the Tribunal to proceed in his absence.

27.40.14 Ms Culleton said that the Respondent's late contention that his conduct was as a result of his health was unfounded.

27.40.15 With respect to the case of Howd Ms Culleton said that that case had involved inappropriate behaviour towards female colleagues and staff at a party. It was limited in time and not conduct over months. The Respondent's case was not on all fours with Howd.

27.40.16 In Howd, Lang J had had the benefit of seeing more comprehensive medical evidence which had not been available to the Tribunal below. The evidence established that Mr Howd's excessive consumption of alcohol was very likely to have been a response to the onset of his medical condition and it probably had the consequence of exacerbating his lack of inhibition and loss of judgment on the occasion in question. Lang J was satisfied that the Tribunal's conclusions in respect of H's medical condition were mistaken and that they had misunderstood and misapplied the medical evidence.

27.40.17 Ms Culleton said the Applicant did not accept the submission that the Respondent could be absolved of culpability on the basis of Dr Zaman's report which had been served late and did not come close to setting out any reasoned view why the Respondent's depression and anxiety had been of such degree as to render inoperative his ability to restrain himself from Tweeting antisemitic and offensive Tweets, conduct which had continued for months.

27.40.18 The evidence was clear that the Respondent's health had played little or no part in the conduct giving rise to the allegations. His Tweets had been based on his coherent and consistent views which he continued to set forth in his evidence and which he said was part of his legitimate right to freedom of expression. *'Bad and hasty drafting'* as he had put it did not arise from an overwhelming health condition and remained *'bad and hasty drafting'* caused by the Respondent's admitted anger issues.

The Tribunal's Decision

27.40.19 The Tribunal noted that the Respondent had obviously been aware of the hearing and its purpose. He had made no application to adjourn the hearing and he had positively entreated the Tribunal to continue in his absence.

27.40.20 In the circumstances the Tribunal considered that the Respondent had voluntarily absented himself and the substantive hearing would continue in his absence as adjourning the matter would likely not achieve his attendance.

27.40.21 The Tribunal was satisfied therefore that it was appropriate and in the public interest for the hearing to proceed and for it to deal with sanction and costs in the Respondent's absence.

27.40.22 As to the submissions on Howd the Tribunal considered that the Respondent's position was not analogous to it and it had not incorrectly directed itself upon the objective test regarding antisemitism. There was nothing in the argument presented to the Tribunal

which made it doubt that it was incorrect in admitting the report of Dr Zaman for reasons of deciding reasonable adjustments and mitigation only.

Previous Disciplinary Matters

28. None.

Mitigation

29. The Respondent presented his mitigation in writing.

30. He apologised for any offence caused by his Tweets. Prior to this, he had an impeccable disciplinary history. At a time when he was not well mentally, he was sucked into arguments on Twitter and made comments which, as a result of his illness, lacked appropriate measure and self-control. If his words had come across as antisemitic (rather than as a comment on the behaviour of Israel towards Palestine), then that had been unintentional.

31. The Respondent was directing his ire at Zionists and did not seek to deride non-Zionist Jews generally.

32. The Respondent stated that it was regrettable that, despite being on notice of the Respondent's mental health problems, no pre-trial steps were taken to have the Respondent examined by a psychiatrist, being a step which might well have affected (i) the commencement/continuation of the proceedings or (ii) if the proceedings were to continue, how that could be done in a way which did not (a) put the depressed, unrepresented Respondent at a significant disadvantage or (b) risk causing him further anxiety/depression.

33. The Respondent reminded the Tribunal that the primary aims of a sanction are to protect the public and preserve the reputation of the profession, not to punish (though a sanction may have a punitive effect): Bolton v Law Society [1993] EWCA Civ 32. Extra care must be taken when the relevant misconduct was caused or contributed to by mental illness. That was the situation here. The Respondent was not well mentally, but he did not pose any risk to the public as a solicitor and (as is shown by the fact that there were only two complaints about the Tweets, both apparently from lawyers) had done no or minimal damage to the reputation of the profession.

