The Bar Tribunals & Adjudication Service

The Council of the Inns of Court

Report of Finding and Sanction

Case reference: PC 2021/4254/D5

Timothy John Edward Crosland

The Director-General of the Bar Standards Board

The Chair of the Bar Standards Board

The Treasurer of the Honourable Society of the Inner Temple

Disciplinary Tribunal

Timothy John Edward Crosland

1. In accordance with an appointment made by the President of the Council of the Inns of Court contained in a Convening Order dated 14 December 2022, I sat as Chairman of a Disciplinary Tribunal on 19 January 2023 to hear and determine two charges of professional misconduct contrary to the Bar Standards Board Handbook against Timothy John Edward Crosland, barrister of the Honourable Society of the Inner Temple.

Panel Members

2. The other members of the Tribunal were:

   John Vaughan [Lay Member]

   Stephanie McIntosh [Lay Member]

   Siobhan Heron [Barrister Member]

   Isabelle Watson [Barrister Member]

Charges

3. The following charges were found proven:

Charge 1

Statement of Offence

Professional misconduct contrary to Core Duty [CD] 5 of the Conduct Rules (Part 2 of the Bar Standards Board's Handbook - Version 4.5).

Particulars of Offence

Timothy Crosland, a barrister, behaved in a way which was likely to diminish the trust and confidence which the public places in him or in the profession (CD 5), in that, on 15 December 2020, he disclosed a draft Heathrow judgment (*) upon which an embargo had been placed by the Supreme Court, knowing that such disclosure was prohibited and was a criminal contempt of court (which on 10 May 2021 the First Instance Panel of the Supreme Court found it to be).

Charge 2

Statement of Offence

Professional misconduct contrary to rule C 8 of the Conduct Rules (Part 2 of the Bar Standards Board's Handbook - Version 4.5).

Particulars of Offence

Timothy Crosland, a barrister, behaved in a way which could reasonably be seen by the public to undermine his integrity, in that, on 15 December 2020, he disclosed a draft Heathrow judgment (*) upon which an embargo had been placed by the Supreme Court, knowing that such disclosure was prohibited and was a criminal contempt of court (which on 10 May 2021 the First Instance Panel of the Supreme Court found it to be).

(*) Reference to R (on the application of Friends of the Earth Ltd and others) (Respondents) v. Heathrow Airport Limited (Appellant) – neutral citation [2020] UKSC 52

Parties Present and Representation

4. The Respondent was not present and was not represented. The Bar Standards Board ("BSB") was represented by Jonathan Auburn KC.

Background

5. Mr Crosland was called to the Bar in 1994. The tribunal were informed that he last held a practising certificate in 2018. Since then, he had been an unregistered barrister. At the time of the events with which the charges were concerned he was director of Plan B Earth, an environment campaign group, and as such, involved in litigation challenging airports policy.

6. The charges relate to the alleged behaviour of Mr Crosland in respect of the disclosure by him of a draft judgment of the Supreme Court contrary to the embargo which prohibited such disclosure before the judgment was formally handed down by the court.

7. The essential facts are stated in the subsequent judgements of the Supreme Court in proceedings brought against Mr Crosland for contempt. In summary the relevant events were as follows.

8. On 7 and 8 October 2020, the Supreme Court heard an appeal in the case of *R (Friends of the Earth Ltd and others) v. Heathrow Airport Limited* [2020] UKSC 53 ("the Heathrow appeal"). Mr Crosland represented the charity Plan B Earth in those proceedings, in his capacity as a director of Plan B Earth.

9. On 9 December 2020, a copy of the Supreme Court's draft judgment was circulated to the parties' representatives (including Mr Crosland), to enable them to make suggestions for the correction of any errors, to prepare submissions on consequential matters, and to prepare themselves for the publication of the judgment. It was stated on the draft judgment, and in a covering email, that the draft was strictly confidential.

10. After circulation of the draft judgment Mr Crosland sent emails to the Supreme Court in which he contended that there were inaccuracies in the draft judgment, and he sought permission to discuss the draft judgment with external lawyers before hand down. His request to do so was refused.

11. On 15 December 2020, the day before the judgment was due to be made public, Mr Crosland sent an email to the Press Association containing a statement in which he disclosed the outcome of the appeal. He stated at that time that he had taken the decision to break the embargo as an act of civil disobedience which would be treated as contempt of court for which he was ready to face the consequences.

12. The statement was also published on Plan B Earth's Twitter account. These disclosures led to the publication of the outcome of the Heathrow appeal in the national media and on Twitter on 15-16 December, prior to the judgment being delivered at 9:45am on 16 December 2020. On 15 December the Supreme Courts Communications Team asked Mr Crosland to remove the statement he had posted on Twitter until 9:45 a.m. next morning, but he did not respond to that request.

13. On 16 December 2020 Mr Crosland reported himself to the Bar Standards Board, stating:

> "Yesterday, 15 December, a day ahead of the issue of the Supreme Court judgment, I posted a personal statement on Twitter, revealing the outcome of the judgment, in protest against the Court's injustice and immorality."

In his self-report he described his action as "Deliberate breach of Supreme Court embargo on Heathrow judgment as an act of civil disobedience"

14. Lord Reed, the President of the Supreme Court, referred the matter to the Attorney General on 17 December 2020. On 12 February 2021, the Attorney General applied to the Supreme Court to have Mr Crosland committed for contempt of court.

15. On 10 May 2021, the Attorney General's application was heard by a First Instance Panel of three Justices of the Supreme Court, none of whom were involved in the Heathrow appeal. They found that Mr Crosland's conduct constituted a criminal contempt of court and imposed a fine of £5,000. They also ordered Mr Crosland to pay the Attorney General's costs in the sum of £15,000; [2021] UKSC 15. It was held that Mr Crosland was responsible for the disclosures; when he made the disclosures, he was aware of the embargo; and his actions were deliberate and calculated breaches of the embargo. It was also held that the publication in breach of the embargo was an interference with the proper administration of justice, that leaks of draft judgements could undermine the authority of the court and its judgments and that the respondent's statements were in terms which defied the authority of the court and which could encourage others to disobey the prohibition on publication and to disclose judgments.

16. The judgment of the First Instance Panel included (in paragraph 45) an assessment of culpability and (in paragraph 46) an assessment of harm in which it was said that the Attorney General accepted that the direct adverse consequences were limited, but "Nevertheless the respondent's conduct was damaging to the system whereby judgements are made available to the parties in advance of hand down, a system which is beneficial to the parties to civil litigation and to the courts." In paragraph 47 it was said:

> "The respondent was motivated by his concerns and fears relating to the consequences of global warming and his disagreement with the decision of the Supreme Court. However, this does not begin to justify his conduct. There is no principle which justifies treating the conscientious motives of a protest as a licence to flout court orders with impunity. It was, moreover, a futile gesture as the judgment would in any event have been available some 22 hours later for scrutiny and criticism by the media and the public."

In paragraph 48 it was said that Mr Crosland had not made any attempt to mitigate his conduct by admitting his contempt or by apology. "On the contrary he has remained unrepentant, save that he apologised for the inconvenience he had caused to the staff at the Supreme Court."

17. Mr Crosland appealed against that decision and his appeal was heard in October 2021 by five further Justices of the Supreme Court who in December 2021 dismissed his appeal; [2021] UKSC 58. In paragraph 6 of the appeal judgment it was said:

> "At the hearing of this appeal, as at the hearing of the committal application, Mr Crosland was candid as to the motivation for his conduct on 15 December and thereafter. He accepted that he would have been free to make whatever comments or criticisms he wished of the Heathrow judgment if he had waited till 9:45 a.m. the following day. But, in his view, that would not have generated the same level of publicity for his complaints about the judgment as he was able to generate by breaching the embargo and presenting himself to the media as someone who was prepared to take a serious personal risk by so doing because he felt so strongly about the point he was making. His assessment was that if he waited to make his criticisms until the Heathrow judgment was available to be scrutinised by everyone, his points would be lost in the general coverage of the judgment and then the rolling 24-hour news cycle would swiftly roll onto other matters. By breaching the embargo, he made something unusual happen and that, he calculated, gave him a better chance of bringing his points to the public's attention. He therefore decided that breaching the embargo presented his best chance "of sounding the alarm loudly"."

It was held by the appeal panel (at paragraph 60) it had not been necessary to breach the embargo to permit or facilitate public scrutiny of the judgment which was due to be handed down the following day, when Mr Crosland would be free to publicise all his criticisms and concerns, and that there was no rational connection between any breach of the embargo and the harm Mr Crosland maintained he wished to prevent. The appeal panel said (at paragraph 72) that the embargo simply delayed the expression of his criticisms of the Heathrow appeal decision, and it did so for only a short period of time. It was said (at paragraph 73) that the appeal panel had seen no persuasive evidence that Mr Crosland would not have been able to get his message across if he had complied with the embargo and refrained from discussing the outcome of the appeal and his criticisms of the judgment until after it had been handed down.

18. Mr Crosland has applied to appeal to the European Court of Human Rights. The tribunal have not been informed of the progress of that application.

19. In addition to the self-report to the Bar Standards Board by the respondent, Mr Crosland, there were referrals to the BSB by the Solicitor General and also by counsel who had represented one of the other parties to the Heathrow proceedings.

20. By e-mail of 23 August 2022 the Bar Standards Board informed Mr Crosland that the Independent Decision-Making Body had considered his case and decided to refer the allegation against him to a 5-person Disciplinary Tribunal.

21. Mr Crosland responded by e-mail of 5 September 2022. In this he said that when he broke the Supreme Court's embargo he was fully conscious that he was simultaneously bringing his career as a barrister to a close. He asked for his name to be removed from the register of barristers. To this the Senior Case Officer of the BSB replied on 7 September 2022 stating that the BSB was not in a position to remove his name from the register of barristers because only the Inns of Court could remove that status. It was said that he could if he wished to make a request of his Inn to end his status as a barrister, but it was understood that it would not do so while there were outstanding disciplinary proceedings against him. By a further e-mail of 8 September 2022 Mr Crosland said that the function of a regulator was to regulate those within the regulated sector, not to undertake symbolic actions against those who have left it.

Preliminary Matters

Application to Proceed in Absence of the Respondent

22. At the start of the hearing before the Tribunal Mr Auburn KC, on behalf of the BSB, made submissions in relation to the application that was outlined in a document provided by him on the 17 January 2023, which the Tribunal panel members had received and considered.

23. The Tribunal were satisfied that the respondent, Mr Crosland had been properly served with all documents relating to the charges against him and with the convening order, and that he had been notified of the hearing and of the application to proceed in his absence. It was clear from his correspondence with the Bar Standards Board and with the Tribunal that he had received everything served on him and had been able to respond to it. It was clear that

he had chosen not to attend the hearing or to engage further with the Bar Standards Board or Tribunal. His decision not to attend had been confirmed in an e-mail written by Mr Crosland to the Tribunal on 20 December 2022 in which he said:

> "I have set out my position in writing. I have nothing further to add. I will not attend the hearing on the 19th. I do not wish to legitimise proceedings which, so far as I can see, have no lawful basis."

The Tribunal considered that his decision not to attend or participate in the hearing did not indicate a lack of cooperation or engagement, but rather was consistent with his contentions that the charges against him had been improperly brought and wrongly pursued, that he had effectively renounced his status as a barrister and that the Tribunal did not have jurisdiction to deal with the charges.

24. The Tribunal were satisfied that the BSB had complied with the procedure in relation to rE183. It appeared that the Respondent had voluntarily absented himself from the proceedings. The Tribunal considered it just and in the interest of the public to proceed in the absence of the Respondent.

Application to Amend Charge Sheet

25. The Bar Standards Board applied to amend the charge sheet to include the case citation for the proceedings in the Supreme Court. The Respondent had been notified of the proposed amendment and had indicated that he did not oppose it. The Tribunal approved the amendment in accordance with rE161.

Jurisdiction

26. In view of the arguments which had been advanced by Mr Crosland and the response of the Bar Standards Board to those arguments, the Tribunal next considered the question of jurisdiction, before deciding whether or not to proceed with the disciplinary hearing.

27. In September 2022 Mr Crosland had informed the Bar Standards Board that he had renounced his status as a barrister.

28. On 17 October 2022 Mr Crosland wrote in an e-mail to the Bar Standards Board, in response to a request to agree directions:

"I am no longer a barrister and no longer subject to the jurisdiction of the BSB.I have formally renounced my barrister status and with it the Bar Code of Conduct. These proceedings are therefore unlawful. Specifically, they are ultra vires and violate Article 9 of the European Convention on Human Rights (Freedom of thought, conscience and religion)."

