



# Statement of Principles and Guidelines for the Inns' Conduct Committee

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## INTRODUCTION

1. The Inns' Conduct Committee (the ICC) is required to determine:
  - (1) Whether an Applicant for admission to an Inn is a fit and proper person to become a practising barrister, and hence whether the Inn should admit or refuse to admit the Applicant.
  - (2) Whether, in the case of a Student member of an Inn, a Serious Matter (within the meaning of the Bar Training Rules (the BTR)<sup>1</sup>) has been proved; and if so, what sanction it is appropriate to impose.
  - (3) Appeals from determinations by a Student's Inn of minor internal disciplinary matters against that Student.

The ICC operates in accordance with Rules approved by the Bar Standards Board (BSB)<sup>2</sup>.

2. This document has been developed by the ICC. Its purpose is to set out guidelines for the assistance of hearing panels of the ICC in deciding any such issues. It concentrates on the first two functions identified under paragraph 1 above. It is intended to promote proportionality, consistency and transparency in decision making. It is not however intended to deflect hearing panel members from the independent exercise of their discretion and judgment in arriving at their determinations.
3. The guidance is intended to be made publicly available via the Bar Tribunal and Adjudication Service (BTAS) website<sup>3</sup>. It is freely available in hard copy from the ICC Administrator upon request. It is intended to allow Applicants, Students and other interested parties to be aware of and, as required, assess material factors about the principles and practice of the ICC, and to consider its likely approach to a particular Applicant's or Student's conduct, in particular in relation to an anticipated hearing, so as to prepare themselves for any such hearing.

## GENERAL PRINCIPLES

4. To be a fit and proper person to practise at the Bar, that person must be honest, of integrity and of good reputation and character. Appendix A to the present Statement

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<sup>1</sup> The Bar Training Rules (BTR) are to be found in Part 4, Section B of the BSB Handbook – see: [https://www.barstandardsboard.org.uk/media/1826458/bsb\\_handbook\\_31\\_march\\_2017.pdf](https://www.barstandardsboard.org.uk/media/1826458/bsb_handbook_31_march_2017.pdf)

<sup>2</sup> See <http://www.tbts.org.uk/wp-content/uploads/2017/09/ICC-Rules.pdf>

<sup>3</sup> See: <http://www.tbts.org.uk/wp-content/uploads/2017/09/Statement-of-Principles-and-Guidelines.pdf>

(“Fitness to become a practising barrister”) contains a statement of the principles to be applied in determining whether an Applicant to an Inn is a fit and proper person.

5. In general, any criminal conduct or other reprehensible behaviour will be powerful evidence of the lack of one or more of these essential qualities. Nevertheless, it is accepted that there are circumstances in which individuals who have been guilty of even serious offences or other relevant reprehensible conduct will nonetheless be fit and proper persons to practise at the Bar. Furthermore, while the ICC’s decision-making can be properly informed by the approach taken by other bodies, including academic institutions, the police and the courts, and the treatment of conduct elsewhere may assist in the determination by the ICC of the approach to be taken, it will not be determinative of the ICC’s treatment of the Applicant or Student.
6. In determining cases before it, the ICC will not re-open the decisions of other relevant bodies. Hence, the ICC shall treat a criminal conviction of an Applicant or Student, which has not been set aside on appeal or otherwise, as sufficient evidence of the commission of the offence in question; and a finding of misconduct by a regulatory/professional/ educational body exercising a regulatory, disciplinary or educational jurisdiction as sufficient evidence of the commission of the misconduct in question. However, the ICC may give such weight to that conviction or finding as it considers reasonable in all the circumstances.
7. Appendix A refers to ICC Decision Guidelines, which are attached as Appendix B. The ICC, and in particular its members who constitute hearing panels to hear individual cases referred to them, should make such reference to Appendix B as may be appropriate in any particular case.
8. In addition, in determining what if any sanction should be applied in the event that a Serious Matter (within the meaning of the BTR) is found proved, the guidelines in Appendix B should be considered.

#### **Review of this statement**

9. This Statement of Principles and Guidelines is reviewed and updated by the ICC. This Statement was updated by the ICC on 9 October 2017.

# APPENDIX A

## Fitness to become a practising barrister

- A1. To be eligible for admission to an Inn an Applicant must be a fit and proper person to become a practising barrister (BTR rQ7.2).
- A2. By BTR rQ9, an Applicant is a fit and proper person to become a practising barrister if:
- (1) There is no reason to expect that that person, if admitted to an Inn, will engage in conduct which is dishonest or which otherwise makes that person unfit to become a practising barrister; and
  - (2) That person does not suffer from serious incapacity due to mental disorder (within the meaning of the Mental Health Act 1983), addiction to alcohol or drugs or any other condition which makes that person unfit to become a practising barrister.
- A3. In determining whether an Applicant is a fit and proper person to become a practising barrister in accordance with BTR rQ9, the following matters will be taken into account.

