



# The Bar Tribunals & Adjudication Service

The Council of the Inns of Court

## Disputed Facts Protocol 2020

Where an Inn asks the ICC to find disputed facts in relation to whether an individual is a fit and proper person to become a barrister.

### Introduction

1. This Protocol (which replaces all previous Disputed Facts Protocols) applies where an Inn refers a matter for determination by the ICC and that referral requires the determination of disputed facts.
2. This Protocol should be read together with:
  - (a) **Guidelines for Determining if a Person is Fit and Proper to Become a Practising Barrister** (the 'Guidelines') set out by the Bar Standards Board: <https://www.barstandardsboard.org.uk/uploads/assets/f20115e1-15c8-44b9-a171ffeb42ad2092/MOU-Schedule-1-Guidelines-for-Fit-and-Proper-Person-checks-v2.pdf> in accordance with rQ6.2 of the Bar Qualification Rules which are contained in the Bar Standards Board Handbook in Part 4, Section B <https://www.barstandardsboard.org.uk/for-barristers/bsb-handbook-and-code-guidance/the-bsb-handbook.html>; and
  - (b) **The Inns' Conduct Committee: Practice and Procedure Rules 2020** (the 'Rules' <https://www.tbts.org.uk/wp-content/uploads/2019/12/Inns-Conduct-Committee-Rules-2020.pdf>);
  - (c) **The ICC Statement of Principles and Guidance** <https://www.tbts.org.uk/wp-content/uploads/2013/07/Statement-of-Principles-and-Guidelines.pdf> - To Be Updated

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3. Paragraph 11 of the Guidelines requires that: ‘If an Inn, after becoming aware of a conduct matter, considers that the matter does call into question whether the individual is a fit and proper person to become a practising barrister, the matter must be referred to the ICC.’
4. Rule 3 of the Rules states that: ‘The function of the Inns’ Conduct Committee is:
  - (a) To determine whether an Applicant for admission to an Inn is a fit and proper person to practise as a barrister;
  - (b) To determine whether, in the case of a Student Member (hereafter referred to as Student), that individual is a fit and proper person to practise as a barrister and, what sanction is appropriate to impose if that individual’s conduct calls in to question whether they are a fit and proper person;
  - (c) To hear and finally determine appeals from determinations by the Student’s Inn of minor internal disciplinary matters against that Student.’ Under rule **70** of the Rules, an appeal comprises a review of the decision reached, not a rehearing. On appeal, ordinarily no fresh evidence will be admitted, and no witnesses heard.

This protocol concerns disputed facts in relation to the ICC’s discharge of its functions under paragraph 4(a) and/or (b) above.

## Before referring a matter to the ICC

5. Before making its referral to the ICC, the Inn should consider carefully what is alleged against the individual and what fact(s) or matter(s) need to be determined by the ICC.
6. The Inn must prepare and include with the referral a “**case summary**”, which:
  - (a) identifies, by reference to Annex 1 of the Guidelines, which of the stated category or categories apply to the matter(s) alleged;
  - (b) states the date on which the individual applied to or became a member of the Inn;
  - (c) states what evidence is relied upon to establish the matter(s) alleged; and

- (d) outlines (so far as known by the Inn) what facts are disputed by the individual and on what ground(s).

The case summary should be clear and succinct. A chronology should accompany the case summary where that would assist in understanding the referral.

7. The Inn must prepare and include with the referral everything that it relies upon in support of the allegation(s) against the individual. This should include:
  - (a) legible copies of relevant documents, assembled in a coherent order;
  - (b) a signed written statement from any witness to be relied upon [containing a statement that the witness believes the facts stated in the written statement are true]; and
  - (c) any other information or material relied upon.
8. The Inn should state whether it intends to call any witness(es) to give oral evidence. If it does intend to do so, the Inn should obtain and provide to the ICC information as to any dates on which any witness would not be able to attend a hearing. (It should be anticipated that all evidence and all key evidence in particular will be required to be given orally by the witnesses called by the Inn or the individual).
9. The Inn should give its best estimate of how long it would expect an ICC Panel Hearing to take. Where the Inn has decided who will act as its representative at the Hearing, it should give that person's name and contact details (including a current professional address). If, at the time when it makes its referral, the Inn considers that any directions as to the conduct of the hearing would be appropriate (including as to whether the hearing or any part of it should be in private), the Inn should inform the ICC as to any proposed direction(s) at that stage.

