Neutral Citation Number: [2026] EWHC 85 (Admin)

Case No: AC-2025-LON-001874

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 20/01/2026

Before :

THE HONOURABLE MRS JUSTICE COLLINS RICE DBE CB

- -

Between :

Mr ASHLEY HURST **Appellant**

- and –

SOLICITORS REGULATION AUTHORITY **Respondent**

- -
- -

Mr Paul Stanley KC & **Mr Ian Helme** (instructed by CMS Cameron McKenna Nabarro Olswang LLP) for the **Appellant**
Mr David Price KC & **Mr Michael Collis** (instructed by Capsticks LLP) for the **Respondent**

Hearing date: 27th November 2025

- -

Approved Judgment

This judgment was handed down remotely at 10.30am on 20th January 2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Mrs Justice Collins Rice :

Introduction

1. Mr Ashley Hurst is a partner at leading international law firm Osborne Clarke LLP, where he heads their media and information law disputes team. He has practised as a solicitor in that expert field for more than 15 years, acting for high profile individuals and companies, both claimants and defendants.

2. Mr Dan Neidle is a tax law and policy expert, a former UK head of tax law at leading international law firm Clifford Chance, and now an investigative journalist and policy adviser on tax matters.

3. In the summer of 2022, Mr Neidle published articles critical of the tax affairs of the then Chancellor of the Exchequer, Mr Nadhim Zahawi, including an allegation that he had lied about them. Mr Zahawi instructed Osborne Clarke over that latter allegation, and Mr Hurst engaged with Mr Neidle to seek its retraction. This included an email headed '*Confidential & Without Prejudice*', seeking the retraction and stating that Mr Neidle was not entitled to publish or refer to that email other than for the purposes of seeking legal advice.

4. Mr Neidle considered that email an improper attempt to stifle his journalism and suppress public knowledge of Mr Zahawi's taking legal steps against him. He drew the correspondence to the attention of the Solicitors Regulation Authority ("the SRA"). The SRA charged Mr Hurst with professional misconduct, alleging among other things a lack of integrity.

5. Mr Hurst duly appeared before a Solicitors Disciplinary Tribunal ("the Tribunal") in December 2024. The Tribunal found Mr Hurst had improperly attempted to restrict Mr Neidle's right to publish the email and/or discuss its contents, and that this amounted to professional misconduct. It fined him £50,000, and awarded costs against him of £260,000.

6. Mr Hurst exercises his statutory right to appeal to the High Court against that decision.

Background

7. Mr Neidle's commentary on Mr Zahawi's tax affairs had included allegations of tax avoidance, and possible dishonest tax evasion. He predicted that Mr Zahawi would face an HMRC investigation, the detail of which would not appear in public because Mr Zahawi would privately settle his unpaid liabilities. Mr Hurst had written letters (headed '*Private and Confidential*') to a number of national newspapers on 12th July 2022 stating that any suggestion Mr Zahawi had engaged in tax avoidance or tax evasion was '*false and defamatory*'.

8. On the morning of Saturday July 16th 2022, Mr Neidle posted a thread of tweets summarising and referring to the basis on which he had concluded Mr Zahawi had been engaged in tax avoidance. The top of the thread said this:

> 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: …

9. The thread also contained the following tweets:

> If, back in 2000, Zahawi gave HMRC the same false explanations he gave us last week, then this would be criminal tax evasion, not avoidance. But I expect he actually just told HMRC nothing.
>
> It will still be tax evasion if Zahawi or others acted dishonestly; that may or may not be the case, but it would be hard to prove.
>
> However there are multiple ways HMRC can attack the arrangement under anti-avoidance principles, trust principles, specific anti-avoidance rules etc. Zahawi's conflicting and false denials will make any defence difficult.
>
> It seems very likely this was 'deliberate concealment' and attracts a penalty of 100%. i.e. you pay twice what the tax should have been.
>
> It's strongly in Zahawi's interest for this not to become public, so likely he will reach a settlement as soon as possible and pay up quietly (tax plus interest plus penalties). We will never know.
>
> It cannot be right that the Chancellor of the Exchequer lies about his past tax affairs. It is an impossible conflict to have a Chancellor who is likely to be subject to an HMRC enquiry and accusations of deliberate concealment.

10. Mr Hurst advised that this thread, with its allegations of dishonest untruthfulness, was defamatory in quality and potentially actionable. He messaged Mr Neidle in the late afternoon, and the following exchange ensued:

> [AH]: Hi Dan, it's Ashley Hurst from Osborne Clarke. Would you mind giving me a quick call on [phone number]? Thanks.
>
> [DN]: Please send me anything you have to say in writing.
>
> [AH]: Trying to avoid that. We can speak WP [Without Prejudice] if you like. Just want to give you a heads up.

> [AH]: If you don't want to speak, could you let me know the best email address to contact you on?
>
> [DN]: My email address is publicly available – [email address]. I gave your client the opportunity to clarify his position and he did not. He provided contradictory and false explanations to the media. I am afraid I will find it hard to take anything you send me seriously.
>
> [DN]: Please note I will not accept without prejudice correspondence.

11. About an hour and a half later, Mr Hurst sent Mr Neidle a substantial email, headed '*Confidential & Without Prejudice*'. It opened as follows:

> We act for Nadhim Zahawi. We have been following your blog in relation to our client's tax affairs and have serious concerns about your latest direct allegation of dishonesty against our client in relation to our client's explanation of his father's interest in YouGov through Balshore investments.
>
> 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 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 overstepped the mark today by accusing him of lying to the media and the public in explaining the contribution of his father to YouGov.

12. The email went on to rehearse the allegations Mr Neidle had made and to challenge them as ill-informed and speculative. It concluded as follows:

> Any allegation that our client has evaded or avoided tax is strongly rejected.
>
> 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 so 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 of 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.
>
> Yours sincerely
>
> Ashley Hurst.

13. Mr Neidle responded within the hour: '*Thank you for your email. I have already told you I am not interested in engaging in without prejudice correspondence. Kindly send me an open letter and I will in due course respond to that*.'

14. Three days later, on the morning of Tuesday 19th July 2022, Mr Neidle sent Mr Hurst an email headed '*Zahawi and nine outstanding questions*'. He explained: '*I am continuing to write about this story, which I believe is strongly in the public interest. To date, your client has provided little in the 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).*'

15. On the same day, 19th July 2022, Mr Hurst wrote from Osborne Clarke a letter to Mr Neidle, marked as '*Private and Confidential*' and headed '*Not for Publication*'. It opened as follows:

> **1. Introduction**
>
> 1.1 We act for the Right Honourable Nadhim Zahawi MP.
>
> 1.2 We write in relation to allegations of dishonesty that you have made against our client on your blog and via your Twitter feed.
>
> 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.

1.5 Our client recognises that, as Chancellor of the Exchequer 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. Our client also recognises that you are entitled to raise the questions that you have done about his tax affairs, especially given your expert status. Until recently, you have generally done so in a balanced and fair way, even if our client does not agree with much of what you have said and the assumptions that you have made.

1.6 However, our client takes objection to your allegations of dishonesty against him, as set out further below.

16. The letter goes on to set out, over the next page, the allegations objected to and why they were said to be wrong. The letter finishes as follows:

3. Next steps

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 forward, 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.

17. Two days later, on 22nd July 2022, Mr Neidle published both the 16th July email and the 19th July letter on his website, together with two articles: one was headed '*The Chancellor's secret libel letters*' and the other '*WITHOUT PREJUDICE Why publish 'without prejudice' and 'confidential' correspondence?*'

18. On 25th July 2022, Mr Neidle wrote to the SRA about his exchanges with Mr Hurst. He said (then) he did not wish to make a complaint about Osborne Clarke or any individual solicitor. Instead, he simply wished to alert the SRA to the practice of attaching labels such as '*without prejudice*' and '*confidential*' to correspondence and to '*threaten (unspecified) serious consequences if it is published or disclosed to third parties*'. He invited the SRA to consider updating its guidance on 'Strategic Lawsuits against Public Participation' ("SLAPPs") to: (a) make specific reference to attempts to prevent the publication or mention of correspondence asserting potential libel claims and (b) caution about the '*misuse*' of the labels '*confidential*' and '*without prejudice*'.

The Disciplinary Allegations

(a) The Notice Recommending Referral

19. Eighteen months later, on 31st January 2024, the SRA served on Mr Hurst a formal notice recommending his referral to the Tribunal ("the Notice"). This recorded that Mr Neidle had gone on to express concerns that the correspondence from Mr Hurst '*was an attempt to pressure him to withdraw his claims and that the labels attached to the correspondence indicated that this was Strategic Litigation against Public Participation or 'SLAPP"*.

20. The notice rehearsed the history, and included the following paragraph:

> Warning Notice on SLAPPs - labelling
>
> 10. A SLAPP is a term used to describe misuse of the legal system and the bringing or threatening of proceedings to prevent publication on matters of public importance. The SRA has published a Warning Notice in relation to SLAPP cases dated 28 November 2022. The Warning Notice sets out that solicitors are expected not to intimidate or mislead recipients of correspondence, and to take particular care where a recipient may be vulnerable or unrepresented:
>
> > *One way this can happen in this context is by labelling or marking correspondence 'not for publication', 'strictly private and confidential' and/or 'without prejudice' when the conditions for using those terms are not fulfilled. [….] you should carefully consider what proper reasons you have for labelling correspondence in these ways, and whether further explanation is required where the recipient might be*

> *vulnerable or uninformed. Such markings cannot unilaterally impose a duty of privacy or confidentiality where one does already exist. Clients should be advised of this and warned of the risks that a recipient might properly publish correspondence which is not subject to a pre-existing duty of confidentiality or privacy.*
>
> It is important to note that the labelling sections of the Warning Notice disclosed no new obligations on the profession but rather emphasised long-established principles in respect of the conduct of litigation and applied these to particular in respect to oppressive tactics.

21. The notice went on to make the following allegations:

> It is alleged that Mr Hurst, a regulated individual:
>
> 1. In an email dated 16 July 2022, improperly labelled correspondence as 'Confidential & Without Prejudice';
>
> 2. In a letter dated 19 July 2022, improperly labelled correspondence as "Private and Confidential" and 'NOT FOR PUBLICATION';
>
> And in doing so failed to comply with a requirement imposed by the SRA Standards and Regulations …

22. Each allegation was particularised as follows:

> Mr Hurst used the labels in circumstances where: the conditions for using the relevant terms were not fulfilled; the restrictive labels were intimidating and inaccurate and the true intention of the labels was to prevent the email/letter being disclosed to the public when this would otherwise be permissible. As such, the use of the labels was oppressive in nature and bore the hallmarks of a SLAPP.

23. The applicable professional standards were identified as follows:

> *SRA Code of Conduct for Solicitors 2019*
>
> [1.2] You do not abuse your position by taking unfair advantage of clients or others.
>
> [1.4] You do not mislead or attempt to mislead your clients, the court or others, either by your own acts or omissions or allowing

> or being complicit in the acts or omissions of others (including your client).
>
> [2.4] You only make assertions or put forward statements, representations or submissions to the court or others which are properly arguable.
>
> *SRA Principles 2019*
>
> [2.] You act in a way that upholds public trust and confidence in the solicitors' profession and in legal services provided by authorised persons.
>
> [5.] You act with integrity.

24. The alleged breaches of these standards were particularised as follows:

> [17.] The email was marked: 'Confidential' and 'Without Prejudice'. These are dealt with in reverse order below.
>
> Without Prejudice
>
> [18.] A '*Without Prejudice*' label should only be attached to an offer to negotiate and not the mere assertion of a right (Buckinghamshire CC v Moran [1990] Ch.623 considered by Coulson J (as he then was) in *Galliford Try Construction Ltd v Mott MacDonald Ltd* [2008] EWHC 603 (TCC) at [5]. Although the email appeared to contain an offer to forego further action should Mr Neidle meet certain conditions ('*Should you not retract your allegation of lies today, we will write to you more fully on an open basis on Monday*') the threat of a further letter on an open basis in couched in vague and unspecified terms. Although the email purports to be a '*genuine attempt to resolve a dispute*' there is no statement or offer made nor is any claim articulated beyond suggesting that Mr Neidle instruct a libel lawyer. Instead, there is a suggestion that Mr Neidle retract or a claim, which is unspecified, will be brought. This is insufficient to amount to an articulation of a legal claim such that privilege, a pre-condition for the use of the label '*Without Prejudice*', applies.
>
> [19.] In this respect we note Mr Hurst's statement in his subsequent letter to Mr Neidle on 19 July 2022 which specifically disavows a claim in libel:
>
> > *Please 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.*

[20.] The approach is also consistent with the advice that Mr Zahawi received in a conference with Mr Hurst recorded in shorthand in a conference note of 19 July 2022: '*a shot across the bows – ask to withdraw – not a threat to sue – don't expect a response*'.

[21.] The letter of 19 July 2022 continues:

> *Our client reserves his rights in relation to what you have published to date.*

[22.] It is not credible to suggest that the same disavowal of any intention to sue for libel on 19 July 2022 did not also apply to the email sent three days earlier. Taking these factors together, it is clear that the '*Without Prejudice*' label was misapplied.

Confidential

[23.] The '*Without Prejudice*' label was attached in support of the contention that Mr Neidle was not permitted to publish the email or even refer to it save for obtaining legal advice:

> *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 that for the purpose of seeking legal advice.* ***That would be a serious matter as you know.*** *We recommend that you seek advice from a libel lawyer if you have not done so already. [Emphasis added].*

[24.] The contention that '*Without Prejudice*' communications are confidential is wrong (see, for example, *EMW Law LLP v Halborg* [2017] EWHC 1014 (ch) at [44] to [45]). Therefore, not only did Mr Hurst misapply the '*Without Prejudice*' label, he also misstated its effect, namely, that as a result Mr Neidle was not entitled to publish it or refer to it other than for the purpose of seeking legal advice. The obvious inference is that both labels were included cumulatively with the intention of preventing Mr Neidle making public reference to the correspondence. Furthermore, the reference to publication being a '*serious matter*' is both exaggerated and misleading since the email was not confidential in its nature and there was nothing to prevent its publication. The inference drawn is that the labels were added to intimidate. The true position was that there were no active proceedings in contemplation which a '*Without Prejudice*' label could attach to as expressly stated in the letter of 19 July 2022. As such, taken together, the labels were oppressive in nature and the email bore the hallmark of a SLAPP.

…

Private and Confidential / NOT FOR PUBLICATION

[28.] The label "Private and Confidential" is misapplied since the contents of the letter were not protected under the law of privacy or confidence. Similarly, Mr Hurst's suggestion in the letter to the effect that it was sent out on a "Confidential Basis" is wrong Furthermore, there is an exaggerated and/or misleading statement in respect of the impropriety of disclosing the letter: '*if your request for open correspondence is motivated by a desire to publish whatever you receive* ***then that would be improper***'. [Emphasis added].

[29.] It is noteworthy that Mr Hurst did not, in fact, seek to enforce any right for breach of confidence following Mr Neidle's publication of the correspondence nor would it have been possible for him to do so. Mr Hurst's implication that publication would be '*a serious matter*' was also misleading because the letter was not confidential and therefore did not impose an obligation on Mr Neidle not to publish.

[30.] Taking these factors together it is alleged that the intended effect of the labels was to prevent the letter being published or publicly referred to and to intimidate Mr Neidle. Mr Hurst's stance was predicated on erroneous and misleading assertions of confidentiality.

Paragraph 1.2 – abuse of position/unfair advantage

[31.] Mr Hurst was a partner at a leading Firm acting for a powerful client. In using misleading and mis-applied labels Mr Hurst abused his position and took advantage of Mr Neidle. Mr Neidle may be a former tax lawyer but he is not a defamation lawyer nor, at the time of receiving the correspondence was he working for a city firm. The public would expect a solicitor to ensure that to take particular care to only attach proper labels to correspondence in circumstances where the Chancellor of the Exchequer and prospective Prime Minister were being scrutinised over their tax affairs. Mr Hurst was aware or ought to have been aware that labels do not unilaterally impose a duty of privacy where one does not already exist and of the chilling effect of applying such labels to inhibit of prevent legitimate public scrutiny.

Paragraph 1.4 – misleading acts and omissions

[32.] The use of '*Without Prejudice*' on the 16 July 2022 email was misleading because the email was not a genuine attempt to compromise an existing dispute. The label '*Confidential/Without Prejudice*', '*Confidential*' and '*Not for Publication*' was misleading in circumstances where the correspondence was neither private nor confidential. Neither the email of 16 July

2022 nor the letter or 19 July 2022 attracted confidentiality protections and the conditions for the use of such labels were not in place. As such, the use of these labels on the letters was misleading.

[33.] The public would expect a solicitor to ensure that they do not mislead recipients of correspondence, and to take particular care in this regard in circumstances where the statements referred to are matters of public interest. All parties in this case acknowledge that the Mr Zahawi's tax affairs were matters of public interest at the time.

Paragraph 2.4 – not properly arguable

[34.] The labels represented a statement and/or representation that was not properly arguable. Since the labels were misapplied, it could not be properly argued that the correspondence was Without Prejudice or confidential. These were improper assertions.

[35.] Members of the public would expect a solicitor to take reasonable steps to satisfy themselves that statements, representations and submissions made by them are properly arguable.

Principle 2 – Public Confidence

[36.] Public trust in the solicitors' profession is undermined when solicitors act in ways that discourage public participation in matters in the public interest and of public importance. It is a long-standing tenet of our profession that solicitors such as Mr Hurst ensure that proceedings are pursued properly, ensuring that representing a client's interests does not override wider public interest obligations and duties to the courts.

Principle 5 – Integrity

[37.] In Wingate v Solicitors Regulation Authority v Malins [2018] EWCA Civ 366, it was said that integrity connotes adherence to the ethical standards of one's own profession. A solicitor acting with integrity (i.e. with moral soundness, rectitude and steady adherence with an ethical code) would not have misused and misapplied labels in a case of this nature. Adherence to an ethical code does not involve the use labels on correspondence as a vehicle to discourage scrutiny of matters in the public interest. A member of the public would not expect a solicitor to use restrictive labels that are potentially intimidating as well as misleading and inaccurate.

…

> [39.] The conduct as alleged above engages issues of integrity and taking unfair advantage of others by seeking inappropriately to suppress information that could otherwise be put into the public domain. As the SRA Enforcement strategy makes clear, such allegations are more inherently serious than others. In particular, the alleged conduct undermines trust and confidence in the profession as a whole. The misuse of labels carries with it the risk of a chilling effect in relation to the publication of information that may be in the public interest to air in order to hold organisations or individuals to account. The SRA views more seriously conduct which demonstrates a deliberate disregard for obligations in respect of the conduct of litigation particularly where, as here, this represents a misuse of the legal system.
>
> [40.] The mislabelling of correspondence in this case bore the hallmarks of a SLAPP and/or was otherwise oppressive in nature; the key aim of the labels was to prevent publication on matters which were likely to and/or were matters of public importance. The public would not expect a solicitor to act in a way that was chilling to public participation.
>
> [41.] For these reasons, we consider the matter to be sufficiently serious to amount to a breach of Paragraph 1.2, 1.4 and 2.4 of the Code of Conduct for Solicitors 2019 and Principle 2 and 5 of the SRA Principles 2019.

25. Mr Hurst's solicitors responded in March 2024 with extensive submissions that these allegations were misconceived and disclosed fundamental errors of law.

(b) The Application Statement

26. On 28th May 2024, the SRA proceeded to the next formal step by applying to the Tribunal for a decision, and setting out its position by way of a statutory statement ("the Statement").

27. The Statement maintained two allegations – in relation to the 16th July 2022 email and the 19th July 2022 letter – but now cast them rather differently, as follows:

> The Allegations against the Respondent, Ashley Hurst, made by the SRA, are 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, …

> 1.2 On or around 19 July, sent a letter to Dan Neidle that improperly attempted to restrict Mr Neidle's right to publish that letter and/or discuss its contents. …

28. The same professional standards as before were cited in each case. I set out in full the SRA's developed position on the alleged breach of standards:

> [46.] At the point at which the e-mail was sent, Mr Neidle was reporting/commenting on the scrutiny of Mr Zahawi's tax affairs that was ongoing through the mainstream media. The fact that Mr Neidle, given his level of tax experience, felt able to make an accusation of lies against Mr Zahawi would have been, and was, a matter of public interest. The fact that Mr Zahawi's response was to instruct a solicitor at a specialist libel lawyer to send correspondence to Mr Neidle threatening legal action, rather than in his position as a politician and a public figure choosing to issue a statement addressing the accusations or clarifying his earlier remarks, would in turn have been a matter of public interest.
>
> [47.] Mr Neidle's request for communication with him to take place in writing and his refusal to accept "without prejudice" correspondence would have alerted the Respondent to the risk, if not the actual fact, that Mr Neidle would seek to comment on or publish any correspondence he was sent. That was expressly referred to by the Respondent in his message to Mr Zahawi at 13:11 on 16 July.
>
> [48.] Mr Zahawi was under no obligation to address what he perceived to be a false accusation of lies through correspondence from a lawyer implying that legal action could follow. The decision to address this issue with the sending of the 16 July e-mail was one taken voluntarily by Mr Zahawi, following discussion and correspondence with the Respondent. The simple fact that the-then Chancellor of the Exchequer had made that decision, given the unfolding interest in his tax affairs and his response to questions about them, would in and of itself have been an issue which would have merited public reporting.
>
> [49.] In the particular circumstances in which the e-mail was sent, and considering that its contents simply referred to matters which were already subject to public scrutiny, it is asserted that the attempt to restrict Mr Neidle's right to publish it or refer to its contents was inappropriate.
>
> [50.] The SRA's position is that it is not properly arguable that Mr Neidle was subject to a duty of confidence in relation to all (or any) of the information conveyed by the e-mail. It is common ground that there is nothing confidential in the information relating to Mr Zahawi's tax affairs. Further, the e-mail sought to prevent Mr Neidle even from referring to the fact of Mr Zahawi's

threatened defamation claim against him. Even where a communication is properly headed without prejudice (and it is not expressly accepted that the label was correctly used in this case), it is not properly arguable that any duty of confidence arising from this would extend to the fact of the claim.

[51.] The three elements of a breach of confidence claim remain as stated by Megarry J in *Coco v AN Clark (Engineers) Ltd* [1968] FSR 415, 419: *First, the information itself, in the words of Lord Greene, M.R. in the Saltman case ... must 'have the necessary quality of confidence about it'. Secondly, that information must have been imparted in circumstances importing an obligation of confidence. Thirdly, there must be an unauthorised use of that information to the detriment of the party communicating it.'*

[52.] It is the SRA's contention that there is no proper basis to submit that the fact of Mr Zahawi's claim had the necessary quality of confidence and/or that it was imparted to Mr Neidle in circumstances importing an obligation of confidence on him. There have since 1968 been developments in the legal principles relating to each of the elements of the claim identified in Coco and attempts to apply them to a wide variety of circumstances. However, there is no authority that comes close to supporting the imposition of such a duty on Mr Neidle.

[53.] The obvious inference as to why an inappropriate attempt was made to restrict Mr Neidle's ability to publish this e-mail or refer to its contents was to try and prevent the simple fact that the-then Chancellor of the Exchequer had instructed such a document to be sent becoming part of the news cycle i.e. to try and prevent the media scrutiny of this decision, and what it said about how Mr Zahawi viewed the accusation of lying, which occurred after Mr Neidle published the documents on 22 July 2022.

[54.] The attempt to limit or restrict Mr Neidle's ability to comment publicly on the correspondence he had received from a solicitor acting on behalf of the-then Chancellor of the Exchequer involves an oppressive or abusive tactic, the type of which had been condemned by the SRA in its March 2022 Guidance in relation to Conduct in Disputes. That document expressly condoned "*oppressive behaviour and tactics*", which was defined as including:

> [54.1.] Making exaggerated claims of adverse consequences including alleging liability for costs that are not legally recoverable;
>
> [54.2.] Sending excessively legalistic letters with the aim of intimidating particularly unrepresented or lay parties; and

> [54.3.] Sending letters in abusive, intimidating or aggressive tone or language.

[55.] This Guidance simply set out long-established principles in relation to the expected level of conduct on the part of solicitors when acting in disputes; it did not create or impose brand new obligations upon the profession.

[56.] The 16 July e-mail was clearly worded to try and convey to Mr Neidle that Mr Zahawi was contemplating legal action as a result of the 16 July post on Twitter. As set out above, given the press coverage there had been up to the 16 July (both in relation to Mr Zahawi's tax affairs and Mr Neidle's commentary on those matters), the Respondent knew or ought to have known of the level of press attention that would have been generated by Mr Zahawi's decision to instruct a solicitor to send an e-mail to Mr Neidle in those terms.

[57.] The improper attempt to limit or restrict Mr Neidle's ability to publish or discuss, not only the contents of this e-mail, but the very fact that such correspondence had been sent to him, represents an oppressive and intimidating approach to legal matters which had been condemned in the March 2022 Guidance.

[58.] In seeking to convey to Mr Neidle that was prohibited from discussing the e-mail or its contents, the Respondent was seeking to keep from the public domain information that was capable of being of great concern to the British public; that the country's Chancellor of the Exchequer at that time was contemplating or threatening legal action against Mr Neidle, rather than seeking simply to engage with the accusations that Mr Neidle had made against him through a public statement.

[59.] In seeking improperly to limit or restrict Mr Neidle's ability to comment on this e-mail, the Respondent has sought to take unfair advantage of Mr Neidle. Whilst Mr Neidle may be considered to have a degree of expertise in relation to tax law, the Respondent appears to have been relying on Mr Neidle's apparent lack of knowledge in relation to matters connected with defamation and privacy in trying to further his client's interests; the attempt to limit Mr Neidle's further public commentary on Mr Zahawi's tax affairs. For those reasons, a breach of Paragraph 1.2 of the Code is alleged.

[60.] In attempting to limit or restrict Mr Neidle's ability to report on or discuss the e-mail, coupled with the threat that to do otherwise would be a "serious matter", the Respondent has sought to mislead Mr Neidle as to what he was entitled to do with the e-mail and the likely consequences if he did not comply with

the Respondent's request. On that basis, a breach of Paragraph 1.4 of the Code is alleged.

[61.] The attempt to restrict Mr Neidle's handling of the 16 July e-mail, and the threat of serious consequences should he not comply, was not correctly based on legal principles, but instead appears to have been made to try and shield Mr Zahawi and his affairs from further public scrutiny. Whilst such further scrutiny may have been politically embarrassing for Mr Zahawi, at a time when he was attempting to position himself as a candidate in the leadership campaign for the Conservative Party, that did not legitimise the request, which was coupled with an obvious threat, which was made to Mr Neidle. For those reasons, a breach of Paragraph 2.4 of the Code is alleged.

[62.] The public is entitled to trust and expect that solicitors will act appropriately towards opposing parties in any apparent dispute, and not seek to make inappropriate requests of them which serve only to benefit their client's interests. The inappropriate request made to Mr Neidle was an attempt to prevent public scrutiny of the decision by the-then Chancellor the Exchequer to resort to instructing a solicitor to write on his behalf and threaten legal action. Whilst it is not asserted that this threat was necessarily inappropriate, the attempt to prevent publication or discussion that such a threat had been made by a member of the Government was, in the context of this case, inappropriate. Acting in such a manner is conduct that would serve to damage the public's trust and confidence in the profession, and on that basis a breach of Principle 2 is alleged.

[63.] It is asserted that the Respondent's behaviour in respect of Allegation 1.1 demonstrated a lack of integrity (Principle 5). In *Wingate v Solicitors Regulation Authority v Malins* [2018] EWCA Civ 366, it was said that integrity connotes adherence to the ethical standards of one's own profession. A solicitor acting with integrity (i.e. with moral soundness, rectitude and steady adherence to an ethical code3) would not have sought to mislead Mr Neidle as to what he was entitled to do with the e-mail that had been sent to him, would not have threatened that it would be a serious matter if he did not comply with that request, and would not have done so simply to try and save his client from further embarrassment within the ongoing news cycle. The Respondent's actions demonstrate a willingness to prioritise his client's interests over his own professional responsibilities or obligations, and on that basis a breach of Principle 5 is alleged.

…

[65.] Whilst the tone and tenor of the 19 July letter depict a step back from the position adopted in the 16 July e-mail (e.g. there was the express mention that this was, "…*not a threat to sue for*

> *libel*", and no threat that the failure to comply with the request for how the document was handled could be a "serious matter"), the points advanced above in relation to the 16 July e-mail equally apply; the public would have wanted to know that Mr Zahawi was resorting to legal letters in an apparent attempt to limit Mr Neidle's commenting on his tax affairs, and was seeking to keep that fact from public scrutiny.
>
> [66.] Despite this, and despite the exhortation from Mr Neidle to receive open correspondence, the Respondent still sought to impose a restriction on Mr Neidle's handling of the document.
>
> [67.] For the reasons set out in relation to Allegation 1.1, it is asserted that this inappropriate request made to Mr Neidle represented a breach of Paragraphs 1.2, 1.4 and 2.4 of the Code, and 2 and 5 of the Principles.

The Decision Challenged

29. The hearing before the Tribunal took place from 16th – 20th December 2024. At the close of the hearing, the Tribunal announced it found the first allegation (relating to the 16th July 2022 email), but not the second allegation (relating to the 19th July letter), proved. Consequential submissions followed, and the fine and costs award were imposed immediately.

30. A reasoned decision was handed down, nearly five months later, on 14th May 2025. Key parts of its analysis included the following:

> [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.
>
> …
>
> [18.7] The Tribunal found that, having considered all 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.
>
> …
>
> [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.

…

[18.24] 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.

…

[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. [His Counsel] 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 not reasonable expectation that this information was private.

…

[18.35] … The Tribunal concluded that Mr Hurst needed to show that the Email included genuinely confidential information before any restriction on publication would 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.

…

[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 is 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.

31. But the Tribunal found that the 19th July 2022 letter, by contrast, had been expressed as a request, which Mr Neidle would have understood himself to be at liberty to refuse. So the SRA's case was not, simply on the face of the document, made out.

32. In imposing a fine, the Tribunal observed that it considered the misconduct '*very serious*'. But it found that it did not amount to a SLAPP.

Mr Hurst's Challenge

33. Mr Hurst advances five grounds of appeal.

34. Ground 1 is that '*the key factual findings of the Tribunal are irrational and unsustainable*'. Two findings in particular are objected to.

35. The first is the finding that Mr Hurst sent the email of 16th July 2022 with no intention of pursuing negotiations or resolution, but solely to restrict disclosure and deter publication. He says that is contrary to the wording of the email and the Tribunal's own finding and is plainly wrong. The SRA, he says, had accepted that the email contained an offer, and that what he had been trying to do was get Mr Neidle on the phone.