### General

- A4. The ten Core Duties which govern practice at the Bar, and the rules which supplement those duties, are set out in The Code of Conduct (Part 2 of the BSB Handbook).
- A5. The proper administration of justice requires that:
- (1) Clients must feel and be secure in confiding their most personal affairs to a barrister;
  - (2) The public must have confidence in barristers because of the central role which they play in the administration of justice;
  - (3) The judiciary must have confidence in those who appear before them in court.
  - (4) Fellow lawyers must be able to depend totally on the behaviour of colleagues.

In considering whether an Applicant is a fit and proper person to become a practising barrister, the Panel must be satisfied that the Applicant will be able to fulfil these requirements.

- A6. Without prejudice to Paragraph A5. above, there are three fundamental characteristics that any Applicant must display: that they are
- (1) honest;

- (2) a person of integrity; and
- (3) currently of good reputation and character.

The Panel must be satisfied that any Applicant has all of these characteristics in order to be satisfied that they are a fit and proper person to become a practising barrister.

- A7. While it is recognised that each consideration by a Panel will be based on the individual facts and circumstances of the case, in order to facilitate consistent decision making reference should be made to the ICC Decision Guidelines (Appendix B) and to the matters set out below. These are not intended to be applied inflexibly, but should provide the starting point for consideration as to whether a person is a fit and proper person to become a practising barrister.

### Honesty

- A8. A person will not normally be considered a fit and proper person where they have proved to be dishonest. This general statement is however subject to exceptions. The ICC Decision Guidelines provide examples of exceptional circumstances in which offences of dishonesty or conduct involving dishonesty may be treated leniently.

### Integrity

- A9. The integrity of the Applicant is of the highest importance. The circumstances which will be relevant to the issue of integrity may vary but can be expected to include (in the absence of justification and/or explanation):
- (1) whether the person has a history of conduct which indicates a lack of regard for the law, or which is capable of harming the integrity of the legal profession;
  - (2) whether the person is the subject of disciplinary proceedings or action (however expressed) in another profession or occupation (whether in England & Wales or elsewhere);
  - (3) whether the person has been the subject of disciplinary proceedings or action (however expressed) in another profession or occupation (whether in England & Wales or elsewhere) which involved a finding of guilt;
  - (4) any other matter which tends to indicate a material risk of harm to users of legal services.

## Reputation and Character

- A10. The Applicant must be of good reputation and character at the date of the application. In making a determination of reputation and character, however, past actions may be taken into account as indicative of future behaviour, unless that inference is rebutted by any relevant or mitigating circumstances. The matters which may be relevant to the Applicant's reputation and character will include the following:
- (1) whether the person has been convicted of any criminal offence or been the subject of a court order limiting their conduct. In such circumstances, the approach to be taken should normally be that set out in the ICC Decision Guidelines.
  - (2) whether the person has been found to have committed any act of dishonesty not dealt with as a criminal offence. In such circumstances the approach to be taken should normally be that set out in the ICC Decision Guidelines.
  - (3) a prior history of multiple offences or a series of offences, or a course or pattern of conduct, which is relevant to an assessment of the person's reputation or character.
  - (4) any other matter which might tend to bring the profession into disrepute.

## Readmissions

- A11. The BTRs relating to an application for admission apply also where the application is for readmission. The ICC will enquire into reasons for a former member of an Inn ceasing to be a member. In particular where there was a previous expulsion, the ICC will require full explanation of the reasons for such expulsion, including copy transcripts of any / all disciplinary hearings. Where there has been a previous finding that the Applicant was not a fit and proper person, the ICC will treat that finding as sufficient evidence that the Applicant was not a fit and proper person (as at the date of the finding). The ICC will want to be provided with full information as to the full facts and circumstances surrounding that finding. The ICC will attach such weight to any previous findings as appears appropriate in all the circumstances.
- A12. The ICC will need to be satisfied in readmission cases that the Applicant is at the date of the application to join an Inn a fit and proper person. This will generally require the Applicant to provide to the ICC evidence of personal progress and change.

### Previous criminal convictions

A13. The ICC will always have regard to and proceed in accordance with the Rehabilitation of Offenders Act 1974 (ROA) and related secondary legislation<sup>4</sup>. The profession of barrister is an “excepted” profession for the purposes of the ROA. Accordingly, an Applicant for admission to an Inn is required to disclose to the Inn any criminal conviction the Applicant has, including any “spent” conviction (other than a “protected conviction”). When exercising its functions, the ICC is entitled to, and shall, have regard to convictions (even when spent). The ICC is entitled to ask an Applicant to disclose the ancillary circumstances relating to any such conviction<sup>5</sup>.

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<sup>4</sup> Including The Rehabilitation of Offenders Act (Exceptions) Order 1975 (Amendment) (England and Wales) Order 2013 (SI 2013/1198).

<sup>5</sup> “Ancillary circumstances” means (a) the offence(s) that were the subject of the conviction; (b) the conduct constituting the offence(s); and (c) any process or proceedings (whether by way of appeal or otherwise) for reviewing that conviction or any such sentence, and anything done in pursuance of or undergone in compliance with any such sentence.