34. Paragraph 23 of the Guidance Note on Sanctions states that:

> *"The Tribunal may conclude that, having regard to all the circumstances, and where the Tribunal has concluded that the level of seriousness of the misconduct or culpability of the Respondent is low, that it would be unfair or disproportionate to impose a sanction. In such circumstances, the Tribunal may decide not to impose a sanction, save for an order for costs."*

35. The Respondent submitted that the circumstances here included (i) the obvious stress and strain imposed upon the Respondent by an extended trial in which he had to represent himself despite his mental health problems, (ii) the way in which the case was prosecuted, including the fact that the SRA allowed false information about

Mr Silverman to be given to the Tribunal and (iii) the post-trial moving of hearing dates (which in itself caused considerable distress and upset to the Respondent).

36. As to the Respondent's problems with anxiety and depression, the imposition of any sanction would (in effect) amount to penalising him for making the mistake of going onto Twitter (in a personal, not professional, capacity) when he was mentally unwell and therefore lacked normal measure and control.

37. To this end, paragraph 77 of Dr Zaman's report was important:

> *"At the material time of The Respondent engaging in Twitter conversations leading to reported abuses and communication with the SRA, The Respondent was affected by observation of images of death from the Middle East. He had been on a reduced dose of his anti-depressant medication which required subsequent increase and re-titration by his GP. He had at the time a relapse of his depression during which his symptoms and levels of agitation and irritability increased, making him more liable to escalations in confrontation with those around him. On balance the relapse of his depression is likely to have led to him acting without his normal due measure and control."*

38. The last two sentences of that quotation made clear that, in Dr Zaman's expert view, it was the Respondent's mental illness (depression) which caused him to lack his usual self-control, with the result that he was more liable to be drawn into confrontations with others. The Respondent urged the Tribunal to be very careful not to make any order which amounted to punishing (or appearing to punish) the Respondent for being mentally unwell.

39. The Respondent submitted that his health had suffered because of the proceedings, the trial of which had in itself stretched over a period of six months (September 2023 to February 2024). As Dr Zaman noted in paragraph 75 of his report:

> *"The role of the tribunal proceedings appears to be significantly affecting his mental state and acting as a significant ongoing stressor. It is possible that despite treatment The Respondent is likely to be affected by recurrent depressive episodes precipitated by proceedings on an ongoing basis and political events in the Middle East."*

40. In the light of the importance of ensuring that any punishment (i) does not interfere with (or causes minimal interference with) the Respondent's Article 10 rights and (ii) does not have a "chilling effect" on the freedom of expression of the profession in general the Respondent submitted that (leaving aside the Respondent's mental health problems) the most severe sanction which the Tribunal should consider imposing was a warning, with no order as to costs.

41. However, in the light of Dr Zaman's uncontradicted assessment of the Respondent's mental health problems (and the causative effect of those problems) and in accordance with BSB v Howd [2017] EWHC 210 (Admin) 21, it was submitted that the correct outcome was one which made no order (whether by way of sanction or costs) against the Respondent.

42. As a result of the complaint made against him the Respondent lost his job and he has since struggled to find long-term employment as a solicitor. He worked as a solicitor at a local authority from 23 May 2021 to August 2021. That was the last occasion on which he worked as a solicitor.

43. From 20 September 2021 to August 2023, he was employed at Croner Group Ltd, but not as a solicitor. That was a permanent contract, but it ended in his dismissal because of the forthcoming Tribunal hearing. Thereafter, his mental health deteriorated further. He continued to be unable to secure work as a solicitor. The Respondent was currently on a short-term contract (from November 2023 to March 2024) and did not have any role to take up after that.

44. There were testimonials from Mr Butt (19 June 2022), Mr Khan (9 July 2022), (19 July 2022) and Ms Newbegin of counsel (8 July 2022) who made it clear the Respondent (i) is highly valued by those whom he has helped as a lawyer and (ii) is by nature "pleasant, professional and courteous" (Ms Newbegin), not someone who gratuitously behaves in an offensive or insulting manner.

Applicant's Application to make Submissions on Sanction

45. Ms Culleton applied for permission to be heard by the Tribunal on sanction. Ms Culleton explained that whilst the Applicant understood that any decision on the appropriate sanction was solely a matter for the Tribunal, the Applicant could assist the Tribunal by reviewing the salient features of the case along with aggravating and mitigating factors. Ms Culleton said that in other jurisdictions such assistance was provided to the court by the prosecution.

