



The Bar Tribunals & Adjudication Service

The Council of the Inns of Court

BTAS DISCIPLINARY TRIBUNAL POOL

Members and Clerks Application Pack

2019

The Bar Tribunals & Adjudication Service

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About the Bar Tribunals and Adjudication Service

The Bar Tribunals and Adjudication Service (BTAS) is the body responsible for administering Disciplinary Tribunals, Fitness to Practise and other hearings for barristers. It also organises hearings to consider the conduct of aspiring barristers to determine whether they are ‘fit and proper’ persons for a career at the Bar.

BTAS is a constituent part of the Council of the Inns of Court (‘COIC’), a charity that exists to advance education in the sound administration of the law, including by promoting high standards of advocacy and enforcing professional standards of conduct.

BTAS exists to ensure the independence of the hearing panels and process. It is separate and wholly independent from the Bar Standards Board (BSB) - the barristers’ regulatory body – which investigates and brings cases for consideration before the hearing panels.

The Roles

Hearings are considered by independent panels drawn from a pool of selected lay persons and barristers. BTAS is looking for a diverse range of individuals prepared to serve as Panel Chairs, Panel Members and Clerks at its hearings. Individuals are appointed to the pool on the recommendation of the independent Tribunal Appointments Body (the 'TAB'), which conducts and oversees the entirety of the recruitment and selection process in accordance with BTAS' [Appointments Protocol](#).

Applications are invited for the following positions:

Role	Key Criteria
Barrister Members	Practising barristers of not less than seven years standing
Clerks	Practising barristers who have completed pupillage
Lay Members	Persons who have never been authorised to conduct reserved legal activity (such as barristers or solicitors)
Queen's Counsel Members	Practising barristers appointed Queen's Counsel (not honoris causa)

BTAS would particularly like to encourage applications from all diverse members of our community and society, as we feel that our panels are currently under-represented by minority groups.

Fees and Expenses

- Barrister, Lay and QC Panel Members may claim an attendance fee of £300 per day or £150 per half day.
- Tribunal Clerks may claim an attendance fee of £200 per day or £100 per half day.

In addition, reasonable travel, subsistence and accommodation expenses may be claimed by all those appointed while acting at hearings, in accordance with the *BTAS Expenses Policy*.

Members of the Pool are not employees of BTAS or COIC, and the role is not pensionable.

Role Description

Members of the Disciplinary Pool are required to listen to argument, distil the facts and ask questions as necessary to reach a conclusion on the case being brought before them. They will use their common sense and personal experience to make informed and reasoned decisions in conjunction with other members of the panel and, where appropriate, determine the appropriate sanction to be imposed.

Tribunal Clerks support and run the conduct of the proceedings.

Members and Clerks of the Disciplinary Pool will be selected, at random and based on availability, to act at Disciplinary Tribunals and other Hearings which may include:

Disciplinary Tribunals for barristers, which consider the most serious allegations of professional misconduct against barristers. There are currently two types of Tribunal - three person panels and five person panels:

- Three person Tribunals are typically chaired by practising barrister QCs, but sometimes the Chair will be a judge. The other panel members consist of a practising barrister and a lay representative.
- Five person Tribunals can last for several days and are usually chaired by a Deputy Circuit Judge. The other panel members consist of two practising barristers and two lay representatives.

The size of Tribunal is determined by the seriousness of the charges. The process and powers of the three or five member Tribunals are the same, except that only a five person Tribunal can suspend a barrister for longer than 12 months or disbar them (so they can no longer practise as barristers). Both Tribunals are able to hear oral evidence and make findings of fact.

Fitness to Practise Hearings. A barrister's fitness to practise may be brought into question if it appears that he/she has an incapacity due to a medical condition (including an addiction to drugs or alcohol). The Panel must consider whether an individual's fitness to practise is impaired to such an extent that restrictions on practise are necessary.

Interim Suspension Hearings take place when there is a need to determine whether it is in the public interest for a barrister be immediately suspended, rather than be allowed to continue to practise while arrangements are made for a Disciplinary Tribunal to be convened, hear and determine the outcome of the case.

