



# The Bar Tribunals & Adjudication Service

The Council of the Inns of Court

## Disciplinary Tribunal

### NICOLA CAIN

Called to the Bar by: Middle Temple, July 2005

Type of hearing: 5 Person Tribunal

Date of decision: 3 February 2022

In breach of:

Core Duties 1 and 2 and/or 3, 5 and 7 of the Bar Standards Board Handbook.

Details of Offence:

#### Charge 1

1. Ms Cain created a document [the “Fabricated Order”] which falsely purported to be an order made by Senior Master Fontaine in proceedings in the High Court of Justice in Matter 1, in which Ms Cain was instructed by the Defendants. The Fabricated Order included an electronic image of a signature which Ms Cain dishonestly intended should indicate that Senior Master Fontaine has signed the Fabricated Order.
2. Ms Cain created the Fabricated Order with the dishonest intention of deceiving her client as to the content of the two orders made by Senior Master Fontaine on 18 December 2019 [the “First Order” and the “Second Order”, together the 18 December 2019 Orders]. The Fabricated Order included parts of the First Order and the Second Order in a single document.

#### The Bar Tribunals & Adjudication Service

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3. When creating the Fabricated Order, Ms Cain deliberately omitted and/or altered material parts of the First Order and the Second Order with the dishonest intention of deceiving her client as to the content of the First Order and the Second Order. In particular in relation to the Fabricated Order:
  - 3.1 Ms Cain omitted the fact that her client had been ordered to serve an updated and compliant disclosure statement by 20 December 2019, failing which her clients' defence would be struck out and judgment entered for the other party with damages to be assessed.
  - 3.2 In relation to an order that her client pay costs in the sum of £9,000, Ms Cain:
    - 3.2.1 Altered the costs to be paid from the other party's "*costs of the hearing on 18 December 2019*" to the other party's "*costs in connection with the further witness statement of the Second Defendant*";
    - 3.2.2 Omitted the fact that these costs were assessed on the indemnity basis; and,
    - 3.2.3 Altered the date by which her client had been ordered to pay those costs from 2 January 2020 to 6 January 2020.
  - 3.3 Ms Cain omitted an order that her client pay the other party's reasonable costs of an application dated 20 November 2019;
  - 3.4 Ms Cain omitted an order that her client serve a witness statement "*detailed the explanation for not complying with the Order that they serve standard disclosure on the Claimants on 29 July 2019, and not doing so until 12 December 2019*", by 4pm on 23 December 2019;
  - 3.5 Ms Cain altered the preamble to state that the Fabricated Order was made "*upon the Claimant's Application dated 16 December 2019*", when in fact the First Order and the Second Order were made upon *inter alia* the other party's applications of 18 November 2019 and 20 November 2019 respectively;
  - 3.6 Ms Cian altered the date by which the other party's Re-Amended Particulars of Claim were to be filed and served from 19 December 2019 to 23 December 2019; and,

- 3.7 Ms Cain omitted to date the Fabricated Order.
4. On 3 January 2020, Ms Cain attached a copy of the Fabricated Order to an email which she sent to her client. Ms Cain thereby falsely and dishonestly represented to her client that:
- 4.1 The Fabricated Order was an order made by Senior Master Fontaine in proceedings in the High Court of Justice;
- 4.2 The Fabricated Order was “*initialled*” by Senior Master Fontaine; and,
- 4.3 The Fabricated Order had been “*obtained from the Claimants*”.
5. By her email on 3 January 2020, Ms Cain deliberately misled her client as to the content of the First Order and the Second Order. Ms Cain accordingly failed to provide her client with all relevant information as regards the First Order and the Second Order.

## Charge 2

1. In Matter 1:
- 1.1 On 18 November 2019, the Claimants made an application to re-amend their Particulars of Claim, which was served on 19 November 2019 [the “Amendment Application”]; and,
- 1.2 On 20 November 2019, the Claimants applied for an order that: [1] the Defendants should provide standard disclosure within 14 days, failing which the Defendants defence be struck out and judgment entered for the Claimants; and [2] that the Defendants within seven days provide a witness statement explaining why the Defendants had failed to comply with the order to serve standard disclosure by 29 July 2019 [the “Disclosure Application”]. Together the “Applications”.
2. Ms Cain failed to notify her client about the Applications, or seek instructions as to the Applications, prior to their determination in a hearing on 18 December 2019.

## Charge 3

1. Ms Cain notified her client of the Amendment Application on 19 December 2019 at 17:53 by an email which contained the following words in the subject line “*urgent instructions required*”. Ms Cain did not refer to the fact that the Amendment Application had in fact already been determined at a hearing on 18 December 2019.

Ms Cain thereby dishonestly misled her client as to the status of the Amendment Application.

2. The client subsequently sought a copy of the application to which Ms Cain had referred in her 19 December 2019 at 17:53 email. Ms Cain did not provide a copy of either the Amendment Application or the Disclosure Application to her client. Instead, on 20 December 2019 at 13:08, she provided her client with a document [the Fabricated Application] which falsely purported to be the application which Ms Cain had informed her client of on 19 December 2019.
3. Ms Cain created the Fabricated Application with the dishonest intention of deceiving her client as to facts relating to the Applications. When creating the Fabricated Application, Ms Cain deliberately omitted and/or altered material parts of the Applications, including by:
  - 3.1 Omitting reference to the Disclosure Application; and,
  - 3.2 Giving a false issue date of 16 December 2019.

#### Charge 4

1. On 23 December 2019, in Matter 1, Ms Cain signed and served on the Claimants a witness statement [the “Witness Statement”] pursuant to the 18 December 2019 Orders. The Witness Statement concerned the reason for the delay in the provision of standard disclosure by the Defendants in Matter 1.
2. Ms Cain falsely and dishonestly stated in the Witness Statement at paragraph 1 that *“I ...am authorised to make this statement on their [the Defendants’] behalf”*. Ms Cain was not so authorised.

**Sanction:** Disbarred / Suspension for 6 months [BSB not to issue a Practising Certificate if applied for during this period]. Costs of £5,900 to be paid to the Bar Standards Board within 28 days.

**Status:** Final.