46. The Tribunal declined the Applicant permission to address it on sanction. The Tribunal was fully aware of its powers and the factors in this case, and it would not be assisted by the Applicant in this regard.

Sanction

47. The Tribunal first had regard to the observation of Sir Thomas Bingham MR (as he then was) in Bolton v Law Society [1994] 1 WLR 512 that the fundamental purpose of sanctions against solicitors was:

> *"to maintain the reputation of the solicitors' profession as one in which every member, of whatever standing, may be trusted to the ends of the earth".*

48. The Tribunal considered the Guidance Note on Sanction (10th Edition, June 2022) ("the Sanctions Guidance"). In doing so the Tribunal assessed the culpability and harm identified together with the aggravating and mitigating factors that existed.

49. The Respondent's predominant motivation for the misconduct, particularly in Allegations 1.1 and 1.2 was to set out his views in a public forum on matters taking place in the Middle East. In each of Allegation 1.1 and 1.2 the Respondent's motivation appeared to shift from one of making potentially valid political points to being purely offensive and stooping to use racist and antisemitic language to underline his points of argument.

50. With respect to Allegation 1.3 his motivation appeared to be one of anger and outrage at being called to account by his regulator.

51. In each allegation the Tribunal found the misconduct arose from a conscious decision on the Respondent's part to follow a certain course of action in which he used offensive and antisemitic language as a means of making his points or dealing with counter argument. There may have been an element of spontaneity however this conduct persisted over a number of months and the Respondent had had time to reflect and moderate his mode of expression.

52. Whilst the Respondent may have been suffering from depression this did not excuse his behaviour and the Tribunal had been shown no medical evidence that his condition was of such degree and nature that he did not know what he was doing or that he had had no control over his use of Twitter, a medium of communication in which he had identified himself as a lawyer.

53. Similarly, there was no medical evidence to provide any explanation why his underlying depression would have caused him to be antisemitic and use racist and inappropriate sexualised language. The Respondent therefore had had direct control of or responsibility for the circumstances giving rise to the misconduct in each allegation. He could have stopped using Twitter or restrained his use of offensive language.

54. In assessing culpability, the Tribunal found the Respondent to be fully culpable for his actions.

55. In assessing harm, the Tribunal noted the impact of the Respondent's misconduct upon those directly or indirectly affected by the misconduct the public, and the reputation of the legal profession was high. Mr Myerson had been so impacted that he had complained to the Respondent's firm, which had dismissed him, and he also made a complaint to the SRA.

56. Mr Teoh said that he was appalled at the Respondent's Tweets and dismayed that an SRA regulated solicitor would express themselves in such an offensive way, including an apparent hostility towards Jews, as to potentially diminish public confidence in the profession.

57. The IO was subjected to distressing language regarding her ethnicity, based upon a presumption made by the Respondent. A person is entitled to carry out their work without being subject to bullying and offensive abuse.

58. The extent of the harm was entirely foreseeable by the Respondent and the Tribunal found the level of harm to be very high.

59. As to aggravating factors the Tribunal noted that there had been no allegation of dishonesty and no criminal offending. However, the misconduct was deliberate and calculated and repeated, continuing as it did over a period of at least 9 months.

60. The Respondent's conduct did not take advantage of a vulnerable person. However, the Tribunal was satisfied that his misconduct was motivated by and/or demonstrated hostility, based on protected or personal characteristics of a person, namely race and

religion. There was clearly a bullying element and puerile and crude sexual references. This was particularly disappointing given the experience of racism the Respondent said he had experienced when growing up and how hurtful this must have been.

61. The Tribunal was also satisfied that the Respondent was responsible for the misconduct and that he knew or ought reasonably to have known that the conduct complained of was in material breach of obligations to protect the public and the reputation of the legal profession.

62. Other than a hitherto unblemished record, the Tribunal was unable to identify any mitigating factors in this case. The Respondent had shown no insight whatsoever. His submission that his depression contributed to his actions could not account for racism and antisemitism.

