



# The Bar Tribunals & Adjudication Service

The Council of the Inns of Court

## Report of Finding and Sanction

Case reference: PC2018/0349/D5

Ms Kayleigh Swain

The Director-General of the Bar Standards Board

The Chair of the Bar Standards Board

The Treasurer of the Honourable Society of the Middle Temple

### Disciplinary Tribunal

#### Ms Kayleigh Swain (Middle Temple, March 2011)

1. In accordance with a Convening Order dated 3<sup>rd</sup> February 2020, I sat as Chairman of a Disciplinary Tribunal on 2<sup>nd</sup> March 2020 to hear and determine four (4) charges against Ms Kayleigh Swain, barrister of the Honourable Society of the Middle Temple.

#### Panel Members

2. The other members of the Panel were:

Mr Andrew Ward (Lay Member)

Mr Jonathan Monk (Lay Member)

Ms Naomi Davey (Barrister Member)

Ms Hayley Firman (Barrister Member)

#### Charges

1. The charges below were proved.

##### Charge 1

##### Statement of Offence

#### The Bar Tribunals & Adjudication Service

9 Gray's Inn Square,  
London  
WC1R 5JD  
T: 020 3432 7350  
E: [info@tbts.org.uk](mailto:info@tbts.org.uk)

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Registered Office:  
9 Gray's Inn Square, London WC1R 5JD

Professional misconduct contrary to Rule rS8 of the Scope of Practice Rules in the Bar Standards Board Handbook [3<sup>rd</sup> Edition, May 2018].

### Particulars of Offence

Kayleigh Swain practised as a barrister without a valid practising certificate between 17 August 2018 and 8 October 2018 in emails to North Yorkshire Police when not authorised to do so in that she held herself out as a barrister in communications with North Yorkshire Police when she was not authorised to do so.

### Charge 2

#### Statement of Offence

Professional misconduct contrary to Core Duty 3 and Conduct Rule rC9 of the Bar Standards Board Handbook [3<sup>rd</sup> Edition, May 2018].

### Particulars of Offence

Kayleigh Swain failed to act with honesty and/or integrity in that she knowingly or recklessly misled or attempted to mislead North Yorkshire Police by: i] signing an email to North Yorkshire Police dated 17 August 2018 with her name and the words “Barrister Park Court Square” which implied that she was a barrister from a Chambers or other legal entity by the name of ‘Park Court Square’ when this was not the case; ii] stating in an email to North Yorkshire Police dated 8 October 2018 that she had not renewed her practising certificate “this year” which implied that she had previously held a practising certificate, when this was not the case; iii] stating in an email to North Yorkshire Police dated 8 October 2018 that family commitments had barred her from returning to work on a full-time basis which implied that she had previously worked full time as a barrister when this was not the case; iv] stating in an email to North Yorkshire Police dated 8 October 2018 that she had in the past undertaken numerous criminal cases while practising as a barrister when this was not the case.

### Charge 3

#### Statement of Offence

Professional misconduct contrary to Core Duty 5 of the Bar Standards Board Handbook [3<sup>rd</sup> Edition, May 2018].

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## Particulars of Offence

Kayleigh Swain behaved in a way likely to diminish the trust and confidence which the public places in a barrister or in the profession, in that she knowingly or recklessly misled or attempted to mislead North Yorkshire Police by: ] signing an email to North Yorkshire Police dated 17 August 2018 with her name and the words “Barrister Park Court Square” which implied that she was a barrister from a Chambers or other legal entity by the name of ‘Park Court Square’ when this was not the case; ii] stating in an email to North Yorkshire Police dated 8 October 2018 that she had not renewed her practising certificate “this year” which implied that she had previously held a practising certificate, when this was not the case; iii] stating in an email to North Yorkshire Police dated 8 October 2018 that family commitments had barred her from returning to work on a full-time basis which implied that she had previously worked full time as a barrister when this was not the case; iv] stating in an email to North Yorkshire Police dated 8 October 2018 that she had in the past undertaken numerous criminal cases while practising as a barrister when this was not the case.

## Charge 4

### Statement of Offence

Professional misconduct contrary to Conduct Rule rC8 of the Bar Standards Board Handbook [3<sup>rd</sup> Edition, May 2018].