# APPENDIX B

## ICC Decision Guidelines

### B1. Regulatory Background

The functions of the ICC are carried out pursuant to the provisions of the BTR and the ICC Rules. These include:

#### B1.1 Whether an Applicant for admission to an Inn is a fit and proper person to become a practising barrister

See generally BTR Part 4, Section B2.

*Framework:*

B1.1.1 To be eligible for admission to an Inn<sup>6</sup> an Applicant must be a fit and proper person to become a practising barrister (BTR rQ7.2).

B1.1.2 An Applicant is a fit and proper person to become a practising barrister if:

- (1) there is no reason to expect that that person, if admitted to an Inn, will engage in conduct which is dishonest or which otherwise makes that person unfit to become a practising barrister (BTR rQ9.1); and
- (2) that person does not suffer from serious incapacity due to mental disorder (within the meaning of the Mental Health Act 1983), addiction to alcohol or drugs or any other condition which makes that person unfit to become a practising barrister (BTR rQ9.2).

B1.1.3 A person whose application for admission to an Inn has been rejected on the ground that that person is not a fit and proper person to become a practising barrister or who has been expelled from an Inn because of a disciplinary offence may not apply for admission to an Inn unless a period of at least five years (or such other period as the Bar Standards Board may determine in the particular case) has elapsed from the date of such rejection or expulsion (BTR rQ11).

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<sup>6</sup> Admission to an Inn includes readmission of a former member who has ceased (whether as a result of disbarment or otherwise) to be a member of the Inn: BSB Handbook, definition (2).



B1.1.4 If an Applicant falls within BTR rQ17, the Inn must refer the question whether the applicant is a fit and proper person to become a practising barrister to the ICC. An Applicant falls within rQ17 if:

- (1) the Applicant has been convicted of a criminal offence (or is the subject of pending criminal proceedings); or
- (2) the Applicant has been convicted of a disciplinary offence by a professional or regulatory body (or is the subject of pending proceedings for such an offence); or
- (3) the Applicant has been the subject of a bankruptcy order or director's disqualification order or has entered into an individual voluntary arrangement with creditors; or
- (4) the Applicant has previously been refused admission to or expelled from an Inn; or
- (5) there is any other circumstance which in the opinion of the Inn calls into question the Applicant's fitness to become a practising barrister.

B1.1.5 Provision is made for review (by the BSB) of a decision by the ICC that the Applicant is not a "fit and proper" person by BTR rQ19 & 20.

**B1.2 Whether, in the case of a Student member of an Inn, a Serious Matter (within the meaning of the BTRs) has been proved and, if so, what sanction it is appropriate to impose**

See generally BTR Part 4, Section B8.

*Framework:*

B1.2.1 The obligation on a Student to give written notification to their Inn of certain matters relating to conduct while a student is contained in BTR rQ103.

B1.2.2 An Inn must consider whether the matter is a 'Serious Matter' where notification is given or a complaint or report is made or it appears to an Inn from a Call Declaration or otherwise that a Student has or may have:

- (1) made any false declaration or acted in breach of any undertaking given in the Student's Admission Declaration or Call Declaration (BTR rQ104.1); or
- (2) while a Student:
  - (a) committed any breach of any regulations made by the Inn concerning the conduct and discipline of its members (BTR rQ104.2.a); or

- (b) been convicted of a criminal offence (BTR rQ104.2.b); or
- (c) been convicted of a disciplinary offence by a professional or regulatory body; (BTR rQ104.2.c); or
- (d) been the subject of a bankruptcy order or directors disqualification or entered into an individual voluntary arrangement with creditors; (BTR rQ104.2.d); or
- (e) been found guilty by the course provider of cheating or other misconduct on a Bar Professional Training Course (and has not successfully appealed against that finding) (BTR rQ104.2.e); or
- (f) otherwise been guilty of any conduct discreditable to a member of an Inn (BTR rQ104.2.f).

See BTR rQ104 and r105.

B1.2.3 If the Inn decides that the matter is a Serious Matter it must refer the matter to the ICC for determination. After determining the matter, the ICC must send a report of its findings and reasons to the student and the Inn (BTR rQ108).

B1.2.4 By the BTR a matter is a 'Serious Matter' if it:

- (1) falls within rQ104.1 or rQ104.2.b to .f; or
- (2) in the opinion of the Inn otherwise calls into question whether the Student is a fit and proper person to become a practising barrister.

See BSB Handbook, definition (208).

B1.2.5 If the ICC finds a 'Serious Matter' proved, its powers/sanctions are set out in rQ109 (see below).

B1.2.6 Provision is made for review (by the BSB) of a decision by the ICC that a 'Serious Matter' is proved by BTR rQ110.