Inns' Conduct Committee Hearings take place when it is necessary to consider whether an individual is a fit and proper person to be a practising barrister, and typically consider matters such as past criminal convictions or academic misconduct (e.g. plagiarism).

Appeals against Administrative Sanctions imposed directly by the Bar Standards Board are also considered by members of the Disciplinary Pool.

Hearings vary in length between half a day and several days. They normally take place between 10.30am and 4.30pm, but can occasionally (and by mutual agreement), last into the early evening. Members and Clerks of the Disciplinary Pool are likely to be required for hearing panels totalling no more than five days each year.

Members and Clerks of the Disciplinary Pool are appointed by the TAB for a three year term of office, renewable once subject to satisfactory performance and availability, and continued eligibility for the role (which will include compliance with the ongoing requirement to undertake training as necessary).

All proceedings are governed by the Bar Standards Board's Handbook. Tribunals and all other hearings (except ICC hearings) take place in accordance with Part 5 of the Handbook (the Enforcement Regulations). ICC hearings are governed by Part 4 of the Handbook (the Qualification Rules) and separate ICC Rules and Guidelines.

Duties of BTAS Disciplinary Pool Members:

All Barrister, Lay and QC Members of the BTAS Disciplinary Pool are expected to:

- Sit on Disciplinary Tribunal, Inns' Conduct Committee, Fitness to Practise, Interim Suspension and other hearings as required;
- Read thoroughly and assimilate fully the papers relating to any hearing including all documentary evidence;
- Listen to argument, distil the facts and ask questions as necessary to reach a conclusion on the case being brought before the relevant panel;
- Ensure, in conjunction with other members, that hearings are conducted efficiently and effectively and in a manner which is compatible with the interests of natural justice;
- Make informed and reasoned decisions in conjunction with colleagues in order to make an appropriate finding and to impose an appropriate sanction;
- Prepare, jointly with the other members of the Panel, a full and reasoned report (judgment) of the findings and decisions of the Panel in a given hearing;
- Attend and participate fully in such training courses or other meetings as may be arranged by BTAS from time to time;
- Participate fully in any appraisal process adopted by BTAS;
- Carry out such other duties in connection with hearings as may, from time to time, be reasonably requested by BTAS.

Queen's Counsel (not *honoris causa*) Members are additionally expected to:

- Act as a Directions Judge, if eligible to do so under the relevant Disciplinary Tribunal Regulations in force at the time;

- Chair appropriate hearings.

Duties of BTAS Disciplinary Pool Clerks

All Clerks of the BTAS Disciplinary Pool are expected:

- Provide procedural support to the Tribunal;
- Explain procedures or forms to the parties in the case;
- Liaise with the parties and witnesses and keep Panel Members informed of matters arising during the Tribunal;
- Obtain information for the Tribunal if required to do so;
- Ensure parties and witnesses are ready to appear in a timely manner before the Tribunal;
- Administer oaths to witnesses;
- Record orders.

All hearings are normally recorded but clerks will also be expected to keep a full note of all proceedings, and particularly all findings and decisions made by the Panel.

For the avoidance of doubt Clerks do not currently provide legal advice to the Members of the Tribunal, but must develop familiarity with the procedures and regulations governing the conduct of Tribunals.

Panel Member and Clerk Competency Framework

Framework that applies to all Panel members:

Core Competence	Performance Indicators
Working within a Legal Framework	<ul style="list-style-type: none"> • demonstrates an understanding of the legal framework, the legal tests to be applied and the rules of procedure • demonstrates knowledge and understanding of the Code of Conduct and the Sanctions Guidance • demonstrates an understanding of the panel’s function in relation to public protection, maintaining the public interest, declaring and maintaining proper standards of conduct • balances public protection and public interest against other issues appropriately
Analysis and Decision-Making Skills	<ul style="list-style-type: none"> • reads and understands the contents of the case file • demonstrates the ability to analyse large volumes of written, complex material • understands the evidence presented • makes an objective assessment of the evidence and identifies key issues • expresses their thinking in a clear, logical and balanced way, identifying relevant points from both parties and using the evidence in a fair and balanced way • actively and constructively participates in discussion and structured decision-making having regard for the legal test, proportionality, the Code of Conduct and Sanctions Guidance • considers the balance of evidence without bias or prejudice • makes decisions within an appropriate timeframe
Collaborative and Communication Skills	<ul style="list-style-type: none"> • attentive throughout the hearing • refers to relevant sections of the case file • listens attentively to the views of colleagues • treats the views of others with respect

Core Competence	Performance Indicators
	<ul style="list-style-type: none"> • constructively challenges the views of others and arrives at a shared, balanced view • compromises and accepts the majority view if necessary • expresses her/himself clearly and succinctly • asks clear, concise and relevant questions in an appropriate manner
Integrity and Impartiality	<ul style="list-style-type: none"> • acts with integrity and discretion • is sensitive to issues of equality and diversity when examining the evidence, during discussion and decision making • adopts an objective approach avoiding bias or prejudice

Additional framework that applies only to QC Members acting as Panel Chairs:

Core Competence	Performance Indicators
Maintaining Effective Control of the Hearing	<ul style="list-style-type: none"> • demonstrates an understanding of the legal framework, the legal tests to be applied and the rules of procedure • demonstrates knowledge and understanding of the Code of Conduct and the Sanctions Guidance • demonstrates an understanding of the panel's function in relation to public protection, maintaining the public interest, declaring and maintaining proper standards of conduct • balances public protection and public interest against other issues appropriately
Additional Communication Skills	<ul style="list-style-type: none"> • facilitates discussion and structured decision-making • ensures all members actively participated in discussion and decision-making • values the contribution of members • demonstrates courtesy toward all participants

Core Competence	Performance Indicators
	<ul style="list-style-type: none"> ensures the views of the panel are accurately reflected in the determination
Drafting Skills	<ul style="list-style-type: none"> the determination is well reasoned and reflects The Code of Conduct, Disciplinary Regulations and Sanctions Guidance the determination reflects the collective views of the panel

Additional indicators applicable to those who chair or clerk a tribunal panel include:

Core Competence	Performance Indicators
Drafting Skills	<ul style="list-style-type: none"> the determination is well reasoned and reflects The Code of Conduct, Disciplinary Regulations and Sanctions Guidance the determination reflects the collective views of the panel

Eligibility

Persons will not be eligible for appointment as Members or Clerks of the Pool if they:

- have been convicted of a criminal offence in any jurisdiction (except for minor motoring offences) that is not a spent conviction for the purposes of the Rehabilitation of Offenders Act 1974;
- have been offered and/or have accepted a caution that is not a spent caution for the purposes of the Rehabilitation of Offenders Act 1974;
- have been the subject of an adverse finding by a disciplinary panel of a professional or other statutory regulatory body;
- have been disqualified by the BSB (this includes non-practising barristers and in the future lay members if working within entities);
- have been notified by the Bar Standards Board or other professional regulatory body that they are being investigated for any matter;
- are a member of the Tribunals Appointments Body; or have been a member of the Tribunals Appointment Body within the 24 months prior to application to BTAS;

- hold office as a Council Member or Committee Member or are an employee of the Bar Council or the Bar Standards Board or have held office as a Council Member or Committee Member or have been an employee of the Bar Council or the Bar Standards Board within the 24 months prior to application to BTAS;
- are a Bar Standards Board prosecutor or have been a Bar Standards Board prosecutor within the 24 months prior to application to BTAS;
- are an employee of the Inns' of Court or have been an employee of the Inns' of Court within the 24 months prior to application to BTAS;
- have been a panel member or clerk at a Disciplinary Tribunal, Inns' Conduct Committee or other hearing administered by BTAS within the 24 months prior to application.

Nolan Principles

In performing their duties, Pool Members must uphