SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 12612-2024

BETWEEN:

SOLICITORS REGULATION AUTHORITY LTD. Applicant

and

ASHLEY SIMON HURST Respondent

Before:

Ms A Kellett (in the chair)
Mr P Lewis
Dr S Bown

Date of Hearing: 16 – 20 December 2024

Appearances

David Price KC, solicitor advocate, of 21 Fleet Street, London, EC4Y 1AA and Michael Collis, counsel, of Capsticks LLP, 1 St George's Street, London, SW19 4DR, for the Applicant.

Ben Hubble KC, of 4 New Square Chambers, 4 New Square, London WC2A and Ian Helme, counsel, of Matrix Chambers, Griffin Building, Gray's Inn, London WCIR 5LN, instructed by CMS for the Respondent.

JUDGMENT

Allegations

1. The allegations made against Mr Hurst by the Solicitors Regulation Authority Limited ("SRA") were that whilst working as a solicitor at Osborne Clarke LLP ("the Firm"), he:

1.1. On or around 16 July 2022, sent an e-mail to Dan Neidle that improperly attempted to restrict Mr Neidle's right to publish that e-mail and/or discuss its contents, and in doing so breached any or all of Paragraphs 1.2, 1.4 and 2.4 of the SRA Code of Conduct for Solicitors, RELs and RFLs 2019 ("the Code") and Principles 2 and 5 of the SRA Principles 2019 ("the Principles").

1.2. On or around 19 July 2022, sent a letter to Dan Neidle that improperly attempted to restrict Mr Neidle's right to publish that letter and/or discuss its contents, and in doing so breached any or all of Paragraphs 1.2, 1.4 and 2.4 of the Code and Principles 2 and 5 of the Principles.

Executive Summary

2. The Tribunal found allegation 1.1 proved in its entirety. The Tribunal found allegation 1.2 not proved. The Tribunal's reasoning can be accessed here:

- Allegation 1.1
- Allegation 1.2

3. The Tribunal determined that a fine of £50,000 was appropriate and proportionate. The Tribunal's reasoning for its sanction can be accessed here:

- Sanction

Documents

4. The Tribunal reviewed all the documents submitted by the parties, which included (but was not limited to):

- Rule 12 Statement and Exhibit IWB1 dated 28 May 2024
- The Respondent's Answer and Exhibits dated 8 August 2024
- Applicant's Reply to the Respondent's Answer dated 9 September 2024
- Applicant and Respondent's Skeleton Arguments
- Applicant and Respondent's Closing Submissions
- Respondent's Rejoinder to the Applicant's closing submissions

Factual Background

5. Mr Hurst was admitted to the Roll in February 2004. He held a current unconditional Practising Certificate. At all material times Mr Hurst was working at the Firm.

6. In July 2022, there was media coverage in relation to the tax affairs of the then Chancellor of the Exchequer, and a candidate in the Conservative Party leadership campaign, the Rt. Hon Nadhim Zahawi MP ("Mr Zahawi").

7. Mr Neidle, a former tax solicitor and partner at Clifford Chance, ran Tax Policy Associates, a 'not for profit' company which, according to its website, has, "…the aim of improving tax and legal policy, and public understanding of tax."

8. On 10 July 2022, Mr Neidle published an article on his Tax Policy Associates website which commented on Mr Zahawi's tax affairs and the various reports from other media outlets. The article was headed: *"Did Nadhim Zahawi use an offshore trust to avoid almost £4m of capital gains tax?"*

9. On Saturday 16 July 2022, Mr Neidle posted on Twitter (now known as X):

> *"On Wednesday, Nadhim Zahawi said that his founder shares in YouGov ended up with a Gibraltar company because it had provided capital. I went through all the filings and concluded that either I was missing something, or Zahawi was lying.*
>
> *Turns out Zahawi was lying. An update:"*

10. At 17:04 on the same day, Mr Hurst messaged Mr Neidle directly asking Mr Neidle to call him. Mr Neidle replied: *"Please send me anything you have to say in writing."* Mr Hurst responded: *"Trying to avoid that. We can speak WP if you like. Just want to give you a heads up"*, followed by, *"If you don't want to speak, could you let me know the best email address to contact you on?"* An e-mail address was provided, but Mr Neidle stated that he did not accept *"without prejudice"* letters.

11. At 18:54 that day, having returned from a family day out at the Natural History Museum and working remotely on his phone from his sister-in-law's bedroom, Mr Hurst sent Mr Neidle an email ("the Email") marked *"Confidential & Without Prejudice"* which stated (amongst other things):

> *"Our client recognises that, as Chancellor and an MP, he is accountable to the public and it is right that he be asked questions relating to the use of offshore companies. He also recognises that you are absolutely entitled to raise the questions that you have done about his tax affairs, especially given your expert status. Until today, you have mainly done so in a balanced and fair way, even if our client does not agree with some of your allegations and assumptions.*
>
> *However, our client considers that you have overstepped the mark today by accusing him of lying to the media and the public in explaining the contribution of his father to YouGov…"*
>
> *"…I have marked this email without prejudice because it is a confidential and genuine attempt to resolve a dispute with you before further damage is caused. Our client wants to give you the opportunity to retract your allegation of lies in relation to our client. That would not of course stop you from raising questions based on facts as you see them.*
>
> *You have said that you will "not accept" without prejudice correspondence. It is up to you whether you respond to this email but you are not entitled to publish it or refer to it other than for the purposes of seeking legal advice. That would*

be a serious matter, as you know. We recommend that you seek advice from libel lawyer if you have not done already.