**B1.3 A person applying for admission is required to declare<sup>7</sup>:**

- (a) *I have never been convicted of any criminal offence<sup>8</sup> nor are there any proceedings pending<sup>9</sup> against me anywhere in respect of any criminal offence.*
- (b) *I have never been convicted of a disciplinary offence by a professional or regulatory body nor are there any disciplinary proceedings pending against me anywhere in respect of any such offence.*
- (c) *I have never been found guilty of an academic offence by a higher education institution.<sup>10</sup>*
- (d) *I have never had any bankruptcy order<sup>11</sup>, debt relief order<sup>12</sup>, directors disqualification order<sup>13</sup>, bankruptcy restrictions order<sup>14</sup> or debt relief restrictions order made against me nor entered into an individual voluntary arrangement with creditors.*
- (e) *I have not previously been refused admission to or expelled from an Inn.*
- (f) *I do not suffer from serious incapacity due to mental disorder (within the meaning of the Mental Health Act 1983) nor addiction to alcohol or drugs, nor from any other condition which might impair my fitness to become a practising barrister.<sup>15</sup>*

*If any of the statements... above is incorrect in any respect, please delete the statement as appropriate.*

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<sup>7</sup> The italicised text below (with the footnotes to that text) is included in the Admission Declaration.

<sup>8</sup> For this purpose a “criminal offence” means any offence, wherever and whenever committed, under the criminal law of any jurisdiction except (i) an offence for which liability is capable of being discharged by payment of a fixed penalty; and (ii) an offence which has as its main ingredient the unlawful parking of a vehicle. Any conviction which is spent within the meaning of the Rehabilitation of Offenders Act 1974 is nevertheless required to be disclosed unless it is “protected” under the provisions of the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975. Information on this can be found here: <https://www.gov.uk/government/organisations/disclosure-and-barring-service>.

<sup>9</sup> Proceedings are pending if (i) you are currently charged with, or (ii) you are on bail or in detention or custody (or have failed to surrender to custody) in connection with, any criminal offence.

<sup>10</sup> If you were found guilty, but subsequently successfully appealed against that finding, there is no need to declare it.

<sup>11</sup> For this purpose a “bankruptcy order” includes a bankruptcy order made pursuant to the Insolvency Act 1986 and any similar order made in any jurisdiction in the world.

<sup>12</sup> For this purpose, a “debt relief order” includes a debt relief order made pursuant to the Insolvency Act 1986 and any similar order made in any jurisdiction in the world.

<sup>13</sup> For this purpose, a “directors disqualification order” includes a disqualification order made by a court, or disqualification undertaking accepted by the Secretary of State, pursuant to the Company Directors Disqualification Act 1986 and any similar order or undertaking made or given in any jurisdiction in the world.

<sup>14</sup> For this purpose, a “bankruptcy restrictions order” includes a bankruptcy restrictions order made by a court or a bankruptcy restrictions undertaking accepted pursuant to the Insolvency Act 1986 and any similar order or undertaking made or given in any jurisdiction in the world.

<sup>15</sup> If you are a disabled person within the meaning of the Equality Act 2010 and are unable to make this declaration, then on application to the Inn consideration will be given as to whether reasonable adjustments can be made.

Except as disclosed below, I am not aware of any matter which might reasonably be thought to call into question my fitness to become a practising barrister.<sup>16</sup>

**B1.4 A person applying for Call to the Bar is required to declare<sup>17</sup>:**

1. *I confirm that the declaration which I made for the purpose of obtaining admission to this Inn was true in every respect when I made it.*
2. *Since I made that admission declaration:*
  - (a) *I have not been convicted of any criminal offence<sup>18</sup> (nor been the subject of any pending proceedings<sup>19</sup> for such an offence);*
  - (b) *I have not been convicted of a disciplinary offence by a professional or regulatory body (nor been the subject of any pending proceedings for such an offence);*
  - (c) *I have not been the subject of any bankruptcy order<sup>20</sup>, debt relief order<sup>21</sup>, or directors disqualification order<sup>22</sup>, bankruptcy restrictions order<sup>23</sup> or debt relief restrictions order<sup>24</sup> nor have I entered into an individual voluntary arrangement with creditors;*
3. *I do not suffer from serious incapacity due to mental disorder (within the meaning of the Mental Health Act 1983) nor addiction to alcohol or drugs, nor from any other condition which might impair my fitness to become a practising barrister.<sup>25</sup>*

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<sup>16</sup> This includes any incident or behaviour which if known to the Inn might cause your application to be considered more carefully. If in doubt, disclose the incident/behaviour. Two examples are given by way of illustration but not as limitations on disclosure: (a) Receipt of a police caution; (b) A Court injunction or Anti-Social Behaviour Order restricting your conduct

<sup>17</sup> The italicised text below (with the footnotes to that text) is included in the Call Declaration.

<sup>18</sup> For this purpose a “criminal offence” means any offence, wherever and whenever committed, under the criminal law of any jurisdiction except (i) an offence for which liability is capable of being discharged by payment of a fixed penalty; and (ii) an offence which has as its main ingredient the unlawful parking of a vehicle. Any conviction which is spent within the meaning of the Rehabilitation of Offenders Act 1974 is nevertheless required to be disclosed unless it is “protected” under the provisions of the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975. Information on this can be found here: <https://www.gov.uk/government/organisations/disclosure-and-barring-service>.