36. The second is the finding that Mr Hurst had '*fabricated*' legal obligations, knowing there was no arguable confidentiality in the email. As a matter of law, he says there *was* arguable confidentiality. In any event, this finding was not properly open to the Tribunal because it was not part of the SRA's pleaded case.

37. He also says that the Tribunal's conclusions were irrational and unsustainable on the evidence. It gave no explanation of why apparently cogent and compelling evidence, including Mr Hurst's own substantial and uncontradicted written and oral evidence about his motives and beliefs in the propriety of his actions, had been disbelieved and rejected. It made no reference to the contemporaneous documentary evidence setting out Mr Hurst's attempts at resolving the dispute in real time.

38. Ground 2 is that '*the Tribunal erred in law by failing to determine the central legal issue raised by the Application, which was whether the Appellant had sought to impose a duty of confidentiality on Mr Neidle 'without any properly arguable basis', such that any conclusion reached by the Tribunal as a result was unsustainable*'.

39. This ground proposes that Mr Hurst had put forward two bases to support at least an arguable duty of confidence – (a) that the email was arguably Without Prejudice and (b) that the email was arguably confidential. The Tribunal failed to make any clear finding on either, instead addressing itself to and determining the wrong question – namely whether the email *was* confidential rather than whether it was *arguable* that it was.

40. Ground 3 is that '*the Tribunal's purported legal analysis in relation to the confidentiality of the Email was fundamentally flawed and amounted to a serious error of law such that any conclusion reached by the Tribunal as a result is unsustainable*'. Mr Hurst's grounds of appeal particularise this ground as follows:

> In particular, the Tribunal:
>
> a. failed to apply the authoritative test for the determination of the question of confidentiality (as agreed by the parties);
>
> b. by failing to apply the correct test, had no regard to the evidence led by the Appellant in accordance with that test.
>
> c. materially misstated the guidance in the leading practitioner text so as to exclude the critical part of the text;
>
> d. inexplicably cited an authority (*Barrymore*) in support of a proposition which it does not even arguably support (an authority neither side advanced to support this proposition);
>
> e. made bald, unsupported, assertions of law which are directly contrary to authority; and
>
> f. dismissed the entirety of the body of authority relied upon by the Appellant as being cases which involved obviously confidential information when that was both wrong and in any event irrelevant insofar as they were relied upon for the propositions of law they contained.
>
> Had the Tribunal addressed (properly or at all) the questions of whether:
>
> a. the Email was, or was arguably, WP and whether that gave rise to a, or an arguable obligation of confidentiality; and/or
>
> b. was arguably confidential in any event;
>
> it would have been bound to conclude that the Appellant was correct in both respects. On that basis, there can have been no misconduct.

41. Ground 4 is that '*the Tribunal misdirected itself by proceeding to "(i) make its findings of fact; (ii) apply the law to those facts*" *rather than first determining the arguability of the legal contentions advanced by the Appellant in support of his position that the Email was confidential and then determining his state of mind and alleged motive*'.

42. This ground argues that the Tribunal erred in addressing the issues of fact and law the wrong way around. It needed to have considered the arguability of the without prejudice and/or confidentiality assertions first. If it had done so, it must have found them at least arguable. If they were, the Tribunal could not have found there was *no*

genuine attempt to resolve a dispute or that Mr Hurst's *sole* motive was to stifle publication.

43. Ground 5 is that '*the Tribunal erred in law in concluding that using a WP label to deter publication was itself improper*'. The Tribunal had expressly accepted that it was *not* improper for Mr Hurst to try to avoid a republication of the allegation of lying, necessarily repeated in the email. Since it had not made a finding that the email was not arguably without prejudice, and that Mr Hurst knew or should have known that, it was not properly open to the Tribunal to find misconduct.

Consideration

(a) Preliminary

44. I have set out the decision challenged, and its history, at some length because this appeal mounts a wide-ranging critique of the Tribunal's approach to its functions in this case, and raises fundamental issues about the fairness of this decision.

45. As such, it is a case of some wider significance. It has been so recognised within the legal profession, both for that reason and for another: the Tribunal made a clear finding that whatever else it was, the email complained of was '*not a SLAPP, and the sanction should not be used as a deterrent in that context*'. The Tribunal prefaced that observation with an acknowledgment of '*ongoing public and professional debate about SLAPPs*' at the time. That debate continues ongoing.

46. SLAPP is a term with a statutory definition, set out in section 195 of the Economic Crime and Corporate Transparency Act 2023, and which also sounds (within the limited scope of that Act) in specific Rules of Court. Both were brought into force in the spring of 2025 (so after the events with which this case deals). The statutory definition is a complex one, and is addressed to the *manner* in which litigation affecting freedom of expression, such as defamation litigation, is conducted. The definition includes components that '*the claimant's behaviour in relation to the matters complained of has, or is intended to have, the effect of restraining the defendant's exercise of the right to freedom of speech*' and '*any of the behaviour of the claimant is intended to cause the defendant harassment, alarm or distress, expense, or any other harm or inconvenience beyond that ordinarily encountered in the course of properly conducted litigation*'. The subjective component of that definition is notable. A claim may be struck out, or have adverse costs consequences for a claimant, if it is held to be a SLAPP.

47. The concept of a SLAPP has been controversial in the legal policy arena because two aspects of the public interest are in direct contention – (defendants') freedom of expression on the one hand and (claimants') access to justice on the other. Parliament has, to date, made careful and limited intervention to strike a balance between the two in the field of economic crime and corporate transparency. But a polarised, and sometimes vehement, policy debate about SLAPPs has continued more generally.

48. Because SLAPPs have to do with *how* litigation is conducted, this debate has placed a spotlight on the legal profession. And because SLAPPs focus on the effect of claimants' litigation conduct on defendants being something more than is ordinarily encountered in the course of '*properly conducted litigation*', it places under intense scrutiny how that expression should be understood. It is a particularly intense issue for

claims in defamation and other communication torts, which *directly* address (the limits of) a defendant's exercise of free speech and where a claimant's interests, including reputation, may be engaged in an acute and time-sensitive manner.

49. Inevitably, all of this has engaged the attention of regulators including the SRA. As the SRA set out prominently in its January 2024 Notice in this case, and less prominently in its May 2024 Statement, it has issued guidance addressed to the specifics of what properly conducted litigation looks like in this field. It says this guidance unpacks, rather than adds to, professional standards in this area. But the limits of '*properly conducted*' defamation litigation remain contentious, and some commentators have noted the potential for the SLAPPs controversy itself to intensify, rather than deter or contain, the inherent contentiousness of defamation litigation.

50. All of this is of course no more than background context to the present appeal. But it is interesting context for an appeal looking at how a Saturday evening email from a senior defamation solicitor, on behalf of a senior politician whose reputational interests were engaged in an acute and time-sensitive manner, to a legally expert and high-profile tax journalist running a major story, led an expert Tribunal to condemn the solicitor for a lack of professional integrity.

51. Mr Stanley KC, leading Counsel for Mr Hurst, put it to me that, in effect, the Tribunal (and the SRA) were swept along by a (possibly SLAPP-infused) narrative of a disreputable attempt to stifle Mr Neidle's journalism, and lost sight of the questions properly before it and the correct approach to answering them. Mr Price KC, leading Solicitor-Advocate for the SRA, rejects that critique, defends the Tribunal's decision-making, and reminds me of the proper limits of my appellate function.

52. I have reminded myself of those limits, and directed myself to the authorities cited by Mr Price KC. The correct approach is well-established and uncontroversial. An appellate court should intervene on a tribunal's decision only if satisfied that it was 'wrong'. That is a test which goes beyond mere disagreement, and engages the court on the question of whether it was a decision unsustainable as not being properly open to the tribunal at all, for example because it was vitiated by error of law, amounted to inadequately supported fact-finding, was insufficiently reasoned, involved an exercise of discretion beyond the limits of its discretionary power, or was irrational or perverse. All of these appear in the grounds Mr Hurst advances before me now.

53. An appellate court will in particular hesitate to disturb findings of fact where it lacks important advantages of a tribunal, such as the ability to hear and evaluate oral testimony ('*the fact-finding tribunal has regard to the whole of the sea of evidence provided, whereas an appellate court will only be 'island hopping" –* Martin v SRA *[2020] EWHC 3525 (Admin)* at [31]).

54. An appellate court will not impose unrealistic standards of analysis and reasoning on a tribunal, or subject its decision to fine textual exegesis. It will take a generous and contextual approach, with the assistance if necessary of reasonable inference, in deciding whether a tribunal has explained itself sufficiently to be understood, and for an unsuccessful party to see why he has lost.

55. And an appellate court will respect the expertise of a specialist tribunal where that specialism is engaged. As Mr Stanley KC reminded me, however, that expertise does

not extend to questions of law, where a rigorous approach from an appellate court may properly be looked for.

(b) The Allegations

56. The proper starting point for reviewing the Tribunal's decision here must be to look carefully at the allegations Mr Hurst faced, because they defined the Tribunal's task. The function, and expertise, of the Tribunal was to adjudicate on allegations of professional misconduct by reference to specified breaches of the Code and Principles. Specifically, Mr Hurst was alleged, *by sending the email complained of*, to have: (a) abused his position by taking unfair advantage of Mr Neidle; (b) misled, or attempted to mislead Mr Neidle; (c) made assertions or put forward statements, representations or submissions to Mr Neidle which were not properly arguable; (d) acted in a way that did not uphold public trust and confidence in his profession and the legal services he provided; and (e) failed to act with integrity. These are all terms which are, and are intended to be, straightforwardly understandable and which are not controversial in the present case. So what follows is by way of simplified summary for present purposes, and not by way of definitive or necessarily transferrable definition.

57. Abuse of position is a charge going, in this context, to the relationship between Mr Hurst, a regulated defamation solicitor acting on instructions, and Mr Neidle, a layperson for these purposes, albeit a legal expert in his field and an experienced journalist so perhaps not paradigmatically '*vulnerable or uninformed*'. It focuses on the nature and extent of any imbalance of power in that relationship, and requires an assessment of whether Mr Hurst took *unfair advantage* of it. The test of fairness is plainly central, context-specific and evaluative.

58. Misleading, or attempting to mislead, is a charge involving the identification of some form of misrepresentation, misstatement or inaccuracy, whether of fact or law, and a finding of some degree of culpable mindset in relation to producing a faulty result in the understanding of the other person.

59. Whether assertions, statements, representations or submissions are *properly arguable* depends on their nature. To the extent that they are factual, to be *properly arguable* imports at least some evidential grounding or prospect of evidential grounding. To the extent that they are propositions of law, to be properly arguable is a familiar standard for legal professionals and for courts for assessing that they are something more than barely stateable, but without importing any particular assessment of prospects for success. A *properly arguable* legal proposition is one that it would not be improper for a regulated professional to advance, not necessarily one that is bound to or even likely to succeed. Our legal system is adversarial. Lawyers may and do *properly* advance weak cases if that is the best they can do for their clients, particularly at the stage of pre-action correspondence when they may hope to achieve results for clients *without* litigation. They can even advance claims which courts later strike out as disclosing '*no reasonable grounds for bringing*' them, or give summary judgment on because they have '*no real prospect of succeeding*', without inevitably breaching professional standards. But they cannot advance legally unrecognisable propositions.

60. Acting so as to uphold public trust and confidence is a standard familiar in many if not most regulated professional contexts. It imports the internalisation by a professional of their profession's ethos, and a proper acknowledgment that all professions are grounded

in a fundamental imbalance of power, that the entitlement to the predicated dependence of the public on their power must be earned, and that it is the task of regulators to ensure that it is.

61. A failure to act with *integrity* is an imputation of unethical conduct. As such, it is more than a portmanteau reference to a corpus of professional standards. It connotes an element of *personal* substandard ethical behaviour or untrustworthiness – a degree of what lawyers sometimes refer to as moral turpitude.

62. As drafted, the allegation before the Tribunal states that Mr Hurst breached all of these standards *because* the email constituted *an improper attempt to restrict Mr Neidle's right to publish the email and/or discuss its contents*. This is a difficult formulation to start with. *Impropriety* in context must connote a failure to conform to each professional standard cited – being misleading, advancing unarguable propositions and so on. But placing *Mr Neidle's right to publish* at the centre of this formulation is not a straightforward key to unlocking the Tribunal's proper task.

63. What Mr Neidle did and did not have a (legal) *right* to publish is, in the end, (a) a question of the application of a range of potentially relevant legal principles to the circumstances of publication and (b) not one on which the Tribunal was competent to give a definitive ruling. Where disputed, it is a question for a court, determinable ultimately on an *inter partes* basis, and not in disciplinary proceedings against another party's lawyer.

64. It is also (c) a matter which was acutely, and (as the Tribunal appeared to accept) entirely properly, in issue between the principal parties in the underlying matter of Mr Neidle's allegations of lying, which had prompted the email in the first place. I heard no controversy in the present case that it was wholly proper for Mr Hurst to challenge Mr Neidle's right to publish *that* allegation, *and* to seek to restrain it, whether in the past, in the future, and/or by publishing or referring to the email Mr Hurst sent which of course necessarily itself set the allegation out. Doing the latter could, at least potentially or arguably, as a matter of defamation law either be a further tortious act of (re)publication in its own right or at least give fresh prominence to the allegation objected to and lead to others repeating it. So this was not fertile territory for the Tribunal to make easy assumptions about, or conversely seek forensically to investigate, Mr Neidle's publication rights.

65. And, importantly, (d) establishing (or assuming) *Mr Neidle's right to publish* is not straightforward to connect with the allegations Mr Hurst actually faced. The questions for the Tribunal were whether the email (read as a whole and in context) was an act by Mr Hurst of abusing his position in relation to Mr Neidle, misleading or attempting to mislead him, advancing propositions that were not properly arguable, dishonouring the public's trust in his profession, or demonstrating a lack of personal integrity. For none of these was establishing an *improper attempt to restrict Mr Neidle's right to publish the email* a necessary, or even obviously relevant, finding, particularly in a context in which publishing the email was precisely and unhesitatingly what Mr Neidle had gone ahead and done. It is not even easy to understand what an *attempt to restrict a right* really amounts to as such, or how a lawyer's email can achieve it.

66. This is not a semantic quibble with the drafting of the SRA's allegations. The pleaded allegations before it were what engaged the Tribunal on its task and defined that task.

The Statement's allegations in the present case set out at their head that the email '*improperly attempted to restrict Mr Neidle's right to publish*' it. This formulation replaced the formulation in the January 2024 Notice which more simply and specifically alleged the labelling of the email as '*Confidential and Without Prejudice*' had been *improper* – abusive, misleading, unarguable and so on. That original formulation had also called this labelling '*oppressive in nature and [bearing] the hallmarks of a SLAPP*'.

67. It can only be a matter of speculation for an appellate court at this remove why the SRA formulated and reformulated the target of its charge against Mr Hurst in this way – and/or the extent to which the background noise of the SLAPP controversy at the time played a part at either stage. It is not my job to speculate. But the evolution of the formulation of the charge over the course of the disciplinary proceedings, and the prominence in the final version of the difficult and elusive headline idea of an '*improper attempt to restrict a right to publish*', was not calculated or likely to make the Tribunal's task clear and straightforward. The questions raised on this appeal are essentially about the success with which the Tribunal did or did not manage nevertheless to stay focused on its task of adjudicating fairly on the specific regulatory breaches alleged before it.

(c) The Tribunal's general approach

68. It is clear from its decision that the Tribunal was aware that there were disputed baseline issues about the approach it needed to take. It recorded that the parties had each '*submitted a different proposed framework for the Tribunal to use in deciding the case*'. It did not identify or analyse those different approaches in its decision. It simply recorded a conclusion that the appropriate approach was to make findings of fact, apply the law to those facts, and then consider whether any regulatory breaches had occurred as alleged or at all. It did not explain why.

69. On the face of it, that might seem a straightforward and logical enough approach. However, of course, the *allegations* were really the first starting point. It was the allegations which identified the relevant regulatory provisions and the relevant regulatory breaches. It was the allegations that determined which findings of fact were relevant and necessary. And, crucially, it was the allegations that identified which components of '*the law*' had to be applied. The allegations were, moreover, explicit that their own starting point required a focus on the email sent: a proper and objective construction of that document was placed clearly and unambiguously at the centre of the Tribunal's task.

70. In the event, the architecture of the decision was assembled as follows. First, the Tribunal found that, by sending the email, Mr Hurst '*intended to prevent Mr Neidle from disclosing either the Email or its contents to anyone other than a legal adviser*'. That was a conclusion stated to be based on construction of the document, Mr Hurst's evidence that he had chosen his wording carefully, a contextual inference that a desire to prevent publicity *generally* was a significant or primary driver in the whole exercise, and the choice of the '*without prejudice*' label.

71. The Tribunal next asked itself the question '*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.*' It directed itself that a key requirement for properly labelling legal correspondence 'without prejudice' is that it contains or

constitutes a genuine offer to settle a dispute; and that if it does then '*additional motivations*' might not be relevant and there would be no misconduct. But it found '*that was not the case*'. It found Mr Hurst had applied the label '*not because the Email genuinely met the criteria for WP protection but to try to prevent Mr Neidle from publishing its contents*'. There was '*no real attempt at negotiation or resolution – only a desire to suppress publication*'. So Mr Hurst had acted improperly in attaching the label.

72. Third, the email did not contain '*inherently confidential*' information which '*genuinely deserves protection*', and labelling it as '*confidential*' made no difference to that. So 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*'. This conclusion appears in context to be reached by way of legal analysis as applied to the contents of the email.

73. Fourth, the final piece of the architecture begins with the Tribunal directing itself that '*having found that Mr Hurst improperly tried to prevent Mr Neidle from publishing or discussing the Email*' it was turning to address whether there had been a breach of the professional standards. It stated in short order conclusions that the language of the email was '*intended to mislead Mr Neidle about his rights*'. That amounted to taking unfair advantage of him. The '*claims made in the email were not properly arguable*'. Mr Hurst had misused legal language and threatened consequences '*based on duties that did not exist*' and had been '*fabricated*'. He had '*ignored or dismissed his regulatory responsibilities*'. He simply wanted to stop disclosure. That lacked integrity.

(d) Analysis

(i) Preliminary

74. Perhaps the first thing to strike the appellate reader of this decision is that it is, after all, highly preoccupied with following the SRA's signposting that it needed to look for an *improper attempt to restrict Mr Neidle's right to publish*. That is what it looked for, and that is what it purported to find. Only then – and in what on the face of it reads as something of a logic puzzle – having found an *improper* attempt did it turn to the specifics of the allegations and find all the charges made out without further analysis.

75. The second striking feature is that the decision appears to come at the construction of the email almost exclusively from this perspective. On *any* basis, the primary purpose of this email was not to prevent Mr Neidle from publishing it. That is not a sensible proposition in its own terms. The primary purpose of this email was plainly – Mr Neidle having declined a phone call and insisting on being communicated with only in writing – for Mr Hurst to convey, on instruction, that while Mr Zahawi did not take issue with his tax affairs being publicly dissected and challenged, he very much took issue with being publicly labelled a liar. That '*overstepped the mark*'.

76. The email, unusually and because Mr Neidle had said he would '*not accept*' without prejudice correspondence, explicitly sets out the reason for attaching that label on this occasion. Why Mr Neidle said he would not accept without prejudice correspondence does not appear from the decision. But the ostensible reason Mr Hurst gave for labelling it so nevertheless, was that he was instructed to resolve the disputed matter of the allegations of lying, before further reputational damage was caused to his client.

77. Allegations of lying, at least potentially and at least arguably, are defamatory. If they are not retracted, they continue to be, at least potentially and at least arguably, a source of continuing and cumulative, and actionable, reputational damage. Retraction and agreeing not to repeat such allegations may be a wholly satisfactory outcome for some claimants, halting and undoing any damage swiftly and avoiding the need for litigation. It may be that Mr Neidle's position had been that nothing was going to induce him to retract his allegations, and he was prepared to defend their truth or justifiability all the way to a libel trial if necessary. But there could be nothing in principle wrong with Mr Hurst giving him '*the opportunity*' to retract the allegation instead – and reassuring him that that would not of course prevent him from '*raising questions*' based on the facts as he saw them. Raising questions about whether Mr Zahawi had been open and transparent about his tax affairs is something different from asserting definitive and negative answers to such questions. And there could be nothing wrong in principle with Mr Hurst seeking an urgent response, to the effect that if there were no retraction the matter would be pursued '*more fully*' and on an open basis (so not, therefore, necessarily extending the opportunity to resolve the matter without litigation). The decision does not suggest otherwise.

(ii) 'Without Prejudice'

78. A proper and objective construction of the email being at the centre of the Tribunal's task, it becomes necessary at this point to turn to consider the legal principles governing the labelling of legal correspondence as being '*without prejudice*'. That is for three reasons. The first is that, although the 'labelling' issue was a prominent part of the SRA's original formulation of its allegations but *not* of its final formulation, it appears to have been a significant part of the Tribunal's thinking. The second is that caselaw had been cited to the Tribunal but dismissed in relatively short order as '*addressing the admissibility of WP material in litigation, not professional conduct*'. And the third is that there is real opacity about the Tribunal's analysis and findings on the subject.

79. Taking the last of these first, the Tribunal appeared to accept that if the email were making a genuine settlement offer, there would be no misconduct in labelling it as '*without prejudice*'. It also appeared to accept that if there were a genuine attempt to resolve a dispute, then '*additional motivation may be irrelevant*'. But its two specific findings, or reasons for regarding the WP label as improper – '*That was not the case here*' at [18.20], and the conclusion in [18.25]-[18.26] 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.*' – are opaque. Did the Tribunal find that, considered objectively, an email which sought immediate retraction of an allegation of lying as an alternative to a more formal libel challenge was not a genuine attempt to resolve that matter, and if so why? Did it find that, contrary to its own premise, a subjective motivation to '*suppress publication*' vitiated an otherwise acceptable use of the label, and if so on what basis? What, exactly, did the Tribunal think was wrong with the application of the label to the email, and what was wrong with Mr Hurst's explanation of his use of it as set out on the face of the email?

80. Turning, then, to what the authorities say, Mr Stanley KC took me back to the cases the Tribunal considered to be '*of limited relevance*', beginning with *Unilever v Procter &*

Gamble [2000] 1 WLR 2436. The Court of Appeal judgment in that case included this (at pages 2448-9):

> … the without prejudice rule is founded partly in public policy and partly in the agreement of the parties. … the protection of admissions against interest is the most important practical effect of the rule. But to dissect out identifiable admissions and withhold protection from the rest of without prejudice communications (except for a special reason) would not only create huge practical difficulties but would be contrary to the underlying objective of giving protection to the parties … : *to speak freely about all issues in the litigation both factual and legal when seeking compromise and, for the purpose of establishing a basis of compromise, admitting certain facts*.

The public policy in question included '*to encourage those who are in dispute to engage in frank discussions before they resort to litigation*'.

81. Mr Stanley KC also took me to some clear statements of principle from the High Court in *Williams v Hull [2009] EWHC 2844 (Ch)*. It was common ground in that case that the labelling of a communication was not determinative either way, but that the question of whether a communication is in quality 'without prejudice' had to be assessed objectively as at the date of the communication. That is largely a question of construction of the communication, but regard must be had to all the relevant factual circumstances. The key question is whether a communication '*merely asserts rights or whether it asserts rights as part of a negotiation with a view to settlement*'. The judgment includes the following (at [40]:

> … I do not agree that '*without prejudice*' means '*without prejudice to my open position*'. In my view it means '*without prejudice to my position in any subsequent proceedings*'. It is not necessary for a party to have formulated an open position for it to be able to invoke the without prejudice rule, which is why an 'opening shot' in negotiations may be protected. Furthermore, imposing such a requirement would be contrary to the public policy behind the rule of encouraging settlement negotiations, since if parties had to state their open positions before they could claim the protection of the rule, that might inflame the negotiations. … without prejudice communications are inadmissible in any subsequent litigation connected with the same subject matter whether between the same or different parties.

82. The Court of Appeal in *Savings & Investment Bank v Fincken [2004] 1 WLR 667* reinforced (at [57]) that the without prejudice rule is '*all about ... encourag[ing] parties to speak frankly to one another in aid of reaching a settlement: and the public interest in that rule is very great and not to be sacrificed save in truly exceptional and needy circumstances*'. The rule – that matters stated in without prejudice correspondence are not admissible in subsequent litigation – is subject to exceptions, but only in cases of

'*unequivocal or unambiguous impropriety*' such as using such a communication as an occasion for blackmail.

83. The Court of Appeal in *Motorola v Hytera Communications [2021] EWCA Civ 11* emphasised that the displacement of the without prejudice rule is a '*truly exceptional*' occurrence. The following appears in the judgment of the Court:

> [31.] …First, the without prejudice rule must be 'scrupulously and jealously protected' so that it does not become eroded. Second, even in a case where the 'improper' interpretation of what was said at a without prejudice meeting is possible, or even probable, that is not sufficient to satisfy the demanding test that there is no ambiguity. Third, evidence which is asserted to satisfy this test must be rigorously scrutinised. While this last point was made with particular emphasis in the context of evidence procured by clandestine methods, the point itself applies generally. All this is inconsistent, in my judgment, with an approach which simply takes at face value the evidence of a party seeking to disapply the without prejudice rule.
>
> …
>
> [57.] …the courts have consistently emphasised the importance of allowing parties to speak freely in the course of settlement negotiations, have jealously guarded any incursion into or erosion of the without prejudice rule, and have carefully scrutinised evidence which is asserted to justify an exception to the rule. Although the unambiguous impropriety exception has been recognised, cases in which it has been applied have been truly exceptional…

84. The Tribunal's stated reason for considering these cases to be '*of limited relevance*' to its task was that they '*addressed the admissibility of WP material in litigation, not professional conduct*'. That explanation does not speak for itself. The without prejudice rule *is* a rule about the (non-)admissibility of material in litigation – it is what the rule is '*all about*'. The authorities are unanimous in identifying it as grounded in fundamental public policy considerations aimed at encouraging parties to discuss on a wholly frank basis the prospects of resolving a legal dispute otherwise than by litigation. Whether or not something is labelled as 'without prejudice' is not *determinative* of the application of the rule (although it is relevant); in a disputed case a court or tribunal has to decide objectively, as a matter of contextualised construction and taking a communication as a whole, whether it discloses both a recognisable legal dispute and an expression of a genuine proposed basis for resolving it without litigation. If on that basis a communication should be regarded as made on a without prejudice basis, then the protection from admissibility in subsequent litigation will not be lost unless, truly exceptionally, it discloses unequivocal or unambiguous impropriety on the part of a party to the litigation.

85. The Tribunal found Mr Hurst to have '*acted improperly*', as a matter of professional misconduct, in labelling his email 'without prejudice'. Its decision does not clearly relate that finding to the charges of (a) abuse of position; (b) misleading, or attempting to mislead; (c) making assertions or putting forward statements, representations or submissions which were not properly arguable; (d) acting in a way that did not uphold public trust and confidence; or (e) failing to act with integrity.

86. These grounds are interrelated, but the third might have made a convenient starting point for the Tribunal's consideration. Was it '*not properly arguable*' that the email was a 'without prejudice' communication? On the face of it, it identified a legal dispute – as to Mr Neidle's legal entitlement to publish allegations that Mr Hurst's client had lied. It made some admissions as to Mr Neidle's entitlement to publish other allegations against his client. It provided an '*opportunity to retract*' the allegations in the alternative to litigation. It did not obviously disclose the sort of '*unequivocal or unambiguous impropriety*' by a party (such as a blackmail attempt) so as to render it beyond argument that this fell into the very limited category of '*truly exceptional*' circumstances where the protection of without prejudice correspondence would be lost. So it is entirely unapparent on what basis the email could not at least *arguably* be considered a without prejudice communication. Arguability is not an especially high hurdle to clear.

87. If it is at least arguable that the email was a without prejudice communication, it is even less clear on what basis Mr Hurst acted abusively, misleadingly or otherwise unprofessionally in describing it as such. There are only a small number of clues in the decision as to why the Tribunal might have thought so.

88. The first is that there was '*no real attempt at negotiation or resolution*'. That is an entirely unexplained finding. The email declares on its face that it is a '*confidential and genuine attempt to resolve a dispute with you before further damage is caused*'. On the face of it, the email was plainly and indisputably aimed at securing the retraction of the allegations of lying as an alternative to the possibility of defamation litigation. Why the Tribunal considered there could be any doubt that that was its objective, and genuinely capable if achieved of avoiding defamation litigation, is nowhere explained. Of course, Mr Neidle had said he did not want to entertain 'without prejudice correspondence', and he might turn out to have been resolutely uninterested in retraction or settlement. But that hardly renders Mr Hurst's attempt not '*real*'.

89. Another clue appears at [18.27]-[18.28] in the decision under the heading '*The Implicit Threat and Use of the Without Prejudice Label*'. The Tribunal interpreted the email as containing an '*implicit threat*' of action, which '*could include legal proceedings or a regulatory complaint*', if the email were disclosed. The analysis in these paragraphs makes it hard to identify and disentangle what it is saying about the use of the 'without prejudice' label and what it is saying about the assertion of confidentiality (which I consider below), but it appears to read the email as asserting that Mr Neidle was not entitled to publish it *because* it was labelled 'without prejudice'. That is by no means an obvious or even straightforward reading of the email, considered objectively.

90. On its face, the email acknowledges that Mr Neidle had said he '*would not accept*' without prejudice correspondence, and that it was up to him whether or not to respond to the '*opportunity*' a '*without prejudice*' email nevertheless provided. But there are at least two, more obvious, reasons on which the email can straightforwardly be

understood to rely for asserting that its recipient was not entitled to publish. The most obvious is that it could constitute republication of an alleged libel or be the occasion of republication by others. The email is also asserted on its face to be confidential. Both of these are properly understood as propositions about restraint of *publication*. The use of the 'without prejudice' label is however, as the Tribunal decision rightly identified, a proposition about the *admissibility* of communications rather than about their publication as such (although if a communication is made on a without prejudice basis that may be part of the factual matrix within which confidentiality has to be considered, as discussed below). It is difficult in these circumstances to understand how or why an '*implicit threat*' of legal or regulatory consequences for the publication of the email, even taken at its highest, is said to relate to the use of the 'without prejudice' label at all, much less to constitute professional misconduct in the use of the label.

91. These paragraphs do not say that the Tribunal considered this '*implicit threat*' a matter of '*unequivocal or unambiguous impropriety*' such as to make this a '*truly exceptional*' example of the proper forfeiture of the protections afforded to without prejudice correspondence. It did not address itself to that test. It is hard to see how the email could possibly be considered to clear that very high hurdle on any basis relating to the 'without prejudice' marking in any event.