### Particulars of Offence

Kayleigh Swain behaved in a way which could reasonably be seen by the public to undermine her honesty and/or integrity in that she knowingly or recklessly misled or attempted to mislead North Yorkshire Police by: ] signing an email to North Yorkshire Police dated 17 August 2018 with her name and the words “Barrister Park Court Square” which implied that she was a barrister from a Chambers or other legal entity by the name of ‘Park Court Square’ when this was not the case; ii] stating in an email to North Yorkshire Police dated 8 October 2018 that she had not renewed her practising certificate “this year” which implied that she had previously held a practising certificate, when this was not the case; iii] stating in an email to North Yorkshire Police dated 8 October 2018 that family commitments had barred her from returning to work on a full-time basis which implied that she had previously worked full time as a barrister when this was not the case; iv] stating in an email to North Yorkshire Police

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dated 8 October 2018 that she had in the past undertaken numerous criminal cases while practising as a barrister when this was not the case.

### Parties Present and Representation

2. Ms Swain did not attend the Tribunal hearing on 2<sup>nd</sup> March 2020. Ms Swain was not represented at the hearing.
3. The Bar Standards Board (“BSB”) was represented by Marcus Joyce Esq.

### Preliminary Matters

4. The Tribunal considered whether it was appropriate to proceed to hear and determine the charges in the absence of Ms Swain or any representative instructed to appear on her behalf. The Tribunal found that rE183 had been complied with in that the documents required to be served under rE102 and rE103 had been served on Ms Swain by post at her last known address on 29<sup>th</sup> October 2019 and the convening order had been sent to Ms Swain on 5<sup>th</sup> February 2020 in accordance with rE132.3.c.
5. The Tribunal noted that Ms Swain had indicated in email correspondence to the BSB and to BTAS on 6<sup>th</sup> June 2019, 10<sup>th</sup> January 2020 and 19<sup>th</sup> February 2020 that she did not wish to appear before the Tribunal either in person, via telephone or Skype video-conference link, nor did Ms Swain wish to be represented. The Tribunal noted that Ms Swain had put forward her version of events in email correspondence and also supplied a witness statement from Lucy Walton. The Tribunal noted that it could consider that evidence in the course of the hearing and could also put questions arising from Ms Swain’s evidence to the BSB’s witness.
6. In all the circumstances, the Tribunal was satisfied that it was appropriate to proceed to hear and determine the charges in Ms Swain’s absence.

### Plea

7. Ms Swain did not formally admit or deny any of the four (4) charges and the Tribunal proceeded on the basis that the charges were denied.

### Evidence

8. The Tribunal read and considered the contents of the bundle prepared by the BSB and heard live evidence from PC Lana Ackroyd as part of the BSB’s case. The Tribunal read

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and considered the version of events put forward by Ms Swain in email correspondence on 12<sup>th</sup> November 2018, 6<sup>th</sup> December 2018, 15<sup>th</sup> January 2020 and 19<sup>th</sup> February 2020. The Tribunal also read and considered the undated witness statement of Lucy Walton in support of Ms Swain.

9. The Tribunal noted that Ms Swain was of good character and entitled to both limbs of the good character direction.
10. The Tribunal heard oral representations from Mr Joyce on behalf of the BSB and considered the written submissions he provided.

## Findings

11. The tribunal was sure of the following:
  - (i) That Ms Swain signed an email to North Yorkshire Police dated 17<sup>th</sup> August 2018 with her name and the words “Barrister Park Court Square” in a deliberate attempt to imply that she was a practising barrister working from a Chambers with that address when this was, to her knowledge, untrue and misleading;
  - (ii) That Ms Swain stated in an email to North Yorkshire Police that she had not renewed her practising certificate “this year” in a deliberate attempt to imply that she had previously held a practising certificate when this was, to her knowledge, untrue and misleading;
  - (iii) That Ms Swain stated in an email to North Yorkshire Police dated 8<sup>th</sup> October 2018 that family commitments had prevented her returning to work on a full-time basis in a deliberate attempt to imply that she had previously worked as a barrister on a full-time basis when this was, to her knowledge, untrue and misleading;
  - (iv) That Ms Swain stated in an email to North Yorkshire Police dated 8<sup>th</sup> October 2018 that she had in the past undertaken numerous criminal cases in a deliberate attempt to imply that she had undertaken cases as a criminal barrister when this was, to her knowledge, untrue and misleading;
  - (v) That the account put forward in Ms Swain’s email correspondence to the BSB and BTAS, particularly in the email dated 12<sup>th</sup> November 2018, to the effect that there had been other correspondence with North Yorkshire Police, including telephone conversations, in which Ms Swain clarified her standing and stated she was acting as a McKenzie Friend was incorrect. The Tribunal accepted the evidence of PC

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Lana Ackroyd that she had not received any further correspondence, or any telephone calls, from Ms Swain. The Tribunal further accepted PC Ackroyd's evidence that there was no record of anyone else at North Yorkshire Police having received such correspondence or telephone calls;

- (vi) That Ms Swain deliberately held herself out as a barrister in email correspondence with North Yorkshire Police when she did not hold, and knew she did not hold, a valid practising certificate;
- (vii) That Ms Swain's conduct was dishonest and lacked integrity;
- (viii) That Ms Swain's conduct in deliberately seeking to mislead North Yorkshire Police into providing information about an ongoing investigation to which Ms Swain was not entitled was likely to diminish the trust and confidence the public places in the Profession;
- (ix) That Ms Swain's conduct could reasonably be seen by the public to undermine her honesty and integrity.

12. The tribunal therefore found that the four (4) charges in Annex 1 to this report were all proved beyond reasonable doubt.

### Sanction and Reasons

13. The Tribunal did not proceed to sanction on 2<sup>nd</sup> March 2020 in order to give Ms Swain an opportunity to attend, obtain representation and make any written submissions she considered relevant to sanction.

14. The Tribunal returned to consider sanction on 30<sup>th</sup> March 2020. Owing to social-distancing measures brought in to prevent the spread of COVID-19, the hearing took place via Zoom video-conferencing. The proceedings of the Tribunal were recorded in the usual way.

15. On 30<sup>th</sup> March 2020 the BSB was again represented by Marcus Joyce Esq. Ms Swain did not attend and was not represented. The Tribunal read and considered an email from Ms Swain to BTAS dated 27<sup>th</sup> March 2020 in which she indicated that she did not wish to take any part in the proceedings.

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16. The Tribunal read and considered the written submissions prepared by Mr Joyce regarding sanction. Ms Swain had provided no material for the Tribunal to consider on the issue of sanction.
17. The Tribunal had regard to the TBTAS Sanction Guidance. In the light of the aggravating features listed below and in particular the deliberate and persistent dishonesty involved in Ms Swain's conduct, the Tribunal took the view that the case fell within section B.5 'Dishonesty' rather than E.2 'Holding out.' It noted that the starting point at section B.5 was disbarment. However, the Tribunal noted that a combination of mitigating factors might be enough to reduce the sanction.
18. The Tribunal identified the following aggravating factors:
- (i) Premeditation. Ms Swain's conduct was a planned and deliberate attempt to obtain information from North Yorkshire Police to which she was not entitled;
  - (ii) Persistent Conduct. Ms Swain persisted in her conduct which was not limited to a single email;
  - (iii) Undermining the Profession in the eyes of the Public. Ms Swain's conduct inevitably would have this effect;
  - (iv) Attempts to hide misconduct or lay blame elsewhere. Ms Swain attempted to lay the blame on North Yorkshire Police and suggested that the instant proceedings against her were an attempt by that force to cover-up police failings;
  - (v) Lack of Remorse. It was clear to the Tribunal from Ms Swain's email communications to the BSB and BTAS that Ms Swain felt no remorse for her conduct and showed no insight into her offending behaviour;
  - (vi) Failure to engage with the BSB. The Tribunal noted that Ms Swain's email communications to the BSB and BTAS made repeated reference to the instant proceedings being illegitimate and amounting to harassment of her. The Tribunal considered that Ms Swain's email communications were unprofessional and sometimes aggressive in tone;
  - (vii) Dishonesty. The Tribunal found that Ms Swain's conduct was not reckless but deliberate and dishonest;
  - (viii) The Tribunal found that whilst there was no actual harm caused by Ms Swain's conduct, there had been significant risk of substantial harm in that a less

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experienced police officer might well have been persuaded by her false representations to divulge confidential information.

19. The Tribunal identified the following mitigating factors:

- (i) Limited Experience within the Profession. The Tribunal noted that Ms Swain was called to the Bar in 2011 but had never undertaken pupillage.
- (ii) Character. Ms Swain was of previous good character and the undated witness statement from Lucy Walton spoke highly of her.
- (iii) Lack of Financial Motivation. The Tribunal did not consider that Ms Swain's conduct was motivated in any way by financial gain. The Tribunal accepted that the conduct may have been an ill-advised attempt to assist a close friend.

20. The Tribunal concluded that the mitigating factors it had identified were not, either singly or in combination, sufficiently compelling to depart from the starting point identified in the Sanctions Guidance. The Tribunal determined that the seriousness of Ms Swain's conduct was such that it could only be appropriately dealt with by disbarment.

21. The Tribunal complied with rE234 and stated that it had proceeded to sanction in the absence of Ms Swain in accordance with rE183.

22. The BSB did not seek to recover its costs from Ms Swain and the Tribunal indicated that, given it accepted Ms Swain was a single mother of five children, no costs would have been ordered in any event.

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

**Approved: 2 April 2020**

**His Honour Peter Rook QC**  
**Chairman of the Panel**

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