Should you not retract your allegation of lies today, we will write to you more fully on an open basis on Monday.

In the meantime, our client reserves all his rights, including to object to other false allegations that you have made.

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

12. On Monday 19 July 2022, Mr Neidle emailed Mr Hurst in the following terms:

> *"I'm continuing to write about this story, which I believe is strongly in the public interest. To date, your client has provided little by way of substantive answers to the questions being raised, and has done nothing to correct my understanding of events on an open basis. I am, therefore, today publishing a list of outstanding questions for your client, some of which are very serious. I would urge your client to answer them (and I will publish any answer he provides)."*

13. In a letter of the same date ("the Letter") sent to Mr Neidle by Mr Hurst and marked both *"Private and Confidential"* and *"NOT FOR PUBLICATION"*, the following (amongst other things) was stated:

> *"1.3 You have said that you will not accept without prejudice correspondence and therefore we are writing to you on an open, but confidential basis. If your request for open correspondence is motivated by a desire to publish whatever you receive then that would be improper. Please note that this letter is headed as both private and confidential and not for publication. We therefore request that you do not make the letter, the fact of the letter or its contents public.*
>
> *1.4 Please also do not misrepresent the nature of this letter. It is not a threat to sue for libel. It is a request that you reconsider what you have published and adopt a fair and balanced approach to your investigations…*
>
> *…*
>
> *1.7 Since accusing our client of dishonesty, you have asked a series of open questions of our client on your Twitter feed and blog. Our client is not going to engage in a point by point response to each of your questions. He has already provided answers to similar questions to various media publications, which have all published articles on the subject – mainly in a balanced way.*
>
> *1.8 Our client also does not consider that it is appropriate for him to be engaging in argument on personal tax matters over social media. There*

are more appropriate channels for such discussion, as you are well aware.

1.9 Please therefore refer to what our client has said publicly and the comments attributed to our client's spokesperson in the mainstream media. You will note that none of the media has accused our client of dishonesty in the way that you have…"

…

3.1 Our client is not asking for a response to this letter. He does not want to get involved in a debate about semantics and historical tax matters when he has an important job to do. Should there be any serious questions to be asked about our client's taxes, HMRC will no doubt ask them and our client will respond accordingly.

3.2 However, our client does ask that you reconsider the false allegation of dishonesty that you have published and whether you have sufficient information to justify this. You are clearly an accomplished tax lawyer and your opinions are respected, as well as being followed by journalists and members of the public. It is therefore all the more important that you apply balance to what you publish and ensure that you can verify statements of fact that you assert.

3.3 Going forwards, if you have questions to put to our client, please put them to our client's press officer in advance of publication such that our client has a reasonable opportunity to respond.

3.4 Our client reserves his rights in relation to what you have published to date…"

14. Mr Neidle published the Email and Letter on 22 July 2022. On 25 July 2022, Mr Neidle wrote to the SRA stating that whilst he "did not wish to make a complaint about [the Firm] or the individual solicitors involved in the correspondence.." he wanted to alert the SRA to the practice of attaching labels such as *"without prejudice"* and *"confidential"* to correspondence and to *"… threaten (unspecified) consequences if it is published or disclosed to third parties …"*

Witnesses

15. The following witnesses provided written statements and gave oral evidence:

- Dan Neidle – for the Applicant
- Gillian Phillips – for the Applicant
- Ashley Hurst – Respondent
- Lorna Skinner – for the Respondent
- David Engel – for the Respondent
- Lord Garnier KC – for the Respondent
- Adam Speker – for the Respondent

Findings of Fact and Law

16. 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 Mr Hurst's rights to a fair trial and to respect for his private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

Integrity

17. The test for integrity was that set out in *Wingate and Evans v SRA and SRA v Malins [2018] EWCA Civ 366*, as per Jackson LJ:

> *"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 ... [Professionals] are required to live up to their own professional standards ... Integrity connotes adherence to the ethical standards of one's own profession".*

18. **Allegation 1.1 – On or around 16 July 2022, sent an e-mail to Dan Neidle that improperly attempted to restrict Mr Neidle's right to publish that e-mail and/or discuss its contents, and in doing so breached any or all of Paragraphs 1.2, 1.4 and 2.4 of the Code and Principles 2 and 5 of the Principles.**

The Tribunal's Findings

18.1 The parties each submitted a different proposed framework for the Tribunal to use in deciding the case. The Tribunal determined that the appropriate approach was to (i) make its findings of fact; (ii) apply the law to those facts and (iii) then consider whether Mr Hurst had breached the Principles and Code as alleged or at all.

18.2 The facts, as detailed above, were not in dispute. Accordingly, the Tribunal accepted them as accurate.

The Prohibition on Disclosure

18.3 The Applicant argued that the Prohibition on Disclosure prevented any reference to the claim—whether directly or indirectly—to anyone other than a legal adviser. The Respondent, however, said the restriction applied only to the Email itself, not the fact of the claim, and that the prohibition was limited to publishing or referring to the Email or its existence (except when speaking to a legal adviser).

18.4 Mr Hurst himself gave evidence that changes made to the Email drafts, including the insertion of the prohibition on publication, were based on client instructions, although some were "tweaks" made by Mr. Hurst within the client's general instructions to avoid publicity. Mr Hurst accepted that what he was trying to do was get Mr Neidle on the telephone, as would be his usual practice with a defamation defendant, and to dial down the need for aggressive correspondence.

18.5 The Tribunal did not accept the Respondent's interpretation that the prohibition only referred to the existence of the Email. The Tribunal carefully considered the oral testimony by Mr Hurst: it was clear that Mr Hurst was working under intense pressure, out of the office, on a Saturday evening with the imminent threat of the Sunday papers publication deadline looming, having had to juggle client communications during a family day out. Mr Hurst's client was also extremely high profile at the time.