29. On 2 November 2022 Directions were given by the Tribunal for the substantive hearing to be listed for a day, and other procedural and evidential directions were made including a requirement for the respondent to specify

i. the grounds on which he contended that the charges were unlawful

ii. whether he admitted the charges; and

iii. if he did not admit the charges, which areas of fact and/or law were in dispute.

At the end of the directions order the directions judge added a note:

"Reasons

1. I note that the Respondent no longer considers himself to be a barrister and that he considers the charges to be unlawful.

2. I also note that the Respondent requests that he be allowed to explain his position to the Tribunal.

3. I have made the standard directions, in particular those relating to service of documents, so as to allow both parties to serve such documents as they wish to.

4. I have ordered (at paragraph 3(b)(i)) that the Respondent should set out the grounds upon which he contends that the charges are unlawful.

5. I note that the Respondent has stated that he intends to attend any hearing of the Tribunal and that he be allocated 45 minutes to explain his position. The procedure to be adopted at the substantive hearing will be a matter for the Tribunal. The time estimate I have allowed for the substantive hearing will allow sufficient time for the Respondent and the BSB to make submissions."

30. Nothing was said by the tribunal or the BSB to suggest that the respondent could not attend the hearing to explain his position as he wished.

31. On 20 December 2022 Mr Crosland wrote to the tribunal an e-mail including the following:

> "It is not a common occurrence for a barrister to renounce their professional status. People work hard to get there. My professional status has been an important part of my identity for nearly 30 years. It is only *in extremis* that I have felt compelled to give it up.
>
> On 8 September, I asked the BSB to explain where its power comes from to pursue proceedings
>
> against someone who had ceased to be a barrister:
>
> "The BSB has only such powers as are clearly and explicitly conferred on it.
>
> Where is the regulatory provision that gives the BSB jurisdiction over someone who has exercised their right (in accordance with ECHR Articles 9 and 10) to renounce their profession?"
>
> I received no reply.
>
> It's wrong that any regulator (let alone a legal regulator) should pursue proceedings against someone, while declining to identify their legal basis for doing so.
>
> I have set out my position in writing. I have nothing further to add. I will not attend the hearing on the 19th. I do not wish to legitimise proceedings which, so far as I can see, have no lawful basis."

32. On 21 December 2022 the senior case officer at the BSB dealing with the matter responded to the tribunal repeating the BSB's position as follows:

> "The legal basis for taking proceedings against Mr Crosland is contained in the Legal Services Act 2007, which allows the BSB, the body regulating barristers, to take disciplinary action against barristers. Mr Crosland is a barrister and was a barrister at the date of the alleged conduct. The legal authority of the BSB to take such action is set out in the Legal Services Act 2007, by regulatory arrangements confirmed in Part 5 of the BSB Handbook, Enforcement Regulations, in particular, the Enforcement Decision Regulations and the Disciplinary Tribunal Regulations."

33. It has also been made clear that unregistered barristers (i.e. without a practising certificate) remain members of the profession and remain subject to the core duties and conduct rules and remain subject to disciplinary proceedings and sanctions where appropriate.

34. On 29 December 2022 the BSB wrote to indicate the application for a minor amendment to the charge sheet (referred to above).

35. On 3 January 2023 Mr Crosland wrote to the tribunal (with a copy to the BSB):

"Dear Ms Hilson

Absence of prejudice
I confirm that I would suffer no prejudice from the proposed amendment.
Since I am **no longer a barrister**, all charges brought against me by the BSB are **equally unlawful**.

