SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 11156-2013

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

THOMAS CRAMPTON Respondent

Before:

Mrs J. Martineau (in the chair)
Miss N. Lucking
Mr M. Palayiwa

Date of Hearing: 17 December 2013

Appearances

Mr Peter Steel, solicitor, of Bevan Brittan LLP, Fleet Place House, 2 Fleet Place, London EC4Y 7RF for the Applicant.

Mr Thomas Crampton, the Respondent, appeared and represented himself.

JUDGMENT

Allegations

The allegations against the Respondent, made in the Rule 5 Statement dated 6 June 2013, were that:

1. The Respondent had breached Principles 2 and 6 of the SRA Principles 2011 ("the Principles").

   The particulars of the allegation were that he:

1.1 Made misleading statements in correspondence with his clients or their representatives;

1.2 Tampered with the transcripts of court proceedings on 28 and 29 November 2011 by amending and removing a number of passages featuring the words spoken by leading Counsel and by the Judge; and

1.3 Passed the doctored transcripts to his clients or their representatives as if these represented a true and accurate record of the court proceedings on 28 and 29 November 2011.

   It was further alleged that the Respondent's conduct as outlined at paragraphs 1.2 and 1.3 was dishonest.

2. The Respondent breached Principles 4 and 5 of the Principles. Further, or alternatively, the Respondent failed to achieve all or alternatively any of the following Outcomes:

   O(1.2) – you provide services to your clients in a manner which protects their interests in their matter, subject to the proper administration of justice;

   O(1.4) – you have the resources, skills and procedures to carry out your clients' instructions;

   O(1.5) – the service you provide to your clients is competent, delivered in a timely manner and takes account of your clients' needs and circumstances; and

   O(1.12) – clients are in a position to make informed decisions about the services they need, how their matter will be handled and the options available to them

   in breach of the SRA Code of Conduct 2011 ("the Code").

   The particulars of the allegation were that he:

2.1 Failed to file acknowledgments of service in claims in which he was instructed;

2.2 Failed to deal with applications for default judgments made in those claims;

2.3 Tampered with the transcripts of court proceedings on 28 and 29 November 2011 and provided the doctored versions to his clients as if these represented a true and accurate record of the court proceedings; and

2.4 Failed to pass on relevant information to clients.

3. The Respondent breached Principle 7 of the Principles and/or in the alternative failed to achieve all or any of the following Outcomes:

O(10.6) – you co-operate fully with the SRA and the Legal Ombudsman at all times;

O(10.8) – you comply promptly with any written notice from the SRA

in breach of the Code in that he failed to respond to correspondence from the SRA.

Documents

4. The Tribunal reviewed all of the documents submitted by the parties, which included:

Applicant:-

- Application dated 6 June 2013
- Rule 5 Statement, with exhibit "PS1", dated 6 June 2013
- Core hearing bundle, comprising 555 pages
- Revised schedule of costs dated 11 December 2013.

Respondent:-

- Witness statement dated 11 December 2013

Factual Background

5. The Respondent was born in 1978 and was admitted as a solicitor in 2003. His name remained on the Roll of Solicitors at the date of the hearing.

6. At the relevant times, the Respondent was a principal in the firm of Lax & Co LLP of 78 Cornhill, London EC3V 3QQ ("the Firm"). The Respondent undertook work in shipping litigation at the Firm.

7. Two companies, S Shipping and OME ("the Companies"), instructed the Firm in 2011 in a litigation matter relating to the loss of a ship, "The AT". The Respondent was the fee earner with conduct of the matter. S Shipping were the owners of the capsized bulk carrier, "The AT", and OME were the managers of the vessel. In May 2006 The AT sank off the South African coast with the loss of 26 crew. There were 7 survivors, including the bosun Mr AM.

8. S Shipping and/or OME sought to claim under their hull insurance cover for losses arising from the sinking of the vessel, and any other associated losses (which were not relevant to the present matter) from their insurers, Allianz Marine and issued a claim in the High Court under folio 2006/815. The underwriters refused to pay out to S Shipping and/or OME on the basis that the vessel was unseaworthy and that the

Companies had known this and that there had been in place an illegal practice by which they failed to notify relevant bodies about defects to the carrier. These assertions stemmed from evidence provided by Mr AM but were disputed by S Shipping. Criminal proceedings were issued against S Shipping and/or OME but the case collapsed when Mr AM's evidence was found to be untruthful in related proceedings abroad. It transpired that the insurers and/or their solicitors had made significant payments to or on behalf of Mr AM. Shortly after this evidence came to light the insurers paid the principal amount of the hull insurances proceeds to the Companies.