<sup>19</sup> Proceedings are pending if (i) you are currently charged with, or (ii) you are on bail or in detention or custody (or have failed to surrender to custody) in connection with, any criminal offence.

<sup>20</sup> A “bankruptcy order” includes a bankruptcy order made pursuant to the Insolvency Act 1986 and any similar order made in any jurisdiction in the world.

<sup>21</sup> For this purpose, a “debt relief order” includes a debt relief order made pursuant to the Insolvency Act 1986 and any similar order made in any jurisdiction in the world.

<sup>22</sup> A “directors disqualification order” includes a disqualification order made by a court, or disqualification undertaking accepted by the secretary of state, pursuant to the Company Directors Disqualification Act 1986 and any similar order or undertaking made or given in any jurisdiction in the world.

<sup>23</sup> For this purpose a “bankruptcy restrictions order” includes a disqualification order made by a court or a bankruptcy restrictions undertaking accepted pursuant to the Insolvency Act 1986 and any similar order or undertaking made or given in any jurisdiction in the world.

<sup>24</sup> For this purpose a “debt relief restrictions order” includes a debt relief restrictions order made by a court or a debt relief restrictions undertaking made or given in any jurisdiction in the world.

<sup>25</sup> If you are a disabled person within the meaning of the Equality Act 2010 and are unable to make this declaration, then on application to the Inn consideration will be given as to whether reasonable adjustments can be made.

*If any of the statements in paragraphs 1 to 3 above is incorrect in any respect, please delete the statement as appropriate.*

4. *Except as disclosed below, I am not aware of any circumstance which has occurred while I have been a Student member of the Inn which might reasonably be thought to call into question my fitness to become a practising barrister.<sup>26</sup>*

## **B2. THE ICC'S POWERS, IN THE EVENT THAT A SERIOUS MATTER IS PROVED IN RESPECT OF A STUDENT:**

B2.1 By BTR rQ109, if the ICC finds a Serious Matter proved, it may:

- (1) Advise the student as to future conduct; or
- (2) Reprimand the student; or
- (3) Order that the student's call to the Bar be postponed for a specified period; or
- (4) Direct that the student be expelled from the Inn (in which case the Inn must expel the student).

## **B3. OFFENCES AND MATTERS THAT ARE LIKELY TO BE SCREENED OUT BY THE SCREENING PANEL:**

B3.1 The Screening Panel will not normally refer persons to an ICC Panel for the following, unless there are aggravating circumstances or other concerns about the Applicant/Student's fitness to practise, or an Inn has raised specific concerns or made a specific recommendation for a panel hearing in its letter of referral:

- Fixed penalty traffic offences (save those resulting in disqualification);
- Bankruptcy orders or other debt arrangements which are over ten years old and completed/discharged;
- Any other matter that the Screening Panel considers to be of a minor nature, or does not merit a panel hearing on account of the age of the matter and its circumstances.

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<sup>26</sup> This includes any incident or behaviour which if known to the Inn might cause your application to be considered more carefully. If in doubt, disclose the incident/behaviour. Two examples are given by way of illustration but not as limitations on disclosure: (a) Receipt of a police caution; (b) A Court injunction or Anti-Social Behaviour Order restricting your conduct.

## The following guidelines refer to cases that have been referred to an ICC Panel:

### B4 CRIMINAL OFFENCES

#### The decision making process:

B4.1 Whether disposal of the criminal matter which has given rise to the referral to the ICC was by conviction, caution, reprimand, or warning, a three-stage process is envisaged:

- (1) The offence: classification according to seriousness;
- (2) The offence: assessment of individual circumstances;
- (3) The Applicant/Student: assessment of character, circumstances and (where relevant) length of time since offence.

#### (1) THE OFFENCE: CLASSIFICATION

B4.2 First, the particular offence by the applicant/student will be assigned to a class of seriousness, in accordance with the table below.

Offences	
<b>CLASS 1</b>	Murder Wounding/GBH with intent Rape/assault by penetration/sexual assault/sexual activity with a child All offences of theft , including robbery and burglary All offences of fraud and dishonesty, including bribery Supply/possession with intent to supply/production/importation of any Class A drug Unlawful use of a firearm/imitation firearm Perjury, perverting the course of justice, assisting an offender, intimidation and revenge
<b>CLASS 2</b>	Violence not involving deliberate intent to cause serious physical harm Public order offences Possession of Offensive weapon/Bladed article Firearms offences not in Class 1 (above) Possession, production or supply of non-Class A controlled drugs Possession of Class A drugs Driving offences requiring mandatory disqualification Sexual offences not in Class 1 (above) Financial, insolvency and company management offences not requiring proof of dishonesty

Offences	
<b>CLASS 3</b>	Road traffic offences where endorsement obligatory but not requiring mandatory disqualification

## (2) THE OFFENCE: ASSESSMENT OF INDIVIDUAL CIRCUMSTANCES

- B4.3 The panel will then assess the circumstances of the individual case. They will be informed by the sentence imposed, but will take into account all the extenuating or aggravating facts and circumstances of the offence.
- B4.4 In the case of all offences or other actions likely to be of concern, **full disclosure of the facts and circumstances at the earliest opportunity will be considered by the Panel as of great importance.** Applicants/Students should not wait to have information extracted from them by questioning from the Panel.
- B4.5 In the case of offences in **Class 1**, whatever the extenuating circumstances, the offence is always likely to be considered extremely grave. The **starting point** will be that a person who has committed a Class 1 offence will usually be refused admission or expelled.
- B4.6 The **Class 2** criminal offences include a number of offences that, depending on the individual case, can range from the extremely grave to the relatively trivial. So in judging such offences, the particular facts and circumstances of the case and the nature of the conduct will be especially important in determining how the offence should be treated. A useful indication will be the disposal/sentence. A caution /discharge/fine will normally indicate a lower degree of gravity. A custodial sentence, whether immediate or suspended, will indicate a higher degree of gravity. However, the panel will also make its own assessment of the circumstances. The panel will in particular exercise its own discretion based on its assessment of all the circumstances known to it in cases involving mandatory sentences; in cases of causing death by careless driving and manslaughter; in cases of mercy killing; and in cases involving non-Class A drugs (where the amount of the drug will be an important factor).
- B4.7 There is **no assumed starting point for Class 2 offences**, as much will depend on the assessment of the circumstances. The decision which the panel considers appropriate could therefore range (in the case of an Applicant) from refusal of admission to

admission with or without time delay; and (in the case of a Student) from expulsion to permission to proceed to Call, or continuation of studies, with or without time delay.

B4.8 *For example:* A first time offence for drink-driving only will not necessarily lead to non-admission or expulsion. A more serious view will be taken of a conviction involving an element of dangerous driving or accompanied by associated convictions (e.g. leaving the scene, driving while disqualified). A particularly serious view will be taken of cases involving injury to persons; a high alcohol content; or lack of cooperation with the police. The panel will have regard to mitigating circumstances put before it: in particular a compelling emergency situation could be strong mitigation. Cases of driving whilst uninsured will usually be regarded as particularly serious.

B4.9 As a **starting point**, a person who has committed a **Class 3 offence** will usually be admitted, or permitted to proceed to Call (possibly after a specified period) or to continue their membership of their Inn.

#### **The relevance of a custodial sentence**

B4.10 The starting point will be that a person will not be admitted to an Inn while subject to any portion of a custodial sentence, whether immediate or suspended.

B4.11 The rare case of an applicant subject to life licence for an offence committed many years earlier will require special attention.

#### **Cautions**

B4.12 The administering and receipt of a caution requires an admission of guilt. Therefore, the panel will treat a caution, like a conviction, as establishing that the person committed the offence. As noted above, the fact that an offence has been dealt with by a caution rather than by prosecution will be of assistance to the person under consideration as indicating:

- First, timely admission of wrongdoing, and
- Secondly, that the wrongdoing was of such a nature as to merit this method of disposal in the view of the relevant officer or official.

B4.13 However, even a caution, if administered for a more serious offence, will be a matter of great concern.



### **(3) THE APPLICANT/STUDENT: ASSESSMENT OF CHARACTER, CIRCUMSTANCES AND (WHERE RELEVANT) LENGTH OF TIME SINCE OFFENCE**

B4.14 The panel will in arriving at its determination take account of the length of time since the offence was committed and the character of the person considered (but length of time since the offence will usually only be a relevant consideration in cases of applications to join an Inn). A person with a conviction for a particularly serious offence whilst a youth but with positively good character over many years thereafter may well be considered in a better light than a person with a number of recent disposals for less serious offences. Similarly, in the case of a recent less serious offence, a person who can demonstrate consistent good character apart from the one lapse will be considered more favourably than someone who cannot.

B4.15 Offences of dishonesty always fall into Class 1. However, there may be special cases of single instances of un-aggravated minor shoplifting or fare evasion, particularly in youth, that can be treated leniently.

**B4.16 A harsh view is likely to be taken of any case where the panel considers that the applicant/student has failed to make full disclosure of all the facts and circumstances of the offence, has been evasive or reticent as to the circumstances, or has failed to acknowledge the severity of the conduct in question and show appropriate remorse and contrition.**

B4.17 The ICC will always have regard to and proceed in accordance with the Rehabilitation of Offenders Act 1974 and related secondary legislation.

#### **Character references**

B4.18 In demonstrating good character, references from persons of good standing with whom the person has worked or studied will be taken into account. Referees providing written references should be warned that the panel may wish to speak to them personally. More weight will be given to material received from referees who have:

- had a close association with the person, allowing them to make a reliable assessment of their character and activities.
- known the person well over a long period and in the recent past.

B4.19 Conversely, less weight will be given to references from those who have known the Applicant / Student in the more distant past, who have been associated with the

person only for a brief period, and who have not had recent contact with the Applicant / Student.

B4.20 Any reference must include a signed statement that the referee:

- (1) knows the purpose for which it is provided; and
- (2) is aware of the details of the conduct that has led to the ICC referral.

B4.21 **Generally, the following positive and negative factors will be taken into account:**

**Plus factors:**

- (1) Substantial passage of time since offending.
- (2) Full disclosure of all facts at the earliest opportunity.
- (3) Guilty plea and/or genuine remorse.
- (4) Single offence, out of character.
- (5) Good references as to good character over a long period.
- (6) Personal progress since offending including significant voluntary work in the community.

**Minus factors:**

- (1) Recent offending.
- (2) Reticence as to facts and circumstances.
- (3) Contesting a trial and/or lack of remorse.
- (4) Commission of multiple offences, whether on a single or more than one occasion.
- (5) Failure to provide good references from referees with appropriate knowledge of the applicant/ student.

## **B5. NON-CRIMINAL CONDUCT**

**The decision making process:**

B5.1 In the case of reprehensible, non-criminal conduct, the ICC Panel will consider the particular facts of the conduct and then the character of the person considered, including character references, as at stages 2 and 3 relating to CRIMINAL OFFENCES above.

B5.2 The panel will consider all matters relevant to its determination whether the applicant is a fit and proper person to be called to the Bar, within the meaning of rQ9 of the BTR.

B5.3 In making its determination as to fitness to practise, the panel will have regard generally to the contents of the **STATEMENT OF PRINCIPLES AND GUIDELINES** to which these Decision Guidelines stand as Appendix B including, in particular, Appendix A.

**Particular matters referred for ICC Consideration:**

**PROFESSIONAL DISCIPLINARY MATTERS**

**(applies to rQ17.2; rQ104.2.c; and declaration 2(b) (admission and call))**

B5.4 In assessing a person's fitness, careful attention will be given to the precise facts and circumstances of any professional disciplinary finding or proceedings and to any personal mitigation. Whilst the precise circumstances of each case will be important, a finding of misconduct in another profession will often militate against a finding that a person is fit and proper to pursue a career at the Bar.

**BANKRUPTCY AND DEBT ARRANGEMENTS**

**(applies to rQ17.3; rQ104.2d; and declarations 2(d) (admission) or (c) (call))**

B5.5 In the case of Applicants, bankruptcies more than ten years old which have been discharged will not normally be referred to a Hearing Panel. Similarly, arrangements with creditors more than ten years old and that have been completed will normally be screened out.

B5.6 A person will not normally be admitted while an undischarged bankrupt or whilst subject to an IVA or similar arrangement.

B5.7 In looking at cases where the person has been declared bankrupt, or who has entered into an IVA or other debt arrangement, the particular circumstances will be examined. Factors in favour of such applicants will include:

- honest attempts to repay creditors;
- conduct not resulting in substantial financial harm to vulnerable creditors.

B5.8 The ICC will be particularly concerned about those who appear to have used the debt laws to escape the consequences of their own conduct. As always, evidence of dishonesty or unfair dealing with others will strongly indicate that a person is not fit and proper to be a barrister; and be regarded as a Serious Matter warranting expulsion.

## **DIRECTORS DISQUALIFICATION AND OTHER ORDERS AND INJUNCTIONS LIMITING A PERSON'S CONDUCT**

(applies to rQ17.3: rQ104.2d; and declaration 2(d) (admission), and 2(c) (call))

- B5.9 Such orders include, but are not limited to, disqualification from being a director, a sexual offences notification requirement, an anti-social behaviour order, a non-molestation or harassment order, a financial reporting order, a sexual offences prevention order, disqualification from working with children, a football banning order, and a serious crime prevention order.
- B5.10 Where an order limiting a person's conduct has been imposed, the ICC Panel will first consider what its view is as to the conduct (whether criminal or non-criminal) that led to the imposition of the order, and will make the appropriate decision as to the applicant's fitness; or whether the matter is serious and what action to take.

### **In any event:**

- B5.11 A person will not normally be admitted while subject to a court order limiting his/her conduct.
- B5.12 Unless a more severe decision has been made as a result of the substantive offence/conduct, admission will usually be delayed until at least three years from the end of the order.
- B5.13 A person made subject to such an order whilst a Student can generally expect to be expelled, although, in exceptional circumstances, delayed call may be considered.

## **OTHER NON-CRIMINAL CONDUCT, INCLUDING ACADEMIC MISCONDUCT**

- B5.14 A person found to have committed any act of dishonesty, not dealt with as a criminal offence, should be prepared to be expelled or refused admission.
- B5.15 Only where the conduct is minor, fully explained, and there is genuine remorse for the dishonesty, will an alternative be considered.
- B5.16 Such dishonest conduct will include false declarations and concealment of convictions or other relevant matters in an application to join an Inn. Any past failure in making a declaration to an Inn will necessitate a full explanation from the Student as to why the failure occurred, in addition to the facts of whatever matter it was that should have been declared.

## ACADEMIC MISCONDUCT

B5.17 Academic Misconduct includes a wide range of different offences including plagiarism (attributing another's work to oneself); collusion (unauthorised collaboration); personation (commissioning another person to undertake one's academic work); examination room misconduct (including discussion or use of unauthorised materials in an examination); falsification of results and unethical research. Many acts of academic misconduct can involve an element of dishonesty (such as deliberate cheating); others may not (such as inadequate referencing of source material).

B5.18 It follows that the **starting point** will be that a person who has committed an academic offence where there is significant, deliberate and dishonest conduct will be refused admission to an Inn, or expelled from the Inn and not permitted to proceed to Call.

B5.19 However, the ICC recognises that a range of conduct may be encompassed in the definitions of types of academic misconduct (including plagiarism), which can vary from one academic institution or course provider to another.

B5.20 Because of

- the variation in terminology referred to, and
- the variable circumstances of academic offences

it is important that full disclosure be made by the Applicant / Student of all facts relating to the conduct under review by the Hearing Panel. This will include all paperwork relating to that conduct, including all records of hearings before and determinations of the relevant academic institution, insofar as they are available to the Applicant / Student. (The panel will have regard in assessing the good faith of the Applicant / Student to the extent of their cooperation in the obtaining of relevant records and material from the relevant institution prior to the Panel hearing.) In cases of examination room misconduct, an invigilator's report should be requested, where it is available. Further, since institutional rules may vary, a copy of the relevant assessment regulations may also be useful.

B5.21 For the same reason, it is important and in the interests of the Student / Applicant that their fullest possible statement of facts and contentions should be made available in advance of the panel hearing.

- B5.22 A Hearing Panel is not able to re-open the determination of an academic institution, or to hear submissions as to whether any academic offence found to have been committed has been committed. It proceeds upon the basis that all possible appeal avenues have been exhausted, and it determines the level of wrongdoing, so far as is relevant to the imposition of sanctions, upon the material available to it.
- B5.23 Academic misconduct at Bar Professional Training Course (BPTC) provider institutions will generally be regarded as more serious than similar conduct at prior academic stages. Cheating or other misconduct on the BPTC is automatically a ‘Serious Matter’ (BSB Handbook definition and BTR rQ104.2.e). Other cheating / academic offences are not automatically ‘serious’, but may well be found to be such under rQ104.2.f (conduct discreditable to a member of an Inn); and/or be found to call into question an Applicant’s (or Student’s) fitness to become a practising barrister- especially where an element of dishonesty is involved.
- B5.24 BPTC providers are required by the BSB to have their own policies and procedures for dealing with academic misconduct and to make them ‘clearly visible’ to students: BSB’s BPTC Handbook. The ICC will take account of the relevant and applicable policies and procedures when considering the circumstances of the academic misconduct in question.
- B5.25 Factors militating in favour of persons under consideration will include:
- (1) a first offence (unless this was an instance of significant, deliberate dishonesty);
  - (2) defective citation (use of small amounts of text not properly referenced or attributed) or minor instances of mutual assistance by students;
  - (3) prompt and candid admission of guilt;
  - (4) evidence that the institution failed to make the academic regulations known to the student in advance of the offence;
  - (5) inadvertent misconduct on the part of the individual concerned. (For example, when conduct has been found to fall within a definition of academic misconduct under the rules of the relevant institution, where there is no requirement of dishonesty or other specific intention on the part of the individual in relation to that conduct).
  - (6) successful exceptional circumstances and/or mitigating evidence claims lodged at the institution in relation to the conduct in question;
  - (7) positive views expressed by the institution as to the honesty or credit of the individual in relation to the finding of academic misconduct and/or the

imposition by the institution of no or only a minimal penalty in relation to the offence.

B5.26 Factors militating against such persons include:

- (1) reproduction in what was put forward as the individual's own work of large amounts of text without attribution or reference. In considering cases of academic misconduct, many institutions will include a 'Turnitin' (or similar automated) report which will include a 'similarity index'. Such a figure indicates the percentage of work that has been recognised as being derived from other sources, irrespective of whether it had been properly cited. Care should be taken to distinguish whether, or to what extent, source material had been included without any (or any proper) citation, as opposed to source material which had been properly cited;
- (2) substantial and deliberate passing off of others' work;
- (3) knowing collaboration or collusion;
- (4) a second or subsequent offence;
- (5) denial of guilt or blaming another (in an attempt to evade responsibility for the individual's own actions);
- (6) cases of personation, which are tantamount to fraud and which, inevitably, involve serious dishonesty;
- (7) knowing refusal, reluctance or failure to co-operate with the institution's investigation into an allegation of academic misconduct or failure to comply with any requirement imposed by the institution in relation to, or as a result of, a finding of academic misconduct.

B5.27 In cases of academic misconduct involving collusion between two or more Students, consideration will be given to whether each should be required to appear separately before the same Panel. It is generally desirable, if practicable, for referrals in relation to all those involved in the same academic misconduct to be considered by the same Panel, so that the Panel has the fullest picture of events when dealing with each individual. Where this is not practicable, the second or any subsequent Panel will take into account any prior Panel finding in relation to the same incident.

**B5.28 All other non-criminal reprehensible conduct will be considered on its particular facts, informed by the general principles.**