92. The Tribunal seems to have come at the issue of 'without prejudice' labelling from the premise that Mr Hurst was improperly concerned to constrain Mr Neidle not to make public the *fact* that Mr Zahawi had instructed a defamation lawyer to object to the publication of allegations of lying. The '*without prejudice*' rule is not primarily concerned with protecting that sort of information, and it is hard to see how the email was, or could be, read as suggesting that it is. What the '*without prejudice*' rule would protect (in any future litigation) in the present case is not that a legal dispute had been identified or even that proceedings (of any sort) had been threatened, implicitly or otherwise. What it would protect was not that Mr Zahawi was or might be threatening legal action, but that he was prepared *not* to pursue a claim and had made some admissions to that purpose.

93. The authorities are clear that if a document contains the recognisable elements of without prejudice correspondence, then it should be regarded as properly so labelled as a whole. Mr Neidle himself in his responsive email of 16th July appears to have recognised, or at least not to have disputed, that Mr Hurst's email was not improperly labelled. It was on the necessary premise that it was properly labelled, that he asked for an open (ie admissible) letter. There is no properly available contextual inference from this that Mr Neidle was taken advantage of, or misled, by an unwarranted use of the label 'without prejudice', nor that he might have or was intended to have been.

94. It is in all these circumstances difficult to understand, or articulate, on what basis the Tribunal convicted Mr Hurst of professional misconduct in relation to the use of the 'without prejudice' marking. But it is apparent that the Tribunal connected it to what it considered to be the '*impropriety*' of the assertion in the email that '*you are not entitled to publish it or refer to it other than for the purpose of seeking legal advice*'. The Tribunal's most direct focus on what it considered objectionable about that was through the lens of confidentiality.

(iii) Confidentiality

95. Modern statements of the law of confidentiality sometimes refer back to the classic three-part definition set out in *Coco v A N Clark [1968] FSR 415* at page 419:

> … three elements are normally required if, apart from contract, a case of breach of confidence is to succeed. First, the information itself … must 'have the necessary quality of confidence about it'. Secondly, that information must have been imparted in circumstances importing an obligation of confidence. Thirdly, there must be an unauthorised use of that information to the detriment of the party communicating it.

The Court went on to explain that the first element – that information be of a confidential nature – meant that it had to be something more than 'common knowledge'. It had to have passed through a human mind and to have some quality of '*originality or novelty or ingenuity*' or otherwise be something more than the sum of public constituent elements.

96. The tort of breach of confidence has a perhaps rather complex relationship with the tort of misuse of private information. The latter is generally considered referable in origin to the decision of the House of Lords in *Campbell v MGN [2004] 2 AC 457*, building on the incorporation of Article 8 of the European Convention on Human Rights (qualified protection of private and family life, home and correspondence) into UK domestic law via the Human Rights Act 1998.

97. One of the two cases on the modern law of confidence cited by the Tribunal in its decision in the present case was the judgment of the Court of Appeal in *Tchenguiz v Imerman [2011] 2 WLR 592*, where the Court, at [64]-[71], reflected on the relationship between the two torts. The Court of Appeal drew some parallels between the first two elements of the *Coco* test for confidentiality, and the '*reasonable expectation of privacy*' which was established in *Campbell* as a key building block of the new tort of misuse of private information. But this analysis has to be handled with some care and respect for its context.

98. The focus of the Court of Appeal in *Tchenguiz* was on the proposition that '*intentionally obtaining … information, secretly and knowing that the claimant reasonably expects it to be private, is itself a breach of confidence*'. It deals, in other words, with circumstances where a claimant has a '*reasonable expectation of privacy*' in material which is then wrongfully obtained by a third party. That is a prima facie breach of confidence. But *Tchenguiz* is not authority for a proposition that no breach of confidence may be found *unless* there is a breach of privacy, nor that a duty of *confidence* cannot arise unless a claimant has a reasonable expectation of *privacy* in the information in question. It does not go so far. It does support an understanding that privacy and confidentiality may overlap, and that '*consistency and coherence*' in the development and application of both is important. But it states in terms (at [71]):

> …The fact that misuse of private information has … '*become recognised over the last few years as a wrong actionable in English law*' does not mean that there has to be such misuse before a claim for breach of confidentiality can succeed…

99. The Tribunal in the present case drew from *Tchenguiz* confirmation of a proposition that '*a right to confidentiality arises only if the information genuinely deserves protection*'. That is not a proposition which can properly be drawn from the case. Nor is it referable to any authority on the law of confidence of which I have been made aware.

100. The other case cited by the Tribunal on the law of confidentiality was *Barrymore v News Group [1997] FSR 600*. In that case, the High Court granted an injunction restraining publication of details of a claimant's sexual relationship. It is a case which would probably be brought now in the tort of misuse of private information. But it is consistent with *Tchenguiz* in identifying that, as the judge pithily put it, '*when people kiss and later one of them tells, that second person is almost certainly breaking a confidential arrangement*'.

101. The Tribunal cited *Barrymore* to support a conclusion that '*simply instructing solicitors does not, in itself, give rise to confidentiality*'. That is hard to understand. *Barrymore* does not deal in a factual matrix of that nature and contains no proposition which can easily be related to that conclusion. Nor is the Tribunal's conclusion easily relatable to the matters properly before it.

102. The Tribunal's analysis of the law of confidence otherwise proceeds via the following propositions: (a) '*Objectively, there was no reasonable expectation that this information was private*'. That is, as *Tchenguiz* makes clear, not required by the law of confidence. (b) Labelling correspondence '*confidential*' does not by itself create a duty of confidence. That is correct in so far as the authorities in confidentiality cases which are not founded on the misuse of private information indicate a highly fact-specific and contextualised test focused on the nature of the information and the circumstances in which it is imparted. (c) If a communication '*genuinely contained confidential information, a duty might arise. If not, the label made no difference*'. That is not an accurate statement of the law. In *Barrymore* the Court observed that '*Of course, if something is expressly said to be confidential, then it is much more likely to be so held by the courts, but it by no means follows that something that is not so expressly stated to be confidential is not confidential*'. The label does not make '*no difference*'; it is part of the factual matrix in which the question of a duty of confidence falls to be assessed. (d) '*The Tribunal concluded that Mr Hurst needed to show that the Email included genuinely confidential information before any restriction on publication could be justified*'. That is an inaccurate, or at best incomplete, statement of the law of confidence (and an inaccurate statement of the burden on Mr Hurst in the disciplinary proceedings). (e) '*For the reasons above, the Tribunal found that the Email did not contain information with the necessary quality of confidence*'. There are no graspable reasons set out in this section of the decision capable of supporting that conclusion.

103. It is necessary at this point to stand back and recollect why it was that the Tribunal embarked on this piece of legal analysis at all. To reprise once more, the charges Mr Hurst faced were: (a) abuse of position; (b) misleading, or attempting to mislead; (c) making assertions or putting forward statements, representations or submissions which were not properly arguable; (d) acting in a way that did not uphold public trust and confidence; and (e) failing to act with integrity. He was said to have misconducted himself in all these respects by sending the email. The email therefore needed to be properly construed. The issue of its confidentiality arose in that context.

104. So the Tribunal was required to consider misconduct in relation to the email's being headed '*Confidential & Without Prejudice*', describing itself as a '*confidential and genuine attempt to resolve a dispute*', and stating that '*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 [a] libel lawyer…*'. Again, the third charge of misconduct might have been a convenient place for the Tribunal to start: was it '*properly arguable*' for Mr Hurst to say that the email was a confidential communication that Mr Neidle was not *entitled* to publish?

105. With a view to challenging the assertion that Mr Zahawi had lied about his tax affairs, the information contained in the email traversed a certain amount of the history of the financial support Mr Zahawi had received from his father in setting up a business venture, at a time when Mr Zahawi had given up a full time job and depended on that support. It touched on that family relationship, and included specific financial information about both Mr Zahawi and his father. It identified Mr Zahawi's legal position, and his personal views about his public and political transparency and its limits.

106. This is information which, on the face of it, includes the personal data of both Mr Zahawi and his father, and which was not in the public domain, or at any rate not in the form and pattern in which it had been set out in the email. That it was not in the public domain is reinforced by a paragraph which challenges Mr Neidle's own lack of knowledge of the relevant family and financial history; it continues '*In fact, there are very few people who would remember the very significant contribution made by our client's father in setting up YouGov at the very beginning and developing its business plan with our client and the other founders. They also would not know about the financial and other support that our client's father provided…*'.

107. The Tribunal's citation of ***Tchenguiz*** did not address itself to the observation at [76] of that judgment that '*communications which are concerned with an individual's private life, including his personal finances, personal business dealings, and (possibly) his other business dealings are the stuff of personal confidentiality*'. At any rate, the Tribunal did not visibly make any investigation or finding that the content of the email was in the public domain. On the contrary, it found it to be an exercise in creating or maintaining secrecy.

108. This information was imparted to Mr Neidle in circumstances which made it clear that it was for a limited and specific purpose. That purpose was to challenge Mr Neidle's public allegations that Mr Zahawi had lied, by advancing at least some demonstration that Mr Neidle had not been in possession of the necessary facts to support any such allegation, and that there were facts which would positively rebut those allegations. It was, by that means, to persuade Mr Neidle to reconsider his allegations and to withdraw them – the principal purpose of the email as a whole. That purpose, and that purpose limitation, of the email were clearly stated on its face, including by way of expressly asserting its confidentiality.

109. The question for the Tribunal posed by the third charge brought against Mr Hurst was whether the assertion of confidentiality made in the email, taken as a whole, was *arguable*, as a matter of professional standards. It was *not* whether Mr Neidle's subsequent publication of the email was an actionable breach of confidence, nor whether he might have had any public interest defence to any such action; much less

was it whether Mr Zahawi might have been minded in the event to pursue any such challenge. The Tribunal needed to consider, for the purposes before it, the quality of the information contained in the email read as a whole, and the circumstances in which it was imparted, and apply the guidance of the authorities to them. It needed to consider the factors I have set out above which, on the face of them, appear comfortably to clear the arguability threshold. It is not a high threshold. The information imparted included family and financial information not otherwise available, and provided by Mr Hurst's client for a single, limited and clearly articulated purpose and expressly intended for no other. It at least raised a more than statable prima facie legal case of confidentiality. There is nothing in the Tribunal's decision which is recognisable as applying the relevant law to these facts, or as explaining a conclusion that Mr Hurst's assertion of confidentiality was *unarguable*. And if the assertion of confidentiality was not unarguable, in what sense was it abusive, misleading, lacking in integrity or otherwise unprofessional?