9. The Companies instructed the Firm in or around May 2011 to assist it with the service in the UK of Greek civil proceedings for damage to reputation (as following the criminal proceedings they alleged that the insurers had damaged their reputation to a point that they were unable to insure their other vessels either at all or without incurring additional expense). In response to these proceedings being issued, Allianz Marine brought civil proceedings in England against the Companies to prevent them continuing with their claim in the Greek jurisdiction, in proceedings under folio numbers 2006/815, 2011/702, 2011/897 and 2011/1043. In August 2011 the Firm was instructed to contest the jurisdiction of the English courts in relation to the claim brought by Allianz Marine and to protect the Companies' position. The retainer also required the Firm to retain leading counsel to advise on the defence of the litigation and to provide an opinion on merits and strategy. No formal letter of engagement was sent to either of the Companies.

10. On 30 August 2011 the Respondent wrote to Mr CG, a Greek lawyer dealing with the Greek proceedings and who was authorised to give instructions to and/or work with the Firm in relation to the English proceedings. In that communication the Respondent stated:

> "I see that the claim form was served on 18 August. We have 46 days to serve our defence, which gives us until 3 October to do so. I will proceed to file acknowledgements of service in respect of the various claims."

On the same day the Respondent asked a colleague to prepare the Acknowledgements of Service, with a reminder that they would need to state that jurisdiction was contested.

11. Acknowledgements of service were filed on behalf of S Shipping in the four matters but not on behalf of OME in folios 2011/894 and 2011/897. The Acknowledgements of Service indicated that jurisdiction would be contested but no applications were made to contest jurisdiction in any of the actions. In a telephone conversation on 8 December 2011 between the Respondent and Mr Powell of Thomas Cooper Solicitors (the firm which took over conduct of the matter on behalf of the Companies towards the end of 2011) the Respondent stated in relation to the failure to make applications to contest the jurisdiction, "that there were subsequently no recommendations or indeed communications with clients on this point".

12. In relation to the folios where an Acknowledgement had been lodged, the Respondent drafted Defences but these were not considered by the Companies and the Respondent did not seek their instructions on them. Defences relating to folios 2011/702 and

2011/1043 were served and/or lodged on 7 November 2011; this had the effect of permitting the High Court to have jurisdiction over those claims, contrary to the intention of the Companies (and the instructions given to the Respondent). The Respondent/the Firm did not serve or lodge defences in folios 2011/894 and 2011/897 despite preparing drafts.

13. In relation to folios 2011/894 and 2011/897 (in which no Acknowledgement had been filed in relation to OME and no Defence for either of the Companies) one of the Claimants applied for default judgment against OME. Notice of these applications was sent to the Respondent by email on 26 October 2011 from Clyde & Co in which it was stated:

> "We refer to the above referenced proceedings… Please see attached, by way of service, an Application for Default Judgment filed by the Claimants on 24 October 2011. If your clients wish to respond to this Application, we would ask that they do so within 3 days."

The Respondent failed to notify his clients of the position and failed to respond to Clyde & Co either within the three days requested or at all. It was subsequently asserted on behalf of the Respondent, in a letter of 16 January 2012, that these notices were overlooked.

14. On 2 November 2011, default judgments were served on the Firm. Neither of the Companies was made aware that the Claimant had obtained default judgment. On 3 November 2011 the Respondent asked Clyde & Co for an additional extension of time in relation to the filing of defences in folios 2006/815, 2011/702 and 2011/1043.

15. On 23 November 2011, junior counsel for the Companies (Ms Hilliard), emailed the Respondent to ask for copies of the claim forms in the actions in which the other party claimed to have default judgments (as referred to in that party's skeleton argument) and for copies of any such default judgment. The Respondent sent to Ms Hilliard and Mr Drake QC (leading counsel for the Companies) copies of the claim form, but not the default judgments, on 25 November 2011. The Respondent asserted that these were not the subject of a forthcoming hearing.

16. The Respondent did not inform the Companies of the default judgment until 28 November 2011, (which was the date of the hearing of various applications by the Claimants, including an application for summary judgment) when, in an email purporting to report on the proceedings that morning the Respondent wrote:

> "During the opening from the (other party) we were served with a court order dated (illegible) November in respect of the (other party) 2011 claims giving them judgment. Our counsel will be applying to set this aside as part of our argument on the basis that the claims post-date the Greek claim".