Communication of my position
I have taken all reasonable steps to communicate the renunciation of my barrister status and the Bar Code of Conduct.
On 5 September 22, I communicated my decision in writing to the BSB.
On 24 October 2022, I communicated the decision in writing to Inner Temple.
On 12 December 2022, Plan B issued a public statement concerning the position ….
This includes comment from some eminent international lawyers:
Antonio Oposa Jr., Environmental Lawyer, The Philippines, Normandy Chair for Peace Ombudsman for Future Generations said:
"Many thousands of my countryfolk have lost their lives to climate change and many more have been displaced from their lands and their communities.
The Land, the Air and the Water ("The LAW") - those are the first laws of life. Who are the real criminals? Those knowingly violating these laws or those standing up to defend them? That is the question Tim Crosland's decision presents."
Margaretha Wewerinke-Singh, Associate Professor of Sustainability Law at Amsterdam Law School (Amsterdam University) and Adjunct Senior Lecturer at the Pacific Centre for Environment and Sustainable Development (University of the South Pacific) said:
"Tim Crosland's decision to renounce his barrister status is a courageous and principled one. It highlights the power imbalances inherent in our legal systems, which too often work to protect the vested interests of the fossil fuel sector while marginalising (or indeed even criminalising) those who stand up to them. We may hope that Tim's decision inspires others to think more seriously about their options for contributing to the fight against climate change, so that we can collectively work towards legal systems that work for the interests of society and the environment."
The statement has been widely shared on social media:
https://twitter.com/PlanB_earth/status/1602208963709247488 (since the charges against me concern the attitude of the public, the public responses to the statement are relevant, eg from the writer Natasha Walter:
https://twitter.com/Natasha_Walter/status/1602222547751387136).

Prospective grounds of legal challenge
In the event that the Tribunal holds the charges against me to be lawful, I propose to ask the following questions by way of legal challenge:

1. **Can a person who has unequivocally renounced their barrister status and the Bar Code of Conduct be compelled (in any circumstances) to remain a barrister, contrary to their volition (and if so, by virtue of what statutory power)?**

2. Is it consistent with ECHR Article 9 (right to freedom of thought, conscience and religion) to compel someone to remain a barrister, contrary to their volition, when they have renounced their Barrister status and the Bar Code of Conduct on the grounds that the British Courts and the BSB, by actively undermining the goals of the Paris Agreement on Climate Change, are complicit in climate genocide?

3. What power does the BSB have to bring charges against someone who is no longer a barrister?

4. In circumstances in which the Respondent has specifically requested an opportunity to address the Tribunal regarding the legality of proceedings and to a call a witness regarding the direction of their conscience (for the purposes of ECHR Art. 9) at the start of proceedings, is it reasonable for the Tribunal to decline to respond substantively to that request in advance of the hearing, such that the Respondent and witness would not know a) whether any useful purpose would be served by their attendance at the hearing and b) how long they would need to be there?

Please forward this email (and the attachment) to the Tribunal.
Kind regards,
Tim Crosland
Director, PlanB
Plan B links mobilisation and litigation to hold power to account for #ClimateBreakdown"

36. Mr Crosland's contention was that he had effectively renounced his status as a barrister and was therefore no longer subject to the regulatory regime governing the investigation and resolution of allegations against him as a barrister.

37. The contentions of the BSB were that:

(i) To avoid the regulatory and disciplinary regime any such change in professional status would have to have occurred before the alleged misconduct. In this case Mr Crosland had sought to renounce his status as a barrister after the alleged misconduct and in response to the allegation of misconduct.

(ii) The BSB was not in a position to remove his name from the register of barristers. Only his Inn of Court could remove his status. It was understood that an Inn would not act to end his status while there were outstanding disciplinary proceedings.

38. In determining this issue, the Tribunal stated that they should have in mind:

(i) The regulatory objectives set out in section 1(1) of the Legal Services Act 2009, which include: (a) Protecting and promoting the public interest; (b) Encouraging an independent, strong, diverse and effective legal profession; and (c) Promoting and

maintaining adherence to the professional principles (section 1(1)(a), (f) and (h), respectively); and

(ii) The purpose of disciplinary proceedings which is to protect public confidence in, and the reputation of, the profession, by holding barristers accountable, and by making it clear that improper behaviour of barristers will not be left unchecked.

39. The Tribunal rejected Mr Crosland's argument and accepted that the position was as submitted by the Bar Standards Board. Leaving aside the merits or otherwise of the charges against Mr Crosland in this case, it would be contrary to the promotion and maintenance of professional standards designed to protect the public if any professional who was subject to regulation could frustrate proceedings against him or her by unilaterally asserting that he or she no longer belonged to the profession concerned, particularly if the proceedings related to events at a time when that person clearly did belong to the profession concerned.

40. Mr Crosland had also maintained that his actions were not undertaken as a barrister but in a private capacity. In his response to the allegations by the BSB he said that it was not appropriate for the BSB to investigate or censure him for an act of conscience taken in his personal capacity. The Tribunal rejected that as unarguable in the present case, his actions having been closely connected with court proceedings in which he was then involved.