Conclusions

110. In its original January 2024 Notice, the SRA alleged front and centre that the email had been improperly labelled '*Confidential & Without Prejudice*'. It alleged that the conditions for using those terms were not fulfilled. They were intimidating and inaccurate. They were intended to prevent the '*permissible*' disclosure of the email. That was '*oppressive in nature and bore the hallmarks of a SLAPP*'.

111. However, in its May 2024 Statement, the allegation had become one that the email '*improperly attempted to restrict Mr Neidle's right to publish the email*'. It took as its starting point that Mr Neidle was participating in public discussion about Mr Zahawi's tax affairs and that '*the fact that Mr Neidle, given his level of tax experience, felt able to make an accusation of lies against Mr Zahawi would have been, and was, a matter of public interest. The fact that Mr Zahawi's response was to instruct a solicitor at a specialist libel lawyer to send correspondence to Mr Neidle threatening legal action, rather than in his position as a politician and a public figure choosing to issue a statement addressing the accusations or clarifying his earlier remarks, would in turn have been a matter of public interest*.' Again, '*The simple fact that the-then Chancellor of the Exchequer had made that decision, given the unfolding interest in his tax affairs and his response to questions about them, would in and of itself have been an issue which would have merited public reporting.*'

112. All of this in itself is no more than a statement of opinion about journalistic standards. The fact that the public might be interested in something does not confer, create or define a *legal* right to publish it. But the SRA Statement moves seamlessly from a public interest assessment to an assertion that '*the attempt to restrict Mr Neidle's right to publish [the email] or refer to its contents was inappropriate*'. That proposition contains at least two problematic premises.

113. The first is the apparent assumption that, in the context of a public debate, Mr Neidle had a (legal) *right* to publish any and all of the material he chose to publish – a *starting* point which on the face of it assumed what it needed to prove against Mr Hurst, and a particularly problematic starting point in the context of an underlying libel challenge. Mr Hurst was entitled to challenge Mr Neidle's *legal right* to publish the accusations of lying. That is why he wrote the email when Mr Neidle declined a telephone conversation. That does not appear to have been at issue in the disciplinary

proceedings. It is the appropriate legal and professional starting point for construing the email. But it is a starting point which rapidly disappears from view both in the allegations and in the Tribunal's subsequent discussion.

114. The second is the proposition that what Mr Hurst and his client were trying to do was to make a legal challenge to Mr Neidle, but to keep the *fact* of that challenge a secret, for fear it would harm Mr Zahawi's reputation (politically) if that is what the public knew was happening. That is a proposition which Mr Hurst had consistently denied was either the intention or the ostensible effect of the email. The Tribunal recorded that '*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)*'. This evidence appears to have been rejected on the basis that Mr Hurst and his client were motivated by '*a significant or primary driver to prevent publicity generally*' and by what appears to be an assessment that Mr Hurst's position led to a point at which Mr Neidle could have published the entire contents of the email without mentioning the email. That is a *reductio ad absurdum* which did not fairly reflect Mr Hurst's declared position. Nevertheless, the *starting point* of the Tribunal's finding is not so very distant from the starting point of the SRA's allegation – that Mr Hurst and his client were preoccupied with a clandestine operation designed improperly to interfere with Mr Neidle's right to publish what the public had a right to know.

115. This is presented in the Tribunal's decision as a finding of fact, and Mr Price KC cautions against my interfering with it. If it *is* a finding of fact, it is a finding of fact as to the state of mind of Mr Hurst and of his client, namely that both were motivated by a desire to '*prevent publicity generally*'. Mr Hurst denied that, and no explanation is given for rejecting his evidence. It is not to be inferred from the email itself, construed objectively as a whole. So upon what evidence was it purportedly based? A journalist in Mr Neidle's position might well have had a journalistic or possibly political interest in portraying Mr Zahawi as secretive, and Mr Hurst as on a mission to stifle legitimate public interest investigative journalism in a SLAPP-like manner – that would no doubt have burnished a journalist's own investigative credentials and added interest to the story. But in a regulatory context it would be wrong, and naïve, to make any assumptions that a politician under public scrutiny and his legal representative must, or are even likely to, be preoccupied with unwarranted blanket secrecy. As the email makes clear, Mr Zahawi fully understood and embraced the public's interest in his tax affairs and his own transparency and probity in relation to them, and plainly had no desire to appear secretive or evasive about them in any way. That would hardly have assisted his reputation management. He did, however, object to being called a liar. And he was in principle entitled to caution Mr Neidle against using that objection as itself a platform for further repeating the allegation or giving it additional prominence.

116. This idea of a preoccupation with secrecy and stifling a right to publish – proposed by the SRA and adopted by the Tribunal – was, in my judgment, insufficiently examined, accounted for, or evidentially supported in the Tribunal's analysis, and as such was replete with risk of unfairness to Mr Hurst and to the reaching of an unfair decision. If the Tribunal had taken the alleged regulatory breaches as its starting point instead, as it was fairly and properly required to do, and addressed itself to proper construction of the email as a whole, then it might well have found it convenient to begin by addressing the law on confidentiality and 'without privilege' and considering whether or not it was

properly arguable for Mr Hurst to have advanced them in the email. As it is, for the reasons I have set out, the Tribunal did not address itself correctly and relevantly to that law, and unsurprisingly fell into error of law to the extent that it ostensibly had regard to it, sought to apply it, or rejected it as irrelevant.

117. The starting point for considering arguability, in turn, was a fair and objective construction of the email as a whole. It is not recognisable from its decision that the Tribunal properly undertook that key task. The email plainly identified a recognisable legal dispute – that the allegations of lying were defamatory. It set out reasons for disputing Mr Neidle's legal right to publish those allegations. It plainly indicated a proposed alternative to litigation – taking the opportunity provided to retract the allegations. It contained supporting information, including personal data, about Mr Zahawi's, and his father's, family and financial matters which it stated that '*very few people*' were aware of. It made clear that this information was advanced for the single purpose of resolving the legal dispute. There is a recognisable factual and legal basis in the email for an assertion that it was without prejudice and confidential correspondence and that Mr Neidle was not entitled to publish it. That is where the '*properly arguable*' threshold is positioned. It does not require an unanswerable case to be demonstrated or even a strong or a persuasive one. It requires a legally recognisable case which may be advanced without professional impropriety.

118. In my judgment, accordingly, the Tribunal's conclusion on this point proceeded from a problematic starting point, via misdirection and error of law, to a conclusion adverse to Mr Hurst which was not properly open to it on the materials before it – chief among which was the email itself, properly and fairly construed (the construction of documents is not a matter on which tribunals necessarily enjoy an advantage over appellate courts). In other words, I am satisfied that the Tribunal's decision was wrong and cannot be upheld. Its conclusion is also unsustainable, and troubling, for two further and important reasons.

119. The first is a failure of reasoning. The Tribunal is a quasi-judicial decision-making body with huge powers over the reputation and livelihoods of the professionals who appear before it, and important responsibilities to the public and the wider profession. It has corresponding duties to explain its decisions clearly, not least in high-profile cases and in any context of public policy controversy. Appellate courts must not hold specialist tribunals to the standards of courts of record in how decisions are set out. But an appellate court must at least be able to follow and understand at a basic level the route by which a tribunal has reached its conclusions (see for example *Simetra v Ikon [2019] 4 WLR 112* at [40], [46], and *Phipps v GMC [2006] EWCA Civ 397* at [78]).

120. For the reasons I have given, I am not satisfied at this basic level that the Tribunal's decision sets out a line of reasoning which *could* satisfactorily be followed through to a complete understanding of how it reached its end point. I attribute that principally to the starting point the SRA invited it to take and which it did not sufficiently review through the lens of the professional misconduct allegations before it and which properly constituted the task it had to perform. The unexplained delay of five months in producing reasons for its decision may also have played a part. In any event, the reasons are, to put it no higher, condensed to the point of compromised intelligibility. The decision does not sufficiently set out how the Tribunal related the relevant law and evidence to the outcome, such that an appellate court can sufficiently satisfy itself that the analysis and outcome were properly available to it within the appropriate legal

framework, or that it was fair, or even rational. For that reason alone I would have been unable to uphold it.

121. More importantly, the reasoning of the decision does not give an adequately comprehensible account to Mr Hurst, the legal profession or the public of why his articulated professional perspective and version of events was rejected and why the Tribunal reached the adverse conclusions it did. As such it does not properly serve the interests of justice, or provide enough of a guarantee against an inference that the problematic starting point assumption of Mr Neidle's '*right to publish*' proved in practice to be unfairly prejudicial to Mr Hurst, leaving him faced with a task of disproving an extraneous narrative of unprincipled suppression of journalism which he might understandably have neither recognised, understood nor reasonably expected to have to deal with on the basis of the misconduct allegations he actually faced.

122. The other troubling feature of the Tribunal's conclusion is the vehemence and disparagement with which it was expressed. A premise of Mr Neidle's '*right to publish*', and a faulty analysis of whether any different legal view was even arguable, led without visible support in the decision itself to a finding of *intention* to mislead, deliberately taking unfair advantage, calculated misuse of legal language and threats based on duties '*that did not exist*'. That in turn led to condemnation of Mr Hurst for having '*fabricated*' legal obligations and having '*ignored or dismissed his regulatory responsibilities*'. These, and the finding of lack of professional integrity, are findings of bad faith, to put it no higher than that. As such, they import an elevated standard of proof and of reasoning, including an expectation of some clear articulation of why (if it did) the Tribunal considered itself entitled to find Mr Hurst not to be a witness of truth. The charges Mr Hurst actually faced, and the analysis and reasoning set out in the Tribunal's decision, do not justify its expressing itself in the terms it did. It was not fair to Mr Hurst to do so.

Decision

123. The decision challenged in this appeal was insufficiently analysed and reasoned, vitiated by misdirection and error of law, and unfair. I allow Mr Hurst's appeal, and set aside the orders of the Tribunal and the decision and determinations on which they were based.

124. The parties will have an opportunity to reflect on the consequences of my decision, and to make further submissions about them if necessary.