17. On the morning of 29 November, the second day of the hearing, Mr CG sent to the Respondent an email marked "urgent" which set out a list of matters that Mr CG considered were imperative that the court understood. One such point was:

> "Please put forward a Complaint before the Judge for the default judgments obtained by the (other party) and clarify before the Court how this (sic) default Judgments were obtained by the opponents".

The Respondent replied, stating:

> "Many thanks for your email – which is safely received. I will of course pass this to counsel."

Mr CG responded,

> "…please urgently advise:
> (i) What happened with the default judgments obtained by the opponents;
> (ii) What is your allegation before today's court on this point."

The Respondent replied:

> "There appears to have been an administrative error in that although the defence served was allocated to the (other party's) 2006 applications the LM 2006 application and the 2011 LM applications (sic).
>
> We intend to make a separate application to overturn the judgment. The test for doing so is the same as the test for summary judgment that the underwriters have applied for in the 2006 action, namely whether we have a prospect of success of defending the claim, so a victory on the summary judgment claim would result in a victory in an application to overturn the judgment."

18. Mr CG responded:

> "We refer to your below email and wish to advise that it is clients' instructions that you should stress to the court that the opponents took advantage of the administrative error referred to in your below email, in order to deceive the judge to issue a default judgment against the clients.
>
> The opponents did that although they knew of your agreement with Clydes and Barlows for the consolidated hearing of all the actions of the underwriters for the hearing date of 28 November 2011.
>
> According to the professional ethics, the opponent solicitors were obliged to notify you on this matter. However, they omitted to do that in order to defraud the Court.
>
> This is proved by the fact that they knew from 14/11/11 of the default judgment and they decided to serve it with the owners only yesterday at the hearing of the case before the English Court in order to prevent us from reacting and taking measures to set aside the judgments in default before the hearing of 28/11/11.

> Please confirm that you will comply with the above instructions of the clients."

The Respondent replied, stating:

> "Dear (Mr CG). Confirmed. Tom"

19. On or about 30 November 2011 OME learned that the judge who had heard the matter on 28 and 29 November (Burton J) was the same judge who had granted the default judgment and an issue of prejudice was raised. Mr GT of OME emailed the Respondent on 30 November 2011 and stated:

> "I understand from (Mr CG) that the judge who tried the summary case is the same judge who delivered the default order against some of the Claimants in this case.
>
> In view of the fact that the default judgment was the result of an administrative error as you say, and such a judgment has influenced the thinking of Judge Burton when, despite no fault of the Defendants, in his mind 6 out the 7 Defendants appear not to have put a defence because apparently the case is ridiculous and therefore fit only for summary determination, could we apply for a mistrial as due to the above mentioned mistake this particular judge should have declined to try the summary proceedings since he was no longer impartial. Your advice is sought once you have discussed it with Counsel.
>
> I consider this particular judge has been poisoned due to the default judgments and his mind has been influenced against us before even hearing our arguments, and has been vehemently rebutting all our arguments as you told me during our telecom of 28 and 30/11.
>
> Please specify who made the administrative error and what type of error was made.
>
> …
>
> PS I am still awaiting to receive Counsel's opinion for which I have been asking you for the last 2-3 weeks."

20. The Respondent replied the same day, indicating that he would seek Counsel's opinion but he did not think the Judge was prejudiced. The Respondent asserted that he had conveyed Counsel's opinion in an email of 21 November 2011 and remained silent on the question of the "administrative error".

21. On 1 December 2011 Mr CG emailed the Respondent, pointing out that the question of the administrative error remained unanswered and asking for a "detailed description" by close of business the same day. The Respondent replied on 1 December, stating amongst other things:

> "Having reviewed the matter, the error was mine in not making sure that the defence was filed against the (other party's) 2011 claims as well as the LM

> 2011 claims and both parties' 2006 claims. It is an error which I am fixing with an application which will be ready at the start of next week (for which I am obviously not charging any fees)."

Mr CG wrote again the same day stating that. "… does not show much clarity" and asking for the "delay warning letters from Clyde & Co to (the Firm) for the not timely received defense (sic)". The Respondent replied later that day and asserted:

> "With regards to the judgments, there are no warning letters from Clydes to my firm. The procedure is simply that if the date is missed, judgment may be entered which is why there is a procedure for overturning the judgments. You will see from the skeleton arguments the underwriters referred to a default judgment, without any supporting evidence and in our submissions we replied that we didn't understand what they were referring to as a defence had been filed."

22. In an email to Mr CG on 5 December 2011 the Respondent stated,

> "I have searched my files and the default judgments were not served on me. I have asked my secretary to undertake a further search in order to give you a definitive answer as to whether or not they were served on the firm and I will confirm the position first thing tomorrow morning."

On 6 December 2011 Mr GT of OME emailed the Respondent, stating:

> "Further to my previous email a few minutes ago you have failed as yet to undertake further search to give me a definite answer whether (the Firm) was served with the default judgments at any time prior to 28/11 and if so on which dates…"

The Respondent replied the same day, stating:

> "No. We received the default judgments in court on the morning of 28 November 2011. I have spent some time checking the matter as in the week leading up to the hearing we received several bundles for the hearing from Clyde & Co and I wanted to ensure that there was nothing in those bundles which had been overlooked. I am satisfied that wasn't the case."

23. After Thomas Cooper Solicitors had assumed conduct of the matters on behalf of the Companies the fee earner dealing telephoned the Respondent on 8 December 2011 at about 11.45am. The attendance note of the conversation recorded that the Respondent stated he had not seen the 2 November 2011 original default judgments until that morning and that this "… was purely an "oversight"". In a later conversation that same day Thomas Cooper Solicitors recorded:

> "(The Respondent's) understanding was that the original 2 November 2011 default judgments were served by hand by Clydes whilst he was not in the office. (The Respondent) advised that they reached his office/papers on this matter, but were not drawn to his attention (or placed in the correspondence file) and he did not finally locate them until a further search this morning."

24. On 9 August 2011 Mr CG emailed the Respondent about issues which had arisen in relation to the proceedings brought in the English courts. The email was marked "urgent" and asked the Respondent to "… arrange urgently for the appointment of a QC and advise clients accordingly." The Respondent emailed the client the same day to recommend Mr Stephen Kenny QC, who in due course was retained.

25. No documents were sent to counsel until 11 November 2011. On 22 November 2011 Mr Kenny QC removed himself from the case for personal reasons. Following an email from Mr Kenny QC's clerk at 12.36pm that day Mr Drake QC was instructed to attend the hearing (on 28/29 November) in place of Mr Kenny. The Companies were not informed of the change of counsel. At 13.03pm on 22 November 2011 the Respondent sent an email to OME with a pro forma invoice requesting monies on account for Counsel in the sum of £48,000 of which £12,500 was quoted for the fee of the junior, Ms Hilliard, and £35,000 was quoted for the brief fee of Mr Kenny QC. There was no mention of Mr Drake QC or that he would replace Mr Kenny QC.

26. On 25 November 2011 the Respondent informed Mr CG that it was not necessary for anyone from Mr CG's office to attend the hearing.

27. On 29 November 2011 Mr CG sent an email saying:

> "Please urgently send us the opinion of the QC which is long overdue."

28. In a letter dated 16 December 2011 from Mr Drake QC and Ms Hilliard to Thomas Cooper solicitors concerning the nature of their instruction and issues concerning the various folios, they stated:

> "We became aware of the suggestion of default judgment for the first time upon reading Mr S QC's outline which was served on the afternoon of Wednesday 23 November 2011. We asked for instructions. We were provided with the Claim Form and Particulars of Claim in (2011/894). We asked for further instructions and were instructed that it was not the subject of any applications before the Court. It was not listed before the Court and formed no part of the hearing save that (a) when it was mentioned by Mr S as he handed up a bundle of documents relating to the default judgement Mr Justice Burton said that there was no application before him in respect of it and (b) when asked about it by the Judge Mr Drake replied that he had no instructions on it. We did not see the default judgment until the hearing when Mr S handed us a copy of the bundle of documents."

29. On 1 December 2011 Mr GT of OME wrote to the Respondent stating:

> "We note the opinion provided by Mr James Drake QC. Who on earth is this person and how has he appeared in connection with our case? You have always led us to believe that the QC running our case was Mr Kenny QC."

30. The Respondent replied the same day, stating:

> "We had indeed originally instructed Mr Kenny. A week and a half before the hearing Mr Kenny's clerk advised that Mr Kenny had a potential problem – I

understood it to be a family problem – which might prevent him being able to attend at our hearing. I took the precaution of reserving another silk – James Drake QC – who I know from a number of other matters in case Mr Kenny was not able to be present. Mr Kenny and Mr Drake then worked together on the matter, along with Ms Hilliard, to prepare the case and they produced an excellent skeleton argument. Their chambers agreed with me that the fees would remain as per the quote from Mr Kenny. It transpired that Mr Drake was best placed to attend the hearing and he represented (S Shipping).