41. For those reasons the Tribunal concluded that there should be, and was, jurisdiction to proceed even if Mr Crosland had claimed to have renounced his status as a barrister.

Pleas

42. As the Respondent did not attend the hearing, the Charges were deemed to be denied.

Evidence and submissions

43. Mr Auburn KC presented the case on behalf of the BSB. In the absence of the Respondent, he detailed the BSB's case which was outlined in Mr Auburn's written opening of the 16 January 2023 and the bundles of documents. These included Mr Crosland's response of 21 April 2022 to the allegations brought by the Bar Standards Board and his supplementary response of 13 June 2022, and a personal statement by Mr Crosland updated on 30 November 2022.

44. The tribunal were referred by Mr Auburn to authorities relevant to the wording of the charges. It was also submitted that rE169 of the Bar Standards Board Handbook provided for court records of judgements and findings of fact to stand as proof of those facts, unless proved to be inaccurate.

45. In response to the argument advanced by Mr Crosland in respect of Article 10 ECHR, it was submitted that any interference with Article 10 by pursuit of disciplinary proceedings was necessary to achieve the objective of maintaining the authority of the judiciary and judicial decisions, and proper operation of the courts, and was a proportionate means of achieving those objectives. As had been held by the First Instance Panel of the Supreme Court, the restriction under the embargo, for a limited period only, was both necessary and proportionate.

46. The respondent, Mr Crosland, had fully explained his position in correspondence and documents sent to the BSB and to the tribunal referred to above, and in a press release by Plan B dated 12 December 2022. On 9 January 2023 he sent the tribunal a newspaper article about the renunciation of his status as a barrister and a communication from a journalist.

Findings

47. Following retirement to consider the matter, the Tribunal unanimously found all the charges to have been established. In doing so the Tribunal noted that the burden of proving the charges lay upon the Bar Standards Board throughout. Each charge had to be considered separately. The Tribunal should apply the civil standard of proof when deciding a charge of professional misconduct where, as here, the conduct alleged within that charge occurred after 1 April 2019.

48. The factual background to the charges was undisputed, and had been set out fully and analysed in the judgments of the Supreme Court which held that the actions of Mr Crosland were contempt of court for which he was penalised with a fine and an order for costs. Those judgements fully set out Mr Crosland's explanation and justification for what he did. The tribunal also had his explanation in response to the charges of professional misconduct in the statement and other correspondence from him to the Bar Standards Board. There could be no doubt as to the strength and sincerity of the beliefs held by Mr Crosland, including his

belief that he had acted with integrity and that his disobedience of the embargo was legitimate.

49. The tribunal accepted the submissions made on behalf of the Bar Standards Board as to the effect of the undisputed evidence in establishing that Mr Crosland's behaviour was likely to diminish the trust and confidence which the public places in the profession, and that it could reasonably be seen by the public to undermine his integrity.

50. Mr Crosland had made a deliberate choice to breach the clear and express embargo against disclosure of the draft judgment of court, and did so with knowledge of the likely consequences. In so doing, he undermined the specific reasons which draft judgements are distributed in advance. Legal professionals to whom a draft judgment is provided in advance are trusted to respect and comply with the standard, and well understood, restrictions on further distribution before the judgment is formally handed down. The tribunal did not understand Mr Crosland to have challenged the validity of the embargo in this case, he had simply argued that his breach of it was justified for the reasons he had made clear. However, Mr Crosland was not immune from the terms and requirements of the embargo. Compliance with it, whether by a legal professional or any other person aware of the terms of the embargo, was not optional. His duty to the court was to follow the standard directions within the embargo. Those requirements were not onerous, and in this case would only have briefly delayed the ability of Mr Crosland and other interested parties to distribute and publicly comment upon the judgment.

51. In the context of the terms of the charges before the tribunal, they considered that the public would expect barristers to comply with such restrictions and rules, and not deliberately to contravene them in such a way as might undermine the functioning of the court process and might also encourage others to disregard their obligations under court orders and directions. As submitted by the Bar Standards Board, professional integrity required adherence to the rules of the court.

Sanction

52. The counsel for the Bar Standards Board outlined the approach under the current Sanctions Guidance which should be followed and relevant considerations.

53. Following further retirement, the tribunal announced their unanimous decision that the respondent, Mr Crosland should be disbarred for the following reasons.

54. The tribunal were required to have regard to the Sanctions Guidance applicable from January 2022.

55. Sanctions are not to be imposed to punish, though it is to be recognised that they may have a punitive effect. The purposes of applying sanctions for professional misconduct are to: (1) protect the public and consumers of legal services; (2) maintain public confidence and trust in the profession and the enforcement system; (3) maintain and promote high standards of behaviour and performance at the bar; and (4) act as a deterrent to the individual barrister, as well as the wider profession, from engaging in the misconduct subject to sanction.

56. The fundamental principle behind the imposition of a sanction is that any sanctions should be proportionate, weighing the interests of the public with those of the practitioner, and must be no more than necessary to achieve the purposes referred to.

57. The Guidance proposes a staged 6-step approach to consideration of sanctions, which the tribunal had undertaken in this case.

58. It was first necessary to determine the appropriate applicable misconduct group within the guidance for the proved misconduct. In this case it was clear that the misconduct concerned should be treated as falling under group G, relating to the administration of justice and in particular to a barrister's duties to the court. This overlapped with group H which covers non-compliance with court orders and directions.

59. The next stage was to determine the seriousness of the misconduct by reference to culpability and harm factors. In this case the tribunal considered the seriousness of the misconduct by Mr Crosland to go beyond that indicated in the examples identified within group G.

60. Mr Crosland had been found to be in criminal contempt of court, deliberately breaching the embargo on disclosure of draft judgements. That was a calculated act by him after he had

been refused permission to disclose the draft judgment. He had then failed to rectify the wide disclosure which he had instigated, ignoring a request by the court to do so. He acted fully knowing the consequences. These actions were serious enough to prompt the Attorney General to bring contempt proceedings and for the Supreme Court to penalise Mr Crosland by way of fine and a costs order.

61. There was nothing to indicate any evidence of regret or remorse or insight on the part of Mr Crosland who throughout considered that he had acted with integrity, with the intention of drawing widespread attention to an unfavourable decision of the Supreme Court. He had shown no acceptance of the view that he was at fault or acted inappropriately.

62. The tribunal considered that the harm and potential harm to the administration of justice and the reputation of the legal profession, as described in the tribunal's finding of misconduct, was considerable, even if it could not be measured precisely. The tribunal also considered that there was a risk of repetition by Mr Crosland which could not be discounted, and that there was a need for deterrence both of Mr Crosland and of others who might be tempted to act similarly.

63. The tribunal considered the indicative level of sanctions for that category of misconduct and were unanimous that the proved misconduct must be regarded as at, and beyond, the most serious end of the range.

64. The tribunal had to consider also aggravating and mitigating factors.

65. The aggravating factors included the deliberate, indeed calculated, nature of the actions of Mr Crosland. In mitigation, Mr Crosland has no previous disciplinary record, and there were favourable references for him. He self-referred to the BSB, albeit without acknowledgement of any fault on his part. It could be said what he did was an isolated act, but it was not simply an impulsive reaction to an unfavourable judgment. As already said, it had been calculated action deliberately taken in knowledge of the consequences.

66. The tribunal had not heard from Mr Crosland in the hearing, but had read his written representations relating to the allegations against him. The tribunal also did not have completely up-to-date information as to his present circumstances, but assumed that they

had not changed significantly since the decisions of the Supreme Court when imposing a fine and substantial order for costs in 2021.

67. The tribunal understood that Mr Crosland did not hold a practising certificate, his last practising certificate having expired in 2018. He had said already that he has renounced his status as a barrister because of his disapproval of the disciplinary proceedings brought against him. But that did not relieve the tribunal from marking what was considered to be the gravity of his misconduct.

68. The tribunal were unanimous in deciding that Mr Crosland should be disbarred in respect of each charge, to take effect after 21 days.

69. It is recorded that the finding and sanction were made in the absence of the respondent in accordance with rE183.

Costs

70. The Bar Standards Board applied for costs in the sum of £3,120. The Tribunal agreed to the application in accordance with rE244.

Action Required by the Inn

71. The Treasurer of the Honourable Society of the Inner Temple is requested to take action on this report in accordance with rE239 of the Disciplinary Tribunal Regulations 2017.

Approved: 31 January 2023

His Honour James Meston KC
Chairman of the Tribunal