18.6 Against that background the Tribunal gave significant weight to:

- the very clear evidence from Mr Hurst that he had carefully considered the words used in the email: he had not written it carelessly or without thought;
- Mr Hurst's own evidence – and that of Ms Phillips, to include such wording was not usual practice – indeed Mr Hurst had never done it before;
- a significant or primary driver to prevent publicity generally;
- the ordinary meaning of the words used. If the Respondent's position was right, Mr Neidle could have published the contents without mentioning the Email, and there would have been no breach. That would have defeated the purpose of the prohibition entirely.

18.7 The Tribunal found that, having considered all of the circumstances, Mr Hurst intended to prevent Mr Neidle from disclosing both the existence and the contents of the Email.

18.8 For these reasons, the Tribunal found as fact that the Prohibition on Disclosure, supported by the "*without prejudice*" label, was intended to prevent Mr Neidle from disclosing either the Email or its contents to anyone other than a legal adviser.

Whether the Email Was "Without Prejudice"

18.9 The Tribunal next considered the relevance of the "*without prejudice*" labelling to the communication ("WP").

18.10 Mr Hubble KC argued that the Applicant's case had shifted over time and had not initially challenged the WP status of the Email. He pointed to the Rule 12 Statement, which did not explicitly reject the WP label, and claimed that the Applicant had only taken a clear position against the WP label in the Reply.

18.11 The Tribunal rejected that submission. The Rule 12 Statement expressly reserved the right to challenge the use of the WP label and did not concede that it was properly applied. Moreover, the Applicant's position in the Reply was clear. Mr Hurst and his legal team were fully aware of the case they had to meet. At no point during the various case management hearings—including the one on 18 October 2024—did the Respondent seek clarification on the WP issue. The Tribunal found that the Respondent had ample notice and understanding of the Applicant's position.

18.12 In broadest terms, Mr Hubble KC submitted that the Tribunal ought to consider whether it was **arguable** that the respondent's correspondence was "without prejudice".

18.13 Mr Hubble KC submitted that correspondence which was arguably "without prejudice" attracted the privileges and restrictions which flow from that label in accordance with the practice in some civil proceedings. Only in limited circumstances was it necessary or appropriate to go behind the label. By way of example, the Tribunal was directed to *Unilever Plc v Procter & Gamble Co [1999] EWCA Civ 3027* which established that WP communications may be admitted as evidence in civil proceedings only in clear cases of "*unambiguous impropriety*".

18.14 The Tribunal did not agree.

18.15 If Mr Hubble's submission were correct this would leave a lacuna in which a solicitor could craft correspondence with the label without prejudice appearing or having the veneer of without prejudice, but for improper reason.

18.16 The Tribunal found *Unilever Plc v Procter & Gamble Co [1999] EWCA Civ 3027* and related cases to be of limited relevance. Those decisions addressed the admissibility of WP material in litigation, not professional conduct. Unlike a court assessing admissibility, the Tribunal must assess a solicitor's motives and behaviour.

18.17 The question for the Tribunal was not simply whether the Email was (or could be) WP—but whether Mr Hurst had applied the label for a proper reason. That required examining his motivation.

18.18 Where WP is allegedly used improperly, the standard for finding misconduct is high but is to be assessed with regard to all the evidence including, where available, confidential and privileged material.

18.19 The Tribunal agreed that a key requirement for WP status is a genuine attempt to resolve a dispute. Once that intent is established, additional motivations may be irrelevant.

18.20 The Tribunal accepted that if Mr Hurst had applied the WP label to make a genuine settlement offer, then there would be no misconduct. That was not the case here.

18.21 The Tribunal found that Mr Hurst used the WP label to support the improper restriction on disclosure and to deter publication. The timing was important: the Email was sent on a Saturday evening to seek to prevent publication of the story in the Sunday papers.

18.22 Lord Garnier gave evidence on behalf of the Respondent. He told the Tribunal that a government minister must inform government law officers before bringing or threatening a defamation claim. Such a duty arises from the Ministerial Code. Lord Garnier confirmed that a breach would be a serious matter for the Prime Minister to address—and, in practice, "*simply wouldn't happen*".

18.23 All of the Respondent's witnesses confirmed that they had never seen wording like that used by Mr Hurst before. Mr Hurst also confirmed he had not previously used it.

18.24 The Tribunal compared the Email with the subsequent Letter. No material facts had changed between the two. Yet the Email was marked "WP" and asked Mr Neidle to "*retract*" his allegation, whereas the Letter was sent on an open basis and asked him merely to "*reconsider*". The Tribunal found that contrast telling.

18.25 The Tribunal concluded that Mr Hurst had applied the WP label not because the Email genuinely met the criteria for WP protection, but to try to prevent Mr Neidle from publishing its contents. That was not a legitimate reason to use the WP label. There was no real attempt at negotiation or resolution—only a desire to suppress publication.

18.26 In light of the above, the Tribunal found that Mr Hurst had acted improperly by applying the WP label in such circumstances.

The Implicit Threat and Use of the Without Prejudice Label

18.27 The Applicant further argued that the Email contained an implicit threat: that if Mr Neidle disclosed the Email or the fact of the claim, Mr Zahawi would likely take action. This could include legal proceedings or a regulatory complaint. The Respondent disagreed, saying the Email merely highlighted that disclosing a without prejudice communication would be a serious matter. Mr Hubble KC submitted that Mr Hurst had intended only to remind Mr Neidle that it was serious to disregard WP protections. However, Mr Hurst also accepted that his wording could reasonably be taken as suggesting the possibility of regulatory consequences.

18.28 The Tribunal accepted the Applicant's interpretation. Mr Hurst's own concession supported the conclusion that his wording conveyed a real possibility of action being taken against Mr Neidle if the Email was disclosed. That supported the finding that the Email carried an implicit threat, not merely a neutral reminder about confidentiality.

Confidentiality and Attempt to Restrict Publication

18.29 Mr Hurst argued that the Email contained confidential information, specifically:

- (i) that Mr Zahawi had instructed libel solicitors Osborne Clarke to respond to a particular allegation of dishonesty concerning his personal tax affairs; and
- (ii) that Mr Zahawi was keen to negotiate a retraction.

18.30 Mr Hurst accepted that this information was not inherently confidential. Mr Hubble KC submitted that it was not improper to try to avoid publication of the allegation. The Tribunal agreed. However, the Tribunal found that it was improper to suggest a duty of confidentiality existed when it did not, in order to prevent publication.

18.31 The Tribunal then considered whether the fact that Osborne Clarke had been instructed created a duty of confidentiality in itself. Referring to *Barrymore v News Group Newspapers Ltd [1997] FSR 600*, the Tribunal concluded that simply instructing solicitors does not, in itself, give rise to confidentiality. Nor does a desire to settle a matter. Objectively, there was no reasonable expectation that this information was private.

18.32 Mr Hubble KC referred the Tribunal to paragraph 26-007 of *Gatley on Libel and Slander*, which discusses the risks of publishing correspondence labelled "private and confidential". The Tribunal noted that *Gatley* does not say such a label alone creates a duty of confidentiality. The relevant footnote merely advises that a responsible solicitor

would warn a client that publishing such a letter might be inadvisable and could risk a potential breach of confidence or affect damages.

18.33 The Tribunal accepted that a competent solicitor would advise caution, but this did not mean that a legal duty of confidentiality actually existed. That would depend on the content of the communication. If it genuinely contained confidential information, a duty might arise. If not, the label made no difference. The Tribunal found that *Gatley* confirmed this position: the duty arises only if the content has the necessary quality of confidence.

18.34 Mr Hubble KC also relied on *Tchenguiz v Imerman [2011] 2 WLR 592 at [69]*, a case which addressed situations where a party should reasonably understand that information was confidential. The judgment in that case confirmed that a right to confidentiality arises only if the information genuinely deserves protection. The Tribunal agreed. It noted that the relevant passage from the judgment referred to the claimant's right to control if, how, and when confidential information is shared—but this applies only where such a right actually exists.

18.35 The other cases cited by Mr Hubble KC also involved information that clearly met the threshold for confidentiality. The Tribunal concluded that Mr Hurst needed to show that the Email included genuinely confidential information before any restriction on publication could be justified.

18.36 For the reasons above, the Tribunal found that the Email did not contain information with the necessary quality of confidence. Therefore, there was no duty of confidentiality. Mr Hurst had no proper basis for restricting Mr Neidle's ability to publish or discuss the Email, and his attempt to do so was improper.

Findings on Breach of Conduct Rules

18.37 Having found that Mr Hurst improperly tried to prevent Mr Neidle from publishing or discussing the Email, the Tribunal considered whether this conduct breached the SRA Principles (the 'Principles') and Code of Conduct for solicitors ('the Code').

18.38 The Tribunal found that the language used—whether characterised as "*serious wording*" (as the Respondent claimed) or an "*implicit threat*" (as the Applicant argued)—was intended to mislead Mr Neidle about his rights. This amounted to Mr Hurst taking unfair advantage of him. The claims made in the Email were not properly arguable. As a result, Mr Hurst breached paragraphs 1.2, 1.4 and 2.4 of the Code.

18.39 The Tribunal considered that such conduct would clearly undermine public trust in the profession. Members of the public would not expect a solicitor to misuse legal language or threaten consequences based on duties that did not exist. The Tribunal therefore found that Mr Hurst's actions breached Principle 2 of the SRA Principles.

18.40 A solicitor acting with integrity would not seek to mislead a third party or threaten unspecified consequences based on fabricated legal obligations. Mr Hurst said he had carefully considered the wording used. The Tribunal found that this consideration was important. It was clear that Mr Hurst either then ignored or dismissed his regulatory responsibilities. His priority was stopping disclosure, not ensuring his conduct was

compliant or justifiable. The Tribunal therefore found that he had also breached Principle 5.

18.41 For these reasons, the Tribunal found allegation 1.1 proved on the balance of probabilities.

19. **Allegation 1.2 - On or around 19 July 2022, sent a letter to Dan Neidle that improperly attempted to restrict Mr Neidle's right to publish that letter and/or discuss its contents, and in doing so breached any or all of Paragraphs 1.2, 1.4 and 2.4 of the Code and Principles 2 and 5 of the Principles.**

The Tribunal's Findings

19.1 As detailed above, the letter was marked both "*Private and Confidential"* and "*Not For Publication"*. Paragraph 1.3 of the letter stated:

> *"You have said that you will not accept without prejudice correspondence and we are therefore writing to you on an open, but confidential basis. If your request for open correspondence is motivated by a desire to publish whatever you receive then that would be improper. Please note that this letter is headed both private and confidential and not for publication.* ***We therefore request that you do not make the letter, the fact of the letter or its contents public. (Tribunal's emphasis).****"*

19.2 It was clear from the wording of the Letter that there had been no attempt to restrict Mr Neidle's right to publish the Letter or discuss its contents that could amount to a breach of the Principles or Code as alleged. The Letter expressly stated that this was a request. On that wording the Tribunal found that Mr Neidle was at liberty to refuse that request. Indeed, in his evidence Mr Neidle described the letter as *"weak"* and did not suggest that he felt that he was bound by any duty of confidentiality or non-publication as a result of the contents of the Letter.

19.3 Accordingly, the Tribunal found allegation 1.2 not proved on the face of the wording of the document. In the circumstances, the Tribunal determined that it was not necessary to detail the parties' respective cases as regards allegation 1.2.

Previous Disciplinary Matters

20. None

Mitigation

21. Mr Hubble KC submitted that:

21.1 Any sanction imposed should be proportionate to the misconduct found proved by the Tribunal. While there is ongoing public and professional debate about SLAPPs, this case should not be treated as one. It is not a SLAPP, and the sanction should not be used as a deterrent in that context.

21.2 Mr Hurst was not motivated by any improper intent. His purpose in sending the Email was to seek a swift retraction of the dishonesty allegation and to protect a potential defamation claim.

21.2 The conduct was not premeditated or planned. It took place in a fast-moving, urgent situation. The misconduct related solely to the contents of a single email written on a Saturday afternoon under considerable time pressure. Although Mr Hurst was aware of public concern around SLAPPs, the Email predated the publication of the SRA's warning notices in 2022 and 2024.

21.3 The harm caused to Mr Neidle lasted only a few days—from 16 July 2022, when the Email was sent, to 19 July 2022, when it was followed up with the letter. The primary concern was the implied threat of defamation proceedings; secondary concerns were the use of the without prejudice label, the restriction on publication, and the suggestion that non-compliance would be viewed as a serious matter.

21.4 The publication of the correspondence was delayed by only six days. Viewed in context, this was not an attempt to obstruct scrutiny of Mr Zahawi's tax affairs. Rather, the intention was to narrow the focus of the dispute to Mr Neidle's allegation of dishonesty.

21.5 The misconduct was neither deliberate, calculated, nor repeated. It arose in the heat of the moment, in a context where Mr Hurst believed he was acting in line with his regulatory duties. This was a single incident of brief duration in an otherwise unblemished professional career. Evidence from Ms Phillips, who had previously worked with Mr Hurst, described him as moderate and professional.

21.6 Mr Hurst found the proceedings extremely stressful. Media coverage has affected his professional reputation and his relationships with some clients and colleagues. However, as a direct result of the proceedings, his Firm's litigation team has adopted a more cautious approach when using labels in correspondence, ensuring they are used properly and clearly explained.

21.7 Testimonials from colleagues, clients, and opponents spoke to his professionalism, dedication, and integrity. These demonstrated that this was an isolated incident and that there was no risk of further misconduct.

21.8 The Tribunal was referred to previous decisions showing that a financial penalty would be an appropriate and proportionate sanction. The misconduct fell within Indicative Fine Band 2. There was no need for a suspension, as there was no ongoing risk to the public or the profession, and no reason to restrict Mr Hurst's ability to practise.

Sanction

22. The Tribunal had regard to the Guidance Note on Sanctions (10th Edition – June 2022). The Tribunal's overriding objective, when considering sanction, was the need to maintain public confidence in the integrity of the profession. In determining sanction, it was the Tribunal's role to assess the seriousness of the proven misconduct and to impose a sanction that was fair and proportionate in all the circumstances.

23. Mr Collis offered the Tribunal assistance with its sanction decision as, it was submitted, this was a novel case where the Tribunal might find the view of the regulator to be helpful. The Tribunal declined the offer of assistance. Whilst much had been said in the media in relation to this matter being the first SLAPPs case heard at the Tribunal, the Tribunal had found that this was not a SLAPPs case. Accordingly, the Tribunal did not consider that it required assistance from the Applicant in determining the appropriate sanction.

24. The Tribunal found that Mr Hurst was motivated by the desire to prevent publication of the Email. He had, on his own case, given careful thought to the wording of the Email. As the Tribunal detailed above, that consideration related solely to the aim of preventing publication and did not include a consideration of what was permissible. Mr Hurst was an experienced solicitor who was solely responsible for his misconduct.

25. As had been accepted by Mr Hubble KC, Mr Hurst's conduct had caused harm to Mr Neidle. The Tribunal, in finding that Mr Hurst's conduct was in breach of Principle 2, found that his conduct also harmed the reputation of the profession. He had taken unfair advantage of his position of experience and knowledge and had attempted to mislead Mr Neidle. Together with the mitigation advanced by Mr Hubble KC, the Tribunal noted that the misconduct was of brief duration in an otherwise unblemished career.

26. The Tribunal considered that the misconduct was such that sanctions of No Order and a Reprimand were not proportionate. The Tribunal determined that a financial penalty was appropriate. It assessed the misconduct as falling at the top end of its Indicative Fine Band Level 4, as it considered the misconduct to be very serious, notwithstanding the finding that the misconduct did not amount to a SLAPP. The Tribunal determined that a fine in the sum of £50,000 was appropriate in that it was proportionate to the wrongdoing.

Costs

27. Mr Collis applied for the Applicant's costs in the sum of £298,390.80. The case, it was submitted, was novel and unprecedented. A significant portion of the costs were the fees charged by Mr Price KC, which, it was submitted, were reasonable and proportionate; it was appropriate for the Applicant to utilise and instruct expert leading counsel in this case.

28. In considering the costs claimed, the Tribunal should also consider the extent to which the matter had been fiercely litigated by the Respondent's legal team, including a 700-page response to the Notice of Referral and the significant amount of correspondence between the parties. There had also been 3 separate CMHs, 2 of which were for applications made by the Respondent and refused by the Tribunal.

29. When assessing the reasonableness of the costs, it was appropriate, it was submitted, for the Tribunal to have regard to the Respondent's costs schedule, in which £908,171.75 was being claimed for defending the proceedings. The Applicant's costs were a third of that figure.

30. Mr Helme for the Respondent, submitted that the costs order was not resisted in principle, however the quantum claimed was not accepted. The Tribunal should reduce the overall costs for the Applicant's failure to substantiate allegation 1.2 which, it was submitted, was flawed from the outset. It was submitted that a reduction of 25% of the overall costs was reasonable.

31. Further, care needed to be taken to ensure that the individual elements claimed were reasonable. The Applicant had claimed a significant number of hours for communications, including over 60 hours for Capsticks communication with the SRA. Mr Collis alone had claimed for over 285 hours of communication. Without more, it was difficult for the Tribunal to find that such a claim was reasonable.

32. The Tribunal should consider with care the claims made in relation to Mr Neidle. His first witness statement was served by the Applicant in recognition that much of what was contained in that statement was not relevant to the proceedings. A second witness statement from Mr Neidle was served which was much more narrowly confined. The Tribunal should thus disallow the costs claimed in relation to the preparation of Mr Neidle's first witness statement, such costs not being reasonably or proportionately incurred.

33. It was also unclear why the costs of the Non-party Disclosure Applications (NPDs) should be borne by Mr Hurst, particularly given that at the hearing where the NPDs were considered, the Tribunal made No Order as to costs.

34. In reply, Mr Collis submitted that the times claimed were the times spent. Given the voluminous material and nature of the case, what might otherwise seem excessive was reasonable and proportionate.

35. The Tribunal determined that there should be a small reduction in the costs claimed to reflect the Applicant's failure to substantiate allegation 1.2. The Tribunal found that the hours claimed were reasonable given the nature of the issues to be considered, and the number of hearings. The Tribunal agreed that Mr Hurst should not be responsible for any costs occasioned by the non-party disclosure applications. The Tribunal thus reduced the costs from the amount claimed to £260,000.00.

Statement of Full Order

36. The Tribunal ORDERED that the Respondent, ASHLEY SIMON HURST solicitor, do pay a fine of £50,000.00, such penalty to be forfeit to His Majesty the King, and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £260,000.00.

Dated this 14th day of May 2025
On behalf of the Tribunal

A Kellett

A Kellett
Chair

APPENDIX 1 – PRELIMINARY ISSUES

Open Justice and Disclosure

1. The Tribunal noted the public interest in open justice. Pleadings were published on its website, and extracts from witness statements were made public at appropriate stages.

Applicant's Rule 35(10) Application

2. Mr Collis applied under Rule 35(10) of the Solicitors (Disciplinary Proceedings) Rules 2019 for an order preventing onward disclosure of privileged material, to protect Mr Zahawi's legal privilege.

3. Given that Mr Zahawi's identity was already public and the iniquity exception did not apply, the Tribunal granted the order in the interests of justice to protect privilege.

Second Witness Statement of Mr Neidle

4. Mr Price KC applied to admit Mr Neidle's second witness statement dated 26 November 2024. Mr Hubble KC did not object. The Tribunal allowed it in the interests of justice and efficiency.

Application to Adduce Additional Evidence

5. The Applicant sought permission to rely on further documents for (i) re-examination of its own witnesses; (ii) cross-examination of the Respondent's witnesses; and (iii) a Ministry of Justice consultation paper on SLAPPs.

6. The Applicant argued that the material could not have been identified earlier due to the timing of the Respondent's disclosure. It said the application was simply to provide fair notice and context for cross-examination.

7. Mr Hubble KC opposed the application, arguing that it was late, lacked proper explanation, and breached the Tribunal's directions. He also raised concerns over annotations on some documents and the unknown origin of others.

8. The Tribunal noted the lateness but considered the documents to be contextual and not central to the Applicant's main case. The annotations were not deemed problematic, and the Tribunal found no prejudice to Mr Hurst. The application was granted.

Remote and Out-of-Hours Evidence

9. Mr Hubble KC applied for two of the Respondent's witnesses, Ms Skinner and Mr Tomlinson, to give evidence remotely due to work commitments. The Applicant did not object.

10. The Tribunal allowed the remote evidence but declined to sit outside its normal hours for Mr Tomlinson due to the wider impact of that request on others. His statement remained in evidence, but the weight to be given to it was a matter for the Tribunal.

APPENDIX 2 - SUBMISSIONS

The following is a summary overview of counsel's submissions. A full copy of the hearing audio is available from the Tribunal.

The Applicant's Submissions

1. Mr Price KC submitted that:

1.1 The core of the case lay in two sentences in the Email:

(1) the "Prohibition on Disclosure", which told Mr Neidle he could not publish or refer to the Email other than for legal advice, and

(2) the "Implicit Threat", which said any breach would be "a serious matter".

1.2 Mr Hurst's conduct was an attempt to prevent Mr Neidle from disclosing the fact of the claim, without any proper legal basis. The prohibition extended far beyond what was justified and relied wrongly on without prejudice (WP) and confidentiality labels.

1.3 The WP label was misused, especially as Mr Neidle had already refused to accept WP communications. A duty of confidence could not arise unilaterally in those circumstances.

1.4 The inclusion of the Prohibition and the Implicit Threat appeared to be intended to deter publication by suggesting adverse consequences, even though no action was likely or ever taken.

1.5 Mr Hurst should have known that these representations were misleading. The aim was to suppress the threatened defamation claim, which was a matter of significant public interest.

1.6 The use of confidentiality and WP labels, without a proper legal foundation, risked misleading the recipient and breached Mr Hurst's regulatory obligations.

1.7 If the Tribunal accepted the Prohibition on Disclosure and Implicit Threat were intended to create pressure without basis, this would amount to a lack of integrity and an attempt to take unfair advantage.

1.8 The Applicant invited the Tribunal to find that Mr Hurst had knowingly overstated the scope of any duty of confidence, and had attempted to misuse legal labels to suppress public scrutiny of a serious political issue.

The Respondent's Submissions

2. Mr Hubble KC submitted that:

2.1 The key legal principles had been misstated or overstated by the Applicant. The case hinged on whether Mr Hurst's legal arguments were "*properly arguable*", not whether they were ultimately correct.

2.2 Without prejudice communications are confidential, and the law does not require mutual agreement for WP protection to arise. Case law and legal commentary supported this view.

2.3 There was a genuine attempt to open settlement discussions. The Email included an implicit offer to resolve matters without legal proceedings. It was not an abuse of WP.

2.4 Mr Hurst was a credible and candid witness. His evidence was consistent and sincere. He genuinely believed his conduct was appropriate, and his intention was to de-escalate the matter.

2.5 The Applicant's suggestion that Mr Hurst acted in bad faith or misused WP for tactical reasons was unsupported by evidence and unfairly introduced late in the proceedings.

2.6 The public interest arguments advanced by the Applicant were overstated. There were competing public interests in confidentiality and legal fairness.

2.7 Even if the Email was not ultimately found to be WP, Mr Hurst's position was still legally arguable. That was the correct threshold. Allegations of misconduct should not succeed unless the conduct was clearly unarguable or improper.

Was the email correctly marked 'Without Prejudice'

2.8 Mr Hubble KC argued that the email was genuinely sent as part of settlement discussions and therefore properly marked "without prejudice" (WP). He said:

- **A genuine attempt at settlement:** The email aimed to negotiate a retraction of the defamatory allegation. It included an offer not to pursue damages if Mr Neidle withdrew the claim. That, he argued, was a clear concession. Whether it was a strong offer or not did not matter legally—it was still a negotiation.

- **The WP label was valid:** It did not need to include a major concession or be damaging to Mr Zahawi's case to qualify. The courts have confirmed that the strength of an offer is irrelevant for WP status. Even the cost warning in the email supported its settlement purpose.

- **No abuse of WP rules:** Mr Hurst did not act improperly. There was no evidence of dishonesty or bad faith. Even if the email was partially motivated by a desire to keep the claim confidential, that did not disqualify it from WP protection. Other motives could exist as long as there was a genuine attempt to settle.

- **Law supports confidentiality:** WP communications are generally confidential. This doesn't depend on whether the other party agrees to the WP terms. Legal commentary (e.g., *Passmore* on Privilege) supports this. The idea that confidentiality only arises from mutual agreement was a new and unsupported argument.

- **WP and confidentiality go together:** According to established legal commentary and case law, WP communications are confidential, whether based on public policy or agreement. Trying to separate WP status from confidentiality was wrong in principle and law.

- **Practice supports confidentiality:** Experienced lawyers (including Mr Hurst's witnesses) agreed that defamation complaints are routinely marked confidential and that this is generally respected. Ms Phillips' contrary evidence was inconsistent with legal texts like *Gatley* and the broader professional consensus.

- **Reasonable expectation of confidentiality:** According to the *Toulson* test (value in keeping something private, and whether a reasonable person would see it as confidential), Mr Hubble argued that:

    - There was clear value to Mr Zahawi in keeping the matter confidential—mainly to avoid reputational harm.

    - A reasonable person in the legal context would regard the information as confidential, especially given consistent legal practice and commentary.

- **On reputational harm:** It was legitimate to consider potential reputational harm as a reason for confidentiality. The law and courts recognise this, including in defamation and privacy cases. The applicant's claim that reputational concerns were irrelevant was incorrect.

- **Public interest did not override confidentiality:** While the public interest might sometimes justify publication, that was not the case here. There was no unarguable right for Mr Neidle to publish the email. The Applicant hadn't shown that any such public interest defence would succeed.

- **Conclusion:** The email was a genuine WP communication, sent with the aim of resolving a dispute. That meant it was protected by WP rules and also confidential (or arguably so). The Applicant's legal position was novel and unsupported and should be rejected.

<u>Confidentiality of the Email</u>

2.9 Mr Hubble argued:

- Practitioners explained that legal letters are marked "confidential" because claimants fear republication by media organisations, particularly where previous allegations were made publicly. These letters often include sensitive or unpublished information.

- Mr Hubble KC noted that the Applicant's claim—that WP communications are not confidential—is contradicted by key legal textbooks (*Passmore* and *Gatley*), which both support the opposite.

- Once something is confidential, any unauthorised sharing can be stopped. The principle was clearly stated by the Court of Appeal in *Tchenguiz v Imerman [2011] 2 WLR 592*, which confirmed that the owner of confidential material has the right to control its use.

- The Applicant tried to limit this principle to specific factual scenarios, but courts have recognised it as a general rule. Similarly, in *Bolkiah v KPMG [1999] 2 A.C. 222*, Lord Millett confirmed the duty to preserve confidentiality applies broadly.

- Several legal authorities reinforce that WP privilege covers not just the contents but also the fact that settlement talks occurred. This includes *Forster v Friedland, 1992 WL 1351421 (1992), Somatra Ltd v Sinclair Roche & Temperley (2000) 1 WLR 2453, Wildbur v Ministry of Defence [2016] EWHC 102 (Ch)* and the commentary in *Passmore, Privilege, 5th edition §10-002, 10-075, 10-122, 10-196*.

- The Applicant claimed that only inadmissible material could be protected, but this was plainly wrong. Courts have upheld WP protection even where a claim is merely mentioned. Mr Hurst was primarily concerned about public disclosure by Mr Neidle, not private sharing for legal advice.

- Mr Hurst did not object to Mr Neidle discussing the Email in private (e.g., with advisers), so long as confidentiality was maintained.

- The concern that this sets a precedent for gagging critics is overstated. Confidentiality depends on facts, and there's always a potential public interest defence. If the Tribunal rules the Email was not even arguably WP/confidential, it would cause confusion in legal practice.

Meaning of the 'Serious Matter' Wording

2.10 Mr Hubble KC argued:

- The Tribunal must interpret the phrase "serious matter" in context. The Applicant described it as a threat, but Mr Hubble KC argued this mischaracterised it.

- The wording was aimed at Mr Neidle's prior statement rejecting WP correspondence. Mr Hurst believed publishing WP correspondence would be improper for a solicitor and wanted to prompt Mr Neidle to reflect, not threaten him with legal action.

- The phrase was a justified reminder, not an unjustified threat. Mr Hurst's explanation was consistent with how experienced practitioners interpreted it.

- The "prohibition" related to the Email itself, not the broader dispute. Mr Hurst did not try to block discussion about the claim, only publication of the Email marked WP.

- The Applicant's own witnesses accepted that similar or more restrictive wording is common in practice, particularly in legal footers. Even the Applicant acknowledged that such publication could aggravate damages in a future defamation claim.

- The fact that Mr Hurst did not pursue a claim against Mr Neidle was irrelevant. There's often little practical value in bringing a breach of confidence claim after publication. The reminder was reasonable and proportionate.

- Mr Hurst's approach was proper. He acted within the law (or on an arguable legal basis), gave fair warnings, and encouraged legal advice.

Alleged Breach of Solicitors' Code

2.11 Mr Hubble KC argued:

- Mr Hurst did not abuse his position, mislead anyone, or assert unarguable points of law. To find misconduct, the Tribunal would need to be satisfied that he did not believe the legal points were arguable and that no reasonable solicitor would think otherwise. There was no evidence of this.

- A finding of lack of integrity requires deliberate or reckless conduct, or a defective moral compass. Mr Hurst's conduct did not come close. He believed he acted appropriately, which rules out a lack of integrity finding.

- Authorities such as *Solicitors Regulation Authority v Siaw (2019) EWHC 2737 (Admin)* and *Seiler and others v Financial Conduct Authority (2023) UKUT 133 (TCC)* confirm that lack of integrity requires more than just poor judgment. There must be deliberate wrongdoing or recklessness. This was not present here.

Public Trust and Principle 2

2.12 Mr Hubble KC argued:

- Mr Hurst did not act in a way that would damage public trust. He followed the law and advocated for his client as expected of any solicitor.

The Applicant's Reply

3. Mr Price KC argued:-

- The real issue was whether the Email tried to prohibit Mr Neidle from disclosing the claim itself. If that's what the "prohibition" meant, then it was not legally justified and could undermine transparency.

- He said the practice of marking letters confidential did not mean an actual legal obligation existed—especially when both sender and recipient did not treat it that way.

- There's a distinction between confidential details and the basic fact of a claim. The latter is not inherently confidential, and no authority says otherwise. A claimant cannot unilaterally impose confidentiality on a defendant simply by marking a letter WP.

- Reputational concerns cannot justify improper use of the WP label. If the real motive is to keep the claim secret, that may be an abuse of process, as per *Goldsmith v Sperrings (1977) 1 W.L.R. 478*.

- On this basis, the Applicant said the real reason the claim was made via a single WP Email was to suppress publicity. That, they argued, was improper.

- They submitted there was no need to prove "*unambiguous impropriety*" if the purpose of using WP was improper.

- The Applicant argued that *Unilever Plc v Procter & Gamble Co [1999] EWCA Civ 3027* was not relevant, as it involved a different situation (consensual WP discussions), unlike here, where Mr Neidle had refused WP communications.

- When determining Mr Hurst's intentions, the Tribunal should rely on documents, not hindsight or recollections. The content, context, and contemporaneous communications give better evidence of intent.

Respondent's Reply in Response

4. Mr Hubble KC argued:

- The Applicant tried to change their case mid-way, asking the Tribunal to make new factual findings about the "real reason" for the Email. This was not proper.

- The real test is whether the Email was genuinely aimed at settlement. If so, that's enough for WP protection, even if there were other motives.

- Contrary to fears of opening the "floodgates," the current legal position already reflects well-established practice. Most practitioners respect WP and confidentiality norms.

- Mr Hurst's approach was consistent with this practice and supported by feedback from experienced lawyers. The law balances competing public interests—here, promoting early settlement and protecting individuals from reputational damage.

- The lack of reported breach of confidence claims doesn't mean such claims are unarguable. They're rare because (i) the law discourages publication; (ii) breach

of confidence actions are not very useful in defamation; and (iii) claimants can raise the issue in the main defamation claim via aggravated damages.

- Thus, the absence of cases proves nothing. It reflects legal and strategic realities, not a lack of legal protection.

- In conclusion, Mr Hubble KC invited the Tribunal to dismiss the application in full.