G – please accept my apologies for not keeping you up to date with these developments at the time which I undertook in order to ensure that we were not prejudiced by Mr Kenny's possible unavailability. I was working flat out on preparing for the hearing and making sure that we put in a strong defence to Underwriters' claims. I can assure you that Mr Drake is an excellent advocate and did a very good job."

31. Mr GT wrote to the Respondent on 6 December 2011 stating:

"Thank you for your reply, it is once again clear that you have totally failed to follow our instructions.

Some time in August we asked you to instruct Kenny QC in order for him to assist in the preparation of our case and we also asked you to obtain from Mr Kenny an opinion.

Assisting in the preparation of the case means that the QC drafts the defence, etc. This would explain why you refrained from sending us the defence timely before the hearing for our approval and comments.

We wish to put on record that we asked you to get a full written opinion and we have been chasing you on that for months. Instead, after many reminders what we got is your own summary of the opinion which you said you were going to send to us and never did. After the hearing you divulged that the only opinion you had was verbal. This is total nonsense as there is no such thing as a verbal opinion and it's definitely contrary to the instructions we gave you.

From what you say it appears that contrary to our instructions you have left us without Counsel assistance through the case preparation and about five days before the hearing. i.e. on 22/11 you appear to have appointed Mr Drake without our consent, approval or event knowledge, if we may say so for cosmetic reasons.

Irrespective of the outcome of the hearing we consider that because of the above the whole process is invalid."

32. The Respondent replied, stating:

"I instructed Mr Kenny to prepare for the hearing on 11 November, in good time before the start of the hearing on 28 November and originally scheduled for 1.5 days. I also asked him to provide an opinion, which he did verbally

> and would have followed it up with a written opinion but for the family problem that he had. His junior, Ms Hilliard, was also instructed. When Mr Kenny became unable to attend the hearing, I obtained a replacement QC to ensure that (the Companies) were well represented and Mr Kenny assisted him in his preparation. We had counsel throughout the period of 11-29 November.
>
> I am sorry that I did not advise you of the need for a change or to obtain your consent for Mr Drake's involvement; seriously nothing like that will happen again. However, from the skeleton argument and the transcripts (and from the evidence that we put in) it is clear that we put in a strong defence of the (the Companies') position. Let's see what is said in the judgement so that we can consider how best to protect (the Companies)."

33. A letter from Mr Kenny to Thomas Cooper Solicitors dated 16 December 2011 outlines the position in relation to his instruction. Amongst other matters, the letter states:

> "… over the night of 21/22 November 2011, events occurred at home which made clear to me that I could no longer continue with the case… I spoke to my senior clerk, Mr Hyatt, about the problem as soon as I could on the morning of 22 November 2011. He told me that James Drake QC, who had previously acted on instructions from (the Firm) was available for the hearing on 28/29 November and had the capacity and was willing to take over the case, with Ms Hilliard's help. I left it with Mr Hyatt to make enquiries as to whether Mr Drake (or someone else) would be acceptable to solicitors and client as my replacement. I subsequently learned that Mr Drake was acceptable… The transfer of the case was effected on the afternoon of 22 November 2011…"

34. A hearing took place on 28 and 29 November 2011 before Burton J in the High Court. A transcript of the hearing was obtained by the Respondent from a firm of court subscribers. The transcript of the hearing of 28 November was sent to the Respondent and to the Firm on 2 December 2011. On 5 December 2011 the transcript of the hearing of 29 November was sent to the Respondent. Later on 5 December Mr GT emailed the Respondent requesting the transcripts (as well as other documents) urgently. The Respondent informed Mr GT that he was awaiting day two of the transcript, which prompted Mr GT to chase the transcript for day one i.e. 28 November.

35. The Respondent forwarded a transcript for day one of the hearing to Mr GT that day, and forwarded a transcript for day two of the hearing on the following day.

36. Prior to forwarding the transcripts, the Respondent amended them in a number of respects by adding or deleting words. The "original" and amended versions of the transcripts were produced to the Tribunal. The changes made included remarks concerning the late submission of applications, the fact that default judgment had been entered, the fact that there were debarring orders made against S Shipping and the fact that Counsel was ill-prepared for the hearing. By way of example, it was noted that the Judge's words, "… as you have got a default judgment against them"

had been deleted from the version sent to the Companies. Changes had been made on about 15 pages of the transcripts.

