



The Bar Tribunals & Adjudication Service

The Council of the Inns of Court

Disputed Facts Protocol

Where an Inn asks the ICC to find disputed facts in relation to a “serious matter”.

Introduction

1. This Protocol applies where an Inn refers a “serious matter” for determination by the ICC and that referral requires the determination of disputed facts. See the Bar Training Rules (**BTRs**), set out in the BSB Handbook Part 4, Section B8, Rules rQ104-rQ105 & rQ108.

The Relevant BTRs

2. Rule **Q104** applies where “notification is given” or “a complaint or a report is made” or “it appears to an Inn” (from information in a Call Declaration or otherwise) that a student member of the Inn (**Student**) “has or may have” done any of the matters specified in that Rule, in **rQ104.1** and/or **rQ104.2. a-f**. Where rQ104 applies, the Inn **may** make “any enquiries or require the student to provide such information as it may think fit” and **must** consider whether the matter is a “**serious matter**” (rQ105). What is a “serious matter” is defined in (208) of the definitions in Part 6 of the BSB Handbook. If the Inn decides that the matter is a serious matter, it must refer it to the ICC for determination (rQ108).
3. This Protocol applies *only* where, on the referral, there are disputed facts which the Inn asks the ICC to determine. It does *not* apply:
 - (a) where the referral is based solely upon criminal conviction(s), upon finding(s) by a body or person specified, or upon a specified court order or arrangement: see Q104.2.b-e (unless there is a dispute of fact as to whether there was such a conviction, finding, order or arrangement); or

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- (b) where the student *admits* the matter(s) alleged under rQ104.1, rQ104.2a and/or rQ104.2.f.

Before referring a matter to the ICC

4. Before making its referral to the ICC, the Inn should consider carefully what is alleged against the Student and what fact(s) or matter(s) need to be determined by the ICC.
5. The Inn must prepare and include with the referral a “**case summary**”, which:
 - (a) identifies, by reference to the BTRs, the relevant rule (or rules) relied upon;
 - (b) states the date on which the Student became a member of the Inn;
 - (c) specifies, by reference to the identified rule(s), the matter(s) alleged against the Student;
 - (d) states what evidence is relied upon to establish the matter(s) alleged; and
 - (e) outlines (so far as known by the Inn) what facts are disputed by the Student 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.

6. The Inn must prepare and include with the referral everything that it relies upon in support of the allegation(s) against the Student. This should include:
 - (a) copies of relevant documents, assembled in a coherent order;
 - (b) a signed written statement from any witness to be relied upon; and
 - (c) any other information or material relied upon.
7. 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.
8. 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), it would be helpful if the Inn would inform the ICC as to any proposed direction(s) at that stage.

The ICC Screening Panel

9. The referral will be put before the ICC Screening Panel, in the usual way. If the Screening Panel considers that any further clarification or information is required at that stage, it will notify the Inn. Otherwise, it will refer the matter to an ICC Panel Hearing.

Notification to the Student

10. A letter of notification will be sent to the Student in accordance with Rule 23 of the ICC Rules.
 - (a) The case summary and evidence provided by the Inn will be sent to the Student with the letter (or so soon as practicable thereafter).
 - (b) The letter will include notice that the Inn will be represented at the Panel Hearing. The ICC will include in the letter the name and professional address of the person who is to represent the Inn at that Hearing, where that information has been provided to the ICC by the Inn.
 - (c) The letter will ask the Student 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 copy of any documents on which they intend to rely, and a written statement from any witness they intend to call (or an or outline of the evidence they expect such witness to give). The letter will inform the Student that the ICC will provide the Inn with a copy of the response and any other material provided by the Student.
 - (d) The letter will draw the Student's attention to ICC Rule 26 (ICC Panel Hearing normally in public) and ask that, if the Student wishes to request that the hearing or any part of it should be in private, the request and the reasons for it be submitted as soon as practicable.

- (e) The letter will ask whether the Student 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 Student let the ICC know as soon as practicable.
- (f) The letter will ask the Student whether they agree with the time estimate provided by the Inn and, if not, to provide their own estimate.

The Panel Hearing

- 11. The conduct of the Hearing is governed by ICC Rules 25-41.
- 12. Directions that are reasonably necessary for the fair and orderly disposal of the referral may be given at or before the Hearing: ICC Rule 30. Directions may be made prior to the hearing, by such means as the Chair of the Panel considers appropriate. 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.
- 13. All practicable steps should be taken to ensure that the Student has appropriate representation before and at the Hearing. Where the Inn is represented by counsel, the Student should have the opportunity 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 Student wishes to represent themselves at the Hearing, they may do so.
- 14. The Panel Chair shall consider whether the hearing or any part of it should take place in private and shall consider any request (and any response to any such request) from the Inn or from the Student: ICC Rule 26.
- 15. The Chair of the Hearing Panel may, at any time, give such directions as appear necessary for the fair determination of the matter. Subject always to the discretion of the Chair, the order of proceedings will generally be:
 - (a) The Chair of the Panel 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 Panel 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 Student (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 Student/their representative, and the Student and any witness called by the Student 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 Student/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 Student, 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 Student/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 considered necessary at that stage).
16. The Inn has the burden of proof on any disputed matter. The standard of proof is that the Inn should satisfy the Panel so that they are sure (that is, the standard of proof is equivalent to that ordinarily placed on the prosecution in a criminal trial).

Panel Decision

- 17. The Panel will produce a written Report, as set out in ICC Rule 44.
- 18. If the ICC Panel finds the serious matter proved, it has the powers set out in BTRs Rule rQ109.

Approved by the Inns Conduct Committee 1 June 2016

Amended August 2017

This Protocol should be read together with:

- The relevant section of the BTRs
- The ICC Rules
- The ICC Statement of Principles and Guidance

[add links when amended / branded]