

BAR  
STANDARDS  
BOARD

REGULATING BARRISTERS

Schedule 1 to the Memorandum of Understanding:  
Guidelines for determining if a person is fit and proper  
to become a practising barrister

March 2019

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## Introduction

1. This statement of principles and guidelines is written pursuant to rule Q6.2 in the Bar Standards Board (BSB) Handbook, which states:

*The BSB shall set out in writing:*

- *The requirements to be met by an Inn in admitting student members and Calling individuals to the Bar;*
  - *The manner in which an Inn shall assess whether such individuals are fit and proper.*
2. This document should be read alongside the BSB Handbook and the Memorandum of Understanding (the MOU) to which this document is attached. This document refers to either an Inn or the Inns Conduct Committee (ICC). In some circumstances, a requirement may be applicable to either or both Parties. In such circumstances, we refer to Inn/ICC.
  3. This document has been developed by the BSB, in consultation with the Council of the Inns of Court (COIC), the ICC and each of the Inns of Court. Its purpose is to set out the BSB's guidelines for the assistance of the Inns of Court and the ICC in determining whether persons are fit and proper to become a practising barrister. Additionally, the Inns and the ICC shall ensure that their own rules are drafted with reference to the guidelines, including any activities for admitting individuals to an Inn, overseeing conduct matters whilst a student member and Calling individuals to the Bar. These guidelines are intended to promote the use of good practice in processing and determining whether a person is fit and proper. Setting out these guidelines is intended to promote proportionality, consistency and transparency in decision-making. These guidelines are also intended to allow applicants, students and other interested parties to be aware of and, as required, to understand what factors will be considered by the Inns/ICC, in order to assist individuals with any declarations they are required to make and preparations for any hearings.
  4. This document contains several annexes which are integral to the guidelines. Annex 1 considers the type of conduct which is relevant in determining whether an individual<sup>1</sup> is a fit and proper person to become a practising barrister. Annex 2 sets out how the ICC will approach previous criminal convictions and cautions, and any other factors which may call into question whether an individual is fit and proper.
  5. In line with the MOU, the ICC will have special powers to act when determining whether a person is a fit and proper person. These are set out below.
  6. In line with paragraph 7 of the MOU, the Parties agree to utilise reviews to discuss any proposals for making amendments to these guidelines. Such proposals may be made by any of the Parties.
  7. The four Inns of Court and the ICC, where applicable, are required to determine:
    - At admission to an Inn and at Call to the Bar, whether a person is a fit and proper person to practise as a barrister;

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<sup>1</sup> This includes applicants to an Inn, student members and those seeking Call to the Bar.

- In the case of a student member of an Inn, what sanction it is appropriate to impose if their conduct calls into question whether they are a fit and proper person; and
  - Reviews or appeals of such decisions taken.
8. This document is to be made publicly available on the websites operated by the BSB, Bar Tribunal and Adjudication Service (BTAS)<sup>2</sup> and each of the Inns. It is also freely available in hard copy from the ICC Administrator, upon request.

### **General Principles**

9. To be a fit and proper person to practise at the Bar, that person is expected to be capable of upholding the Core Duties which underpin the behaviour expected of barristers. The Core Duties are:

CD1 - You must observe your duty to the court in the administration of justice.

CD2 - You must act in the best interests of each client.

CD3 - You must act with honesty, and with integrity.

CD4 - You must maintain your independence.

CD5 - You must not behave in a way which is likely to diminish the trust and confidence which the public places in you or in the profession.

CD6 - You must keep the affairs of each client confidential.

CD7 - You must provide a competent standard of work and service to each client.

CD8 - You must not discriminate unlawfully against any person.

CD9 - You must be open and co-operative with your regulators.

CD10 - You must take reasonable steps to manage your practice, or carry out your role within your practice, competently and in such a way as to achieve compliance with your legal and regulatory obligations.

10. By assessing whether an individual is a fit and proper person in accordance with the Core Duties, the following outcomes will be achieved:

Outcome 1 - if you are a barrister, you are a fit and proper person; and

Outcome 2 - you act so that clients, and the wider public, have confidence that you are a fit and proper person and uphold the reputation of the profession.

11. 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.

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<sup>2</sup> See: <http://www.tbta.org.uk/policies-guidance-and-publications/rules-2/rules-for-the-inns-conduct-committee/>

12. In determining cases before it, the ICC will not re-open the decisions of other relevant bodies. The ICC shall treat a criminal conviction or caution of an individual, which has not been set aside on appeal or otherwise, as sufficient evidence of the commission of the offence in question. For the avoidance of doubt, a finding of misconduct by a regulatory, professional, or educational body exercising their regulatory, disciplinary or educational jurisdiction will be treated as sufficient evidence of the commission of the offence in question. However, the ICC may give such weight to that offence as it considers reasonable in all the circumstances.
13. The Inns/ICC, and in particular its members who constitute hearing panels to hear matters referred to them, should refer to Annexes 1 and 2 in considering each matter and ensure each matter is considered on a case by case basis.
14. In addition, in determining what, if any, sanction should be applied in the event that conduct which calls into question an individual's fitness to become a barrister is found proved, the guidelines in Annex 2 should be considered.
15. 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 an academic or disciplinary offence, may not apply for admission to an Inn unless a period of at least five years (or such other period as the BSB may determine in the particular case) has elapsed from the date of such rejection or expulsion.

**The ICC's authority in the event a matter which calls into question an individual's fitness to practise as a barrister is proved**

*On application for admission to an Inn*

16. If, having given due regard to these guidelines, the ICC finds an individual's conduct does call into question whether they are a fit and proper to practise as a barrister, it shall direct the Inn not to admit the individual. The ICC shall inform the individual as to their right to appeal and the process for doing so.

*At any point as a student member*

17. If, having given due regard to these guidelines, the ICC finds a student's conduct does call into question whether they are a fit and proper person, it may:
  - Advise the student as to future conduct; or
  - Reprimand the student; or
  - Order that the student's Call to the Bar be postponed for a specified period; or
  - Direct that the student be expelled from the Inn (in which case the Inn must expel the student).

## **Annex 1 – Fitness to become a practising barrister**

1. To be eligible for admission to an Inn and Call to the Bar, an individual must be a fit and proper person to become a practising barrister. The test for determining if a person is a “fit and proper person” is that they are capable of upholding the Core Duties which underpin the behaviour expected of barristers.
2. There are a number of factors which could result in an individual not being considered fit and proper. These are separated into the following categories:
  - Category 1 – Criminal offences
  - Category 2 - Other behaviour
  - Category 3 – Academic history
  - Category 4 – Regulatory history

### **Category 1 – Criminal offences**

3. The BSB requires applicants who are seeking admission, readmission or Call to the Bar to disclose criminal records in accordance with the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 ('the Exceptions Order') as amended by the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (Amendment) (England and Wales) Order 2013.
4. Criminal records disclosures are required at two separate points: at the point of admission to an Inn, via self-disclosure; and at Call to the Bar<sup>3</sup>, via a Standard DBS check. The DBS check will form part of the Fit and Proper Person checks required prior to Call to the Bar.

### **Category 2 – Other behaviour**

5. Individuals should disclose any other matters (other than protected convictions and cautions), which might reasonably be thought to call into question their fitness to become a practising barrister.
6. The Inns/ICC will take into consideration if the individuals have:
  - 6.1 been responsible for behaviour:
    - which is dishonest;
    - which is threatening, violent or harassing;
    - where there is evidence of discrimination towards others;
  - 6.2 misused their position to obtain advantage;
  - 6.3 misused their position of trust in relation to a vulnerable person; and/or
  - 6.4 been responsible for other forms of behaviour which demonstrate that they cannot be relied upon to discharge their regulatory duties as a barrister.

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<sup>3</sup> The control used by the BSB, and administered by the Inns, to determine whether someone is a fit and proper person to become a member of the profession.

### *Relevant Orders*

7. Individuals must declare relevant orders made against them. A “Relevant Order” is an order which calls into question whether an individual is a fit and proper person to become a practising barrister. Some orders will be more serious than others.
8. Civil Orders which may be relevant can be issued by either the Criminal or Civil Courts and include, but are not limited to:
  - Serious Crime Prevention Orders;
  - Non-molestation Orders;
  - Sexual Offences Prevention Orders or a sexual offences notification requirement;
  - Community Prevention Orders;
  - Community Protection Orders; and
  - Disqualification from working with children.
9. Examples of other civil orders will include, but not limited to:
  - Civil Restraint Orders;
  - Financial Reporting Orders; and
  - Football Banning Orders.

### *Previous financial matters*

10. Individuals must declare if they have been: declared bankrupt, entered into an Individual Voluntary Agreement (IVA), if they have a monetary judgment of Court or Tribunal or if they have been disqualified from being a company director.

### *Social media use*

11. Records of an individual’s social media activities and publicly made comments may also be considered when assessing whether they are a fit and proper person. Comments designed to demean or insult are likely to diminish public trust and confidence in the profession and could be seen to be inconsistent with the Core Duties.

### *Health matters*

12. Any disclosures regarding treatment or a diagnosis for a condition (including an addiction to drugs or alcohol) which means the individual may pose a risk to any member of the public or which may impair their judgment as a practising barrister, will not automatically result in an application being refused. The Inns/ICC will consider the disclosures in light of the two outcomes set out in paragraph 10 of the introduction and any evidence provided.

### **Category 3 – Academic history**

13. The Inns/ICC should take into consideration any previous academic or disciplinary findings against the individual by a higher education institution, particularly deliberate action which amounts to plagiarism or cheating to gain an advantage for themselves or others.

### **Category 4 – Regulatory history**

14. The Inns/ICC will consider any previous or pending supervisory action, complaint, investigation, disciplinary proceedings or disciplinary findings against the individual by a professional or regulatory body, including in any jurisdictions outside England and Wales. This will also include whether they have:
  - failed to disclose information to a regulatory body when required to do so, or have provided false or misleading information;
  - been refused registration by a regulatory body; and/or
  - failed to comply with the reasonable requests of a regulatory body.



## **Annex 2 – Guidelines on decision making**

### **Evidence**

1. Where a disclosure has been made either via self-disclosure or via a DBS report, the ICC will consider all of the evidence and may consider the following evidence in particular, where relevant:
  - 1.1. references from at least two independent professionals who know the individual well, which must include a signed statement that the referee knows the purpose for which the reference is provided. Beyond the requirement for a signed statement as to the purpose of the reference, there is no requirement as to what the reference should contain. However, applicants and students should be aware that a reference which, on its face, records (a) the referee's awareness of any matters disclosed which might suggest that the applicant or student is not a fit and proper person and (b) the referee's evaluation of those matters when reaching the conclusion stated in the reference, may be accorded greater weight by the ICC;

#### **Criminal offences**

- 1.2. where appropriate and/or available, an independent report relating to the event(s), such as sentencing remarks following a criminal conviction;
- 1.3. evidence of any rehabilitation (e.g. probation reports, references from employers and/or tutors);
- 1.4. the individual's attitude towards the event(s);

#### **Other behaviour (including financial)**

- 1.5. credit check information (in relevant circumstances);
- 1.6. actions the individual has taken to clear any debts, satisfy any judgments and manage their finances;

#### **Academic history**

- 1.7. the extent to which the individual was aware of the rules and procedures governing the reference of material, or the use of group work or collaborative material; and
  - 1.8. the extent to which the individual could reasonably have been expected to realise that the offence did not constitute legitimate academic practice.
2. The onus is on the individual to provide any evidence they consider necessary and/or appropriate. The Inns reserve the right to carry out their own investigation and/or refuse the application/Call if adequate evidence is not forthcoming.

### **Assessment of relevant information**

3. The Inns/ICC will assess any evidence (including any evidence provided by the individual) to assist their decision of whether the individual is a fit and proper person. The following factors will also be considered (where relevant):

- the individual's age at the time of the incident(s);
- the length of time which has passed;
- whether it was an isolated incident;
- whether there has been more than one incident;
- whether the incident(s) were linked to professional practice;
- whether use of drugs or alcohol was a factor; and
- whether the matter was disclosed to the individual's employer, educational establishment and/or regulator.

### **Criminal offences**

4. If an individual discloses criminal conduct, the ICC must consider the mandatory three-stage assessment, as set out below:
  - Stage 1 - The classification of the offence (type of offence and the sentence imposed) or order (type and seriousness of the order and restrictions imposed); and
  - Stage 2 - The length of time which has passed since the sentence or restriction ended; and
  - Stage 3 - Consideration of any other factors, where applicable.
5. This staged assessment will assist the ICC in considering the disclosures of each individual on a case by case basis, along with a range of factors. These factors may include those set out in paragraph 3 of this Annex, in addition to the:
  - Nature;
  - Seriousness;
  - Pattern;
  - Circumstances at the time; and
  - Attitude towards the events.

### Stage 1 - Classification of the offence or ancillary order

6. The table below classifies offences which may call into question whether the individual is a fit and proper person to become a barrister.
7. 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.

<b>Class 1</b>	<ul style="list-style-type: none"> <li>• Murder;</li> <li>• Inclusion on the Violent and Sex Offender Register;</li> <li>• Wounding/GBH with intent;</li> <li>• Rape/assault by penetration;</li> <li>• Association with terrorism;</li> <li>• Custodial sentence by reason of dishonesty, fraud, perjury, perverting or obstructing the course of justice, assisting an offender, intimidation, revenge and/or bribery;</li> <li>• Supply/possession with intent to supply/production/importation of any Class A drug; or</li> <li>• Unlawful use of a firearm/imitation firearm.</li> </ul>
<b>Class 2</b>	<ul style="list-style-type: none"> <li>• Conviction by a court of a criminal offence not falling within Class 1 but which the ICC considers might have an impact on whether the individual is capable of discharging the Core Duties;</li> <li>• Conviction by a court of more than one criminal offence (these could be less serious offences when considered in isolation but taken more seriously because of frequency and/or repetition);</li> <li>• Violence not involving deliberate intent to cause serious physical harm;</li> <li>• Serious Public Order offences;</li> <li>• Possession of Offensive weapon/Bladed article;</li> <li>• Firearms offences not in Class 1 (above);</li> <li>• Possession of Class A drugs;</li> <li>• Possession, production or supply of non-Class A controlled drugs;</li> <li>• Obstructing the course of justice;</li> <li>• Behaviour showing signs of discrimination towards others;</li> <li>• A pattern of increasingly serious behaviour (e.g. starting from a caution but moving through to convictions);</li> <li>• Sexual offences not in Class 1 (above);</li> <li>• Financial, insolvency and company management offences requiring proof of dishonesty; and</li> <li>• Acceptance of a caution for an offence involving dishonesty.</li> </ul>
<b>Class 3</b>	<ul style="list-style-type: none"> <li>• Road traffic offences where endorsement obligatory but not requiring mandatory disqualification;</li> </ul>

	<ul style="list-style-type: none"> <li>• Financial, insolvency and company management offences not requiring proof of dishonesty; and</li> <li>• The individual has more than once: <ul style="list-style-type: none"> <li>i. Accepted a caution from the police for an offence not involving dishonesty</li> <li>ii. Received a Fixed Penalty Notice from the police, excluding motoring</li> <li>iii. Received a final warning or reprimand from the police (under 18s only) and/or</li> <li>iv. Received a referral order from the courts (under 18s only).</li> </ul> </li> </ul>
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*Class 1*

8. In the case of offences in Class 1, the offences are extremely serious and, subject to stages 2 and 3, and any evidence provided, will normally result in a refusal of admission or expulsion.

*Class 2*

9. In the case of offences in Class 2, they can range from the extremely serious to the less serious. The ICC will use the assessment grid in stage 2, the considerations under stage 3 and any other evidence submitted to exercise their independent discretion to determine the appropriate outcome.
10. The decision which the ICC considers appropriate could therefore range (in the case of an individual) from refusal of admission, to admission with or without time delay and refusing the individual being Called. 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 a high blood alcohol limit, an element of personal injury being caused, dangerous driving or where it is accompanied by associated convictions (e.g. leaving the scene, driving while disqualified).
11. The ICC will have regard to mitigating circumstances put before it. In particular, a compelling emergency situation could be strong mitigation.

*Class 3*

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

Guidance note

13. Police can only issue a caution if there is evidence that the individual is guilty of an offence and they admit to committing the offence. Therefore, by accepting a caution, the individual has made an admission of guilt.
14. No admission of guilt is required to receive a fixed penalty notice, and by paying the penalty, a recipient discharges liability for conviction for the offence.

15. If an offence has been disclosed which is not listed within the classification grids above, the Inns/ICC will align it with other similar offences which have been listed within Class 1, 2 or 3.

Stage 2 - The length of time which has passed

16. The below assessment grid sets out the starting point for the ICC in considering the length of time which has passed since the sentence restrictions ended and the type of caution, warning, fine, discharge or sentence the individual received.<sup>4</sup> This grid should be used for any Class of offence/order, whether 1, 2 or 3.

		<b>Actual sentence/disposal (non protected)</b>			
		Caution, warning, community resolution, absolute/conditional discharge, admonishment	Fine, community disposal	Suspended sentence	Imprisonment
<b>Time since sentence or restriction ended</b>	<b>0 to &lt; 12 months</b>	CAF	CAF	Refuse	Refuse
	> 12 months to < 2 years	No sanction*	CAF	Refuse	Refuse
	>2 years to < 4 years	No sanction*	No sanction*	CAF	Refuse
	>4 years to < 7 years	No sanction*	No sanction*	CAF	CAF
	>7 years	No sanction*	No sanction*	No sanction*	CAF

CAF = Consider Additional Factors – See stage 3

< = less than or equal to

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<sup>4</sup> The use of a “starting point” is intended to guide the ICC in undertaking its assessment of an applicant’s particular circumstances.