63. Notwithstanding the Respondent's contention that he was apologetic the Tribunal had seen no evidence of genuine insight into his behaviour. He had described his apology to Mr Myerson as a '*British apology'* presumably this meant that it was not a real apology. This was perhaps an encapsulation of the case i.e., that the Respondent was a clever man who knew that certain words and language may be selected to mask true and intended meaning. In reality, no contrition had been shown by the Respondent.

64. The Tribunal was confident that it had made adequate reasonable adjustments for the Respondent in the form or regular and longer breaks; latitude to serve very late evidence, some of which was voluminous, and he was not restricted as to the manner and length of his cross-examination of witnesses other than to remain courteous. However, throughout the substantive hearing the Respondent had been unduly combative towards the Tribunal, the Applicant's advocate and the witnesses. The Respondent had claimed that Ms Culleton was a *"British imperialist"* who wanted to hide [her] country's own crimes and he had digressed into matters of history which although illuminating from the point of view of general knowledge did little to progress his case.

66. It was noted that during the course of the hearing, as the evidence of his conduct was unpacked, his position transitioned from portraying himself as a stout defender of freedom of speech to being a person who had been angry and depressed and not able to control his impulses when sending offensive and antisemitic Tweets.

66. Such observations did not serve to increase the Tribunal's view of the seriousness of the matters found proved, which were by their nature very serious, but they shed light on the Respondent's lack of restraint, lack of judgement and lack of insight on his conduct. The Tribunal was concerned that the Respondent would behave in similar vein with clients and members of the public who did not share his views or who he perceived were challenging him.

67. When reviewing all the factors in this case the Tribunal concluded that the Respondent's misconduct was so serious that a Reprimand, Fine or Restriction Order would not be a sufficient sanction to protect the public or the reputation of the profession from harm.

68. The Tribunal gave earnest thought to the imposition of a fixed or indefinite suspension, but it considered that in this case the Respondent's conduct had been both seriously offensive and seriously discreditable.

69. This was a case where there had been many examples of antisemitic rhetoric, vulgar and offensive language, and racism. This had been ingrained behaviour and the Respondent had shown himself to be without contrition or insight.

70. In such circumstances the protection of the public and public confidence in the profession along with the reputation of the profession required no lesser sanction than that the Respondent be removed from the Roll.

71. The Tribunal felt compelled to state that there is no place for bigotry and prejudice in the profession. Whilst the wider world is experiencing turbulent times solicitors must exercise restraint, show courtesy and display understanding to all manner of people with whom they come into contact whilst at the same time not shrinking from fearlessly fighting for their client, no matter their creed or political views.

72. With respect to the use of Twitter, a solicitor would be well advised to avoid using this platform when in a state of anger and to refrain from sending messages until they had a clear head and reclaimed their objectivity.

Costs

73. The Tribunal, having announced its decision on sanction, next considered the question of costs.

The Applicant's Application for Costs

74. Ms Culleton submitted that as a matter of principle the Applicant was entitled to its proper costs. The Applicant had approached the case with principled fairness, sensitivity, and the required expertise. It had proved its case on all allegations to the requisite standard.

75. The quantum of costs claimed by the Respondent was set out in its itemised statements of costs in the total sum of £40,708.08.

76. Ms Culleton submitted that this was a reasonable and proportionate sum given that this had been a complex case, involving expert evidence, raising issues of public importance impacting directly upon the reputation of the profession. The case had merited the harnessing and utilisation of a legal team and the skills each had brought to bear. There had been at a general hourly rate of £142 per hour, which in the circumstances of the case was not excessive.

77. Whilst the case had been set down for 5 days it had taken much longer, in part due to the actions of the Respondent who did not comply with the standard directions; served late and voluminous material, some of which was of limited relevance and caused disruption to the flow of the hearing and served only to draw matters out. Extra time was required to review the late served material and extra expense in instructing an

expert counsel to advise on matters relating to the Respondent's submissions on the Equality Act 2010.

78. In contrast, the Applicant had abided by all directions, and it had served the material it relied upon in accordance with those directions.