37. On 16 February 2012 Thomas Cooper Solicitors wrote to Mills and Reeve (solicitors who had been instructed to act for the Firm, the Respondent and the Firm's insurers in relation to a potential negligence claim brought by the Companies) raising the apparent discrepancies and seeking access to the complete client files and computer records. On 20 February 2012 Mills and Reeves responded:

> "… We are instructed that, as suggested in your letter, (the Respondent) did indeed amend the transcripts of the hearing on 28/29 November 2011 before sending them to your client.
>
> We and our clients agree that (the Respondent's) behaviour is extremely serious and understand your client's concern that it may have been misled in other respects…"

38. Thomas Cooper Solicitors subsequently brought proceedings in negligence against the Firm and the Respondent on behalf of the Companies. Particulars of Claim were lodged on or around 9 July 2012 and a Defence and Counterclaim was lodged on 19 September 2012 in which the Respondent and the Firm admitted:

38.1 A breach of duty by allowing default judgments to be entered;

38.2 The fact that no letter of engagement was ever provided;

38.3 A breach of duty for the failure to request timely advice on the merits of the client's claim from Counsel;

38.4 A breach of duty for the failure to file Acknowledgements of Service and/or Defences in folios 894 and 897;

38.5 A breach of duty for failure to notify clients of the default judgments against them;

38.6 A breach of duty for failure to notify Counsel of the default judgments against the clients;

38.7 A breach of duty by the Respondent who had admitted doctoring transcripts of the November 2011 and sending those to the client

39. The conduct issues raised in this matter were considered by the Applicant and raised with the Respondent in a letter of 24 September 2012, which was sent to the Respondent's last known address. The Respondent did not respond. A further letter dated 17 December 2012 was sent to the Respondent requesting a response to the 24 September letter within 7 days. No response was received. On 6 February 2013 an Authorised Officer of the Applicant determined that the Respondent's conduct should be referred to the Tribunal.

Witnesses

40. None.

Findings of Fact and Law

41. The Applicant was required to prove the allegations beyond reasonable doubt. The Tribunal had due regard to the Respondent's rights to a fair trial and to respect for his private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

42. **Allegation 1 - The Respondent had breached Principles 2 and 6 of the SRA Principles 2011 ("the Principles").**

The particulars of the allegation were that he:

1.1 Made misleading statements in correspondence with his clients or their representatives;

1.2 Tampered with the transcripts of court proceedings on 28 and 29 November 2011 by amending and removing a number of passages featuring the words spoken by leading Counsel and by the Judge; and

1.3 Passed the doctored transcripts to his clients or their representatives as if these represented a true and accurate record of the court proceedings on 28 and 29 November 2011.

It was further alleged that the Respondent's conduct as outlined at paragraphs 1.2 and 1.3 was dishonest.

42.1 This allegation was admitted in its entirety by the Respondent.

42.2 Principle 2 of the Principles requires a solicitor to act with integrity and Principle 6 requires a solicitor to behave in a way that maintains the trust the public places in him/her and in the provision of legal services.

42.3 The Respondent admitted that he had made misleading statements in correspondence with his clients or their representatives.

42.4 The Tribunal found that a number of emails from the Respondent set out above made misleading representations about how the default judgments came to be entered against the clients. In particular it was suggested by the Respondent that he first became aware of the default judgments at the hearing on 28 November, that the judgments had been entered as a result of an administrative error and that there had been no prior notice. As shown by the emails set out at paragraph 13 above, on 26 October 2011 the Respondent was informed of an application for default judgment. Those judgments had been sent to the Firm on 2 November 2011 and the Respondent had been asked specifically about default judgments by Ms Hilliard in an email of 23 November 2011, as these had been referred to in the skeleton argument produced

by the other party. It was not credible that, as the Respondent had initially suggested in his emails to his clients, he had overlooked the default judgments; in particular, by 23 November if not earlier the Respondent had been asked by counsel he had instructed about this and had simply told Counsel that this was nothing to do with the instant hearing. In any event, the Respondent knew that the default judgments had not been given as a result of an administrative error but rather because he had not filed defences (or, indeed, made an application to contest the jurisdiction of the English courts as instructed by his clients). In his emails referred to at paragraphs 16, 17, 21 and 22 above, and in failing to correct a number of statements made by his clients in their communications, the Respondent had given a misleading impression of how the default judgments had been obtained and had failed to correct that impression.