>= greater than

\* If the individual has ever received a conviction resulting in imprisonment of longer than 48 months, regardless of the time which has passed since the end of the sentence, they will always fall within the CAF category.

#### *No sanction*

17. If a matter falls within a 'no sanction' cell above, the expectation is that the ICC will not normally make a finding or impose a sanction against the individual. However, whilst the ICC will not normally look for information about a named individual, they reserve the right to consider information which is provided to them about the offence, even if the individual would otherwise fall within the 'no sanction' cell.

#### *Refuse*

18. If a matter falls within a 'refuse' cell above, the expectation is that the ICC will normally refuse an individual admission or Call or expel a student from the Inn. As above, the ICC may consider information provided to them which is relevant to the circumstances, even if the individual would otherwise be refused or expelled.

#### *Imprisonment*

19. Where an individual has received a prison sentence, the time since sentencing restrictions ended will be the number of months or years which have passed from the release date or licence period (where applicable). It is not from the date when the individual was sentenced or when the offence, or offences, were committed.

#### *Suspended sentences*

20. In the case of suspended sentences, the individual will be deemed to be free of sentence restrictions when the period of suspension expires. If the custodial sentence is activated, then it will be considered on the same grounds as any immediate custodial sentence.

#### *Community disposals*

21. In the case of community orders, community disposals and other similar sentences undertaken in the community, the individual is considered free of sentence restrictions at the end of the period of the order. If no date is given on the criminal records check, the individual will be considered free of sentence restrictions 12 months after the date of sentence. If the individual can provide evidence from an independent, verifiable source that the community disposal was discharged by the responsible body at an earlier date, the ICC will treat that earlier date as the date the individual was free from sentence restrictions.

#### *Fines and other disposals*

22. For fines, one day detention, cautions, warnings, community resolutions, absolute/conditional discharges, and admonishments, the individual will be considered free of sentence restrictions from the day after the sentence or disposal was imposed.

#### *Ancillary orders imposed by the criminal court*

23. In addition to sentence, the criminal courts have the power to impose various other orders which expire after the sentence that has been passed. These can include,

but are not limited to, a Sexual Offence Prevention Order, Football Banning Order and Criminal Behaviour Order. The ICC will consider the type of order and whether it is more appropriate in all the circumstances to calculate the end date for sentence restrictions as running from expiry of the order rather than the sentence.

#### *Motoring offences*

24. Motoring offences that result in a criminal conviction must be disclosed, excluding a fixed penalty offence under the Road Traffic Offenders Act 1988, an offence committed in the United Kingdom or abroad which is dealt with by a procedure substantially similar to that for such a fixed-penalty offence, or an offence whose main ingredient is unlawful parking of a motor vehicle.
25. Motoring offences that do not result in a criminal conviction do not need to be disclosed. The individual should disclose any disqualifications and offences relating to a breach of a Court order (e.g. driving whilst disqualified).

#### Stage 3 - Consideration of additional factors for offences

26. The ICC will assess the circumstances of each individual matter. They will be informed by a number of factors, including, but not limited to, the sentence imposed, the age of the individual at the time of the offence and any mitigating or aggravating facts and circumstances both of and since the offence (including the individual's attitude towards the offence). Examples have been included below:

##### *Mitigating factors:*

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

##### *Aggravating factors:*

- Recent offending;
- Reticence as to facts and circumstances;
- Contesting a trial and/or lack of remorse;
- Commission of multiple offences, whether on a single or more than one occasion.

#### **Other behaviour**

27. 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 or Call. Such dishonest conduct will include concealment of convictions, cautions 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 individual as to why the failure occurred, in addition to the facts of whatever matter it was that should have been declared. A person found to have misused their position for advantage must similarly expect to be expelled or refused admission or Call.

28. Only where the conduct calls into question whether someone is a fit and proper person but the conduct is fully explained and there is genuine remorse for the dishonesty, will an alternative be considered. This may include, for example, whether the individual was offered support from their Inn when completing an admission declaration, given the challenges which may arise in accurately self-disclosing. Such challenges might include the individual being advised to obtain a copy of their police record under a subject access request, in order to discern which cautions and convictions are protected and therefore should not be disclosed.
29. All other non-criminal conduct will be considered on its particular facts, informed by the general principles.