79. It was right that the Respondent be ordered to pay the costs in full.

The Respondent's submissions

80. The Respondent submitted written submissions, which amongst other things set out:

80.1 Mr Tippett-Cooper's time should be disallowed. Ms Culleton was a barrister of almost 20 years' call and was the trial advocate. She drafted the Rule 12 statement, signed the statement of truth and made all relevant tactical decisions. In the same way that she did not need a *"supervising solicitor"*, she did not need a senior associate: just a paralegal would have done, to help with administrative tasks There was no need for Mr Tippett-Cooper (or anyone else) to supervise her or be involved in this case in *"preparation for"* or during the trial. It was not clear why anyone else (beyond a paralegal) needed to be involved.

80.2 This case was not a proportionate way of dealing with comments which (i) arose mostly out of the emotive situation involving Israel and Palestine, (ii) engaged the Respondent's Article 10 rights and (iii) were written at a time when the Respondent was mentally unwell. The manner in which the Respondent was pursued by the SRA was heavy-handed, in circumstances where (to the SRA's knowledge") the Respondent was (and is) suffering from anxiety and depression.

81. The Respondent had filed a statement of means with comprehensive supporting evidence. It was clear that he had limited resources, and any significant costs order would mean that he would have no option but to consider bankruptcy.

The Tribunal's Decision on Costs

82. The Tribunal noted that under Rule 43 (1) of The Solicitors (Disciplinary Proceedings) Rules 2019 it has the power to make such order as to costs as it thinks fit, including the payment by any party of costs or a contribution towards costs of such amount (if any) as the Tribunal may consider reasonable. Such costs are those arising from or ancillary to proceedings before the Tribunal.

83. By Rule 43(4), the Tribunal must first decide *whether* to make an order for costs and when deciding whether to make an order, against which party, and for what amount, the Tribunal must consider all relevant matters such as:

- The parties' conduct.
- Were directions/deadlines complied with?
- Was the time spent proportionate and reasonable?
- Are the rates and disbursements proportionate and reasonable?
- The paying party's means.

84. The Tribunal found the case had been properly brought by the Applicant.

85. The public would expect the Applicant to have prepared its case with requisite thoroughness and, in this regard, it had properly discharged its duty to the public and the Tribunal.

86. The Tribunal noted the following factors:

- The substantive hearing had taken much longer than anticipated.
- This had been a complex case to prepare and present, and as it had raised serious and complex issues regarding the conduct of a regulated professional when using social media, in circumstances where that individual made reference to their professional status.
- There had been the need to call expert evidence to assist the Tribunal.
- The Respondent had not complied with directions save for providing his Answer and statement of means and support.
- The Respondent had served voluminous material and had done so late. Much of the material had not been relevant to the core issue.
- He had made numerous interlocutory applications which had required the Applicant to prepare its response. This had impacted on the length of the hearing.

87. The Tribunal adopted a 'broad brush' approach to the costs and looked at matters in the round.

88. The Tribunal found that the costs claimed by the Applicant were reasonable and proportionate and that in principle the Applicant's costs should be paid by the Respondent in full and not borne by the profession.

89. However, the Tribunal considered very carefully the Respondent's statement of means and his supporting evidential material.

90. The Tribunal, in considering the Respondent's liability for the costs of the Applicant, had regard to the following principles, drawn from R v Northallerton Magistrates Court, ex parte Dove (1999) 163 JP 894:

- it is not the purpose of an order for costs to serve as an additional punishment for the respondent, but to compensate the applicant for the costs incurred by it in bringing the proceedings and
- any order imposed must never exceed the costs actually and reasonably incurred by the applicant.

91. It was clear that the Respondent's means were extremely limited. The Respondent had no assets and a nil monthly surplus. The Tribunal accepted this evidence.

92. The Tribunal was mindful that it should not make an order for costs where it is unlikely ever to be satisfied on any reasonable assessment of the respondent's current or future circumstances as per Barnes v SRA Ltd [2022] EWHC 677 (Admin).

93. The Tribunal considered that the Respondent's case was analogous to Barnes and that in his case his impecuniosity was a persuasive factor to allow it to divert from the normal course involving costs.

94. The Tribunal therefore made no order for costs.

Statement of Full Orders

95. The Tribunal Ordered that the Respondent, FARRUKH NAJEEB HUSAIN, solicitor, be STRUCK OFF the Roll of Solicitors and it further Ordered that there be no Order for Costs.

Dated this 28th day of March 2024
On behalf of the Tribunal

W Ellerton

W Ellerton
Chair