42.5 The Tribunal further found that the Respondent had tampered with the transcripts of the hearings of 28 and 29 November 2011 and had passed the doctored transcripts to his clients as if they were a true representation of the hearing. The Tribunal noted and found that the changes made removed or altered references which might have raised questions about the Respondent's handling of the case.

42.6 There was no allegation of dishonesty in relation to the misleading statements made to clients in correspondence, but it was alleged that the Respondent had been dishonest in amending the transcripts and presenting these to his clients as if they were a true and accurate record of the hearing on 28/29 November 2011. The Respondent had admitted he had been dishonest in this respect. The Tribunal noted that the test for dishonesty to be applied was that set out in the case of Twinsectra v Yardley and others [2002] UKHL 12 ("the Twinsectra case"). The Tribunal found to the required standard that in deliberately editing the transcripts of the hearing so as to remove or alter references which might have raised questions about his handling of the case and presenting these to his clients as if the transcripts were an accurate record of the hearing, the Respondent had been dishonest by the standards of reasonable and honest people. Further, the Respondent knew that his conduct in so doing was dishonest by those same standards.

42.7 The Tribunal was satisfied to the required standard that all aspects of this allegation, which had been admitted, had been proved, including the allegation of dishonesty.

43. **Allegation 2 - The Respondent breached Principles 4 and 5 of the Principles. Further, or alternatively, the Respondent failed to achieve all or alternatively any of the following Outcomes:**

O(1.2); O(1.4); O(1.5); and O(1.12)

in breach of the SRA Code of Conduct 2011 ("the Code").

The particulars of the allegation were that he:

2.1 Failed to file acknowledgments of service in claims in which he was instructed;

2.2 Failed to deal with applications for default judgments made in those claims;

2.3 Tampered with the transcripts of court proceedings on 28 and 29 November 2011 and provided the doctored versions to his clients as if these represented a true and accurate record of the court proceedings; and

2.4 Failed to pass on relevant information to clients.

43.1 This allegation was admitted by the Respondent in its entirety.

43.2 Principle 4 requires a solicitor to act in the best interests of each client and Principle 5 requires a solicitor to provide a proper standard of service to clients.

43.3 The circumstances of the Respondent's conduct of matters on behalf of his clients is set out at paragraphs 7 to 38 above. Not all incidents in which a solicitor fails in some aspect of the handling of a case will amount to professional misconduct. However, in this matter the Respondent had failed to deal properly with the claims in which he was instructed, such that default judgments were entered against one of his clients. It appeared to the Tribunal that the litigation was potentially complex but a solicitor should only take on matters in which the solicitor had the competence, skills, and resources to carry out the instructions. The failure to protect the clients' interests (by applying to contest the jurisdiction of the English courts or filing a Defence) was compounded by failure to inform the clients of the default judgments and/or take steps to have those judgments set aside. Further, the Respondent had failed to inform his clients of the change of leading counsel or seek their instructions on this. There was nothing at all to suggest that Mr Drake QC was anything other than the most appropriate counsel to instruct when Mr Kenny QC became unavailable, but the clients should have been informed and their agreement sought. The provision of doctored hearing transcripts to the clients further compounded the failures to provide the Respondent's clients with proper information on which they could make informed decisions about their case.

43.4 The Tribunal was satisfied that in this instance the Respondent's conduct amounted to more than negligence and that his conduct amounted to a breach of Principles 4 and 5, together with a failure to achieve the relevant Outcomes. Accordingly, the allegation had been proved on the admission and on the facts.

44. **Allegation 3 - The Respondent breached Principle 7 of the Principles and/or in the alternative failed to achieve all or any of the following Outcomes:**

O(10.6) – you co-operate fully with the SRA and the Legal Ombudsman at all times;

O(10.8) – you comply promptly with any written notice from the SRA

in breach of the Code in that he failed to respond to correspondence from the SRA.

44.1 This allegation was admitted by the Respondent. The factual background to the allegation is set out at paragraph 39 above. The Applicant's correspondence had been sent to the Respondent's last known address and he had failed to respond.

44.2 The Tribunal noted that since the proceedings started the Respondent had been in contact with the Applicant and had co-operated with the proceedings e.g. by providing a statement explaining his position. However, he had not responded to the initial correspondence. In the context of the other allegations, this matter appeared quite minor. However, it was important for public confidence in the profession that solicitors should co-operate with their regulator. The Tribunal was satisfied to the required standard that this allegation had been proved on the facts and on the admission.

Previous Disciplinary Matters

45. There were no previous matters in which findings had been made against the Respondent.

Mitigation

46. The Respondent referred to his statement of 13 December 2013.

47. The Respondent had trained with a city firm from 2001 to 2003 then worked until 2007 in that firm's shipping department, undertaking arbitration and litigation work and advising the firm's shipping clients on various contentious and non-contentious matters. In 2007 he and others left the firm to establish Lax & Co, in which he became a partner.

48. In September and October 2011 (i.e. around the time of the events described in these proceedings) the Respondent had discussed with his partners the prospect of leaving the Firm. The Respondent stated that he found the work at the Firm to be increasingly stressful and he looked to work outside private practice. At about the same time, the Respondent's main client (a shipping company) was interested in employing an in-house solicitor. In October 2011 the Respondent agreed with his partners that he would leave the Firm in January 2012. In February 2012 the Respondent began working in-house for the shipping company in Dubai; he remained in that post at the date of the hearing.

49. The Respondent told the Tribunal that he had admitted all of the allegations, including, in particular, the allegation of tampering with transcripts of court proceedings. The Respondent told the Tribunal that there was nothing he could say to minimise the seriousness of what he had done. The Respondent recognised that the gravity of what he had done could result in him being struck off. The Respondent told the Tribunal that the circumstances were unusual and isolated, and asked for leniency.

50. In his two years of training and eight years as a solicitor (before the events in question) nothing similar had happened. He had been running cases without supervision since about 2007. The Respondent told the Tribunal that in the autumn of 2011 he had been under considerable personal and professional stress and this coincided with him making a number of mistakes such as missing deadlines, which he then foolishly attempted to cover up. He had not made such mistakes or been dishonest previously in his career and they were a matter of considerable regret.

51. The Tribunal invited the Respondent to expand on what he had said. The Respondent told the Tribunal that there was nothing specific he could add on the question of the stress he had been under at the time. These events coincided with his plans to leave the Firm.

52. The Respondent noted in his statement that a negligence action brought against him and the Firm arising from the events set out above had been settled and that he remained on good terms with his former partners. The Respondent stated that he appreciated that there was not much mitigation he could put forward.

Sanction

53. The Tribunal had regard to its Guidance Note on Sanction (September 2013) and the purpose of sanction in the Tribunal as set out in the case of Bolton v Law Society [1994] 2 All ER 486 ("the Bolton case"). It was clear that the main purpose of sanction was the maintenance of the reputation of the solicitors' profession as one in which every member could be trusted to the ends of the earth.

54. In this case, the Tribunal had found the Respondent to have been dishonest; indeed, the Respondent had admitted dishonesty. Even without such a finding, it was clear that the Respondent had lacked integrity, had behaved in a way which would damage the trust the public would place in the Respondent and/or the profession and had failed to provide a proper service to his clients. In particular, he had misled his clients on a number of occasions even to the extent of tampering with transcripts of two days of court hearings.

55. The Respondent could be given some credit for admitting his misconduct, for attending the hearing and for co-operating with the Applicant during the course of the proceedings. The Tribunal considered whether any of the Respondent's mitigation suggested any exceptional circumstances and determined that it did not. The Respondent had been given the opportunity to expand on what he had said in his statement but had not added anything significant. Whilst the Respondent had referred to a period of stress, there was nothing in what he had described which was exceptional; many solicitors dealt with stressful personal and professional matters without being dishonest. There was nothing to suggest that the Respondent's position was worse than that of many other members of the profession, or that the effect on him personally had been exceptional. Whilst the Respondent had expressed some regret in his statement, and recognised the gravity of what he had done, he had not offered any personal apology to the profession.

56. In all of the circumstances, and in particular because of the finding of dishonesty, the only appropriate and proportionate sanction was that the Respondent should be struck off the Roll of Solicitors.

Costs

57. The Tribunal was informed that the Respondent had agreed to pay the Applicant's costs of the proceedings in the sum of £12,000. The Tribunal noted that the Respondent was employed – and it was not suggested that his job was at risk if he were struck off – and had not sought to argue that his means should be taken into

account in determining costs or the appropriate form of order. Indeed, the Respondent had confirmed to the Tribunal that he did not want to make any submissions concerning his means.

58. The Tribunal reviewed the schedule of costs and determined that an order that the Respondent should pay the Applicant's agreed costs of £12,000 was appropriate.

Statement of Full Order

59. The Tribunal ORDERED that the Respondent, Thomas Crampton, solicitor, be STRUCK OFF the Roll of Solicitors and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £12,000.00.

DATED this 4th day of February 2014
On behalf of the Tribunal

J. Martineau
Chairman