### **Financial evidence**

30. In the case of individuals, bankruptcies and other arrangements with creditors more than ten years old which have been discharged will not normally call into question a person's fitness to become a barrister.
31. In looking at cases where a person has been declared bankrupt (discharged or otherwise) or who has entered into an IVA or other debt arrangement, the particular circumstances will be examined. Factors in favour of such individuals will include:
  - Conduct not resulting in substantial financial harm to vulnerable creditors;
  - Circumstances beyond their control which could not have reasonably foreseen; and/or
  - Honest attempts to repay creditors.
32. In contrast, the ICC shall be particularly concerned about those who appear to have used the insolvency or an IVA or other debt arrangement in circumstances where none of the factors identified in paragraph 31 are present in order to escape the consequences of their own conduct. Evidence of dishonesty or unfair dealing with others will strongly indicate that a person is not fit and proper to be a barrister.

#### *Directors' disqualification and other orders/injunctions limiting a person's conduct*

33. Where an order limiting a person's conduct has been imposed, the ICC 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 person's fitness, or whether the matter is serious enough to call into question an person's fitness to become a practising barrister and what action to take.
34. As a starting point, the ICC shall have consideration that:
  - A person will not normally be admitted while subject to a court order limiting their conduct;



- In such circumstances, admission will normally be delayed until at least three years from the end of the order; and
- A person made subject to such an order whilst a student can normally expect to be expelled. However, the ICC may also consider deferring Call.

### **Academic history**

35. Academic misconduct encompasses various offences including plagiarism, collusion, impersonation, exam room misconduct, falsification of results and unethical research.
36. Unless there are exceptional circumstances, 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.
37. However, the ICC recognises that a range of conduct may be encompassed in a finding of misconduct which can vary from one academic institution or course provider to another.
38. Because of the variation in terminology between institutions and the potential range of circumstances of academic offences, it is important that full disclosure be made by the person of all facts relating to the conduct under review by the ICC hearing panel. This will include all paperwork relating to that conduct, including all records of hearings and determinations of the relevant academic institution, insofar as they are available to the person.
39. In cases of exam room misconduct, an invigilator's report should be requested, where it is available. Since rules vary between institutions, a copy of the applicable assessment regulations should also be provided.
40. For the same reason, it is important and in the interests of the individual, that their fullest possible statement of facts and contentions should be made available in advance of the ICC hearing.
41. BSB Authorised Education and Training Organisations (AETOs) must have policies and procedures in place for academic and disciplinary misconduct and must, following conclusion of any investigations, report misconduct to a student's Inn.
42. Factors in favour of persons under consideration will include:
  - A first offence (unless this was an instance of significant, deliberate dishonesty);
  - Defective citation (use of small amounts of text not properly referenced or attributed) or minor instances of mutual assistance by students;
  - Prompt and candid admission of guilt;
  - Evidence that the institution failed to make the academic regulations known to the student in advance of the offence;
  - Inadvertent misconduct: for example, under some institutional regulations a finding of collusion might be made irrespective of whether a student granted access to their work. Similarly, a finding of exam room misconduct

might be made irrespective of whether unauthorised materials were actually used;

- Circumstances/ mitigating evidence claims lodged at the institution indicating stressors in the life of the student/applicant.

43. Factors against persons under consideration include:

- Reproduction of large amounts of text without attribution or reference. Many institutions will include a 'Turnitin' report which will include a similarity index. This figure indicates the percentage of work that has been recognised in other sources irrespective of whether it has been properly cited. Care should be taken to distinguish source material that has been properly cited from that which has not.
- Substantial and deliberate passing off of others' work;
- Knowing collaboration or collusion;
- A second or subsequent offence;
- Denial of guilt or blaming another;
- Cases of impersonation are tantamount to fraud and will be treated as automatically serious;
- Knowing obstinacy or failure to cooperate with the institution's investigation.

44. In cases of collusion between two or more students, consideration will be given to whether each should be required to appear separately before the ICC.

### **Regulatory history**

45. In assessing an individual's fitness, careful attention will be given if there is any professional disciplinary finding or proceedings. Whilst the precise circumstances of each case will be important, a finding of serious misconduct in another profession will often prevent a finding that a person is fit and proper to become a practising barrister. However, this may be mitigated in circumstances where the individual received a rebuke, reprimand or warning about their conduct by a regulatory body.

46. Where a matter is pending (by another body), a decision should not be made by the Inns/ICC until they receive confirmation that the matter(s) has either been concluded with no further action or the outcome of the matter is known.