## The ICC Screening Panel

10. All referrals will be considered by the ICC in accordance with the Rules. If the Screening Panel (or, in cases of urgency, the Chair) considers that any further clarification or information is required at that stage, the Inn will be notified. Otherwise, the matter may be referred to an ICC Panel Hearing in accordance with the Rules, with such further directions as may be appropriate.

## Notification to the Individual

11. A letter of notification will be sent to the individual concerned in accordance with Rule 27 of the Rules and in addition will:
  - (a) include the case summary and evidence provided by the Inn (where possible);
  - (b) ask the individual to provide to the ICC in advance of the Hearing (so far as is practicable), a short written response to the Inn's case summary (including an outline of what matters are disputed or admitted), a legible copy of any documents on which they intend to rely, and a written statement from any witness they intend to call (containing a statement that the witness believes the facts stated in the written statement are true) or an outline of the evidence they expect such witness to give. The letter will inform the individual that the ICC will provide the Inn with a copy of the response and any other material provided by the individual;
  - (c) ask whether the individual wishes to request that any other directions be made for the hearing, or to respond to any request made by the Inn for directions and, if so, ask that the individual lets the ICC know as soon as practicable;
  - (d) ask the individual whether they agree with the time estimate provided by the Inn and, if not, to provide their own estimate.

## The Panel Hearing

12. The conduct of the Hearing is governed by ICC Rules 29-48.
13. If it appears that a Hearing will be required to consider and make necessary directions (with the effective determination of the matter being adjourned to another date), all practicable steps should be taken to ensure that witnesses are not required to attend on the first hearing date. Where a Hearing has to be adjourned from a date that has been fixed, a new date must be set for the Hearing (at the time of the adjournment). A Hearing should not be adjourned for a period longer than 28 days, unless there is good reason that makes that necessary.
14. All practicable steps should be taken to ensure that the individual has appropriate representation before and at the Hearing. Where the Inn is represented by counsel, the individual should be encouraged to be represented by counsel of at least

equivalent standing to that of the Inn's representative. If, having had a proper opportunity to consider the matter, the individual wishes to represent themselves at the Hearing, they may do so.

15. Subject always to the discretion of the Chair of the Panel, the order of proceedings will generally be:
  - (a) The Chair will introduce the Hearing Panel, explain the process and why the matter has been referred, as well as referring to the Rules under which the matter is to be determined. The Chair will identify the documents with which the Hearing Panel members have been provided;
  - (b) The Inn (through its representative) will state the reason(s) for the referral and produce its evidence in support;
  - (c) The individual (if represented, through their representative) will state the case in response and produce any evidence relied upon;
  - (d) Unless directed otherwise by the Chair, any witness called by the Inn may be asked questions by the individual/their representative, and any witness called by the individual may be asked questions by the Inn's representative;
  - (e) Members of the Panel have the right to ask questions, at any stage of the Hearing, of the Inn's representative, the individual/their representative, and any witness called at the Hearing;
  - (f) Closing remarks may be made on behalf of the Inn and (then) on behalf of the individual, before the Hearing Panel deliberates. Those deliberations take place in private, between Panel Members only.
  - (g) Before concluding the Hearing, the Chair of the Panel may ask the Inn's representative and the individual/their representative to wait for a short period, so that the Panel have an opportunity to discuss the matter in private and then, if they were so to wish, to ask any further question or raise any other relevant matter (including by the Chair giving any further direction(s) considered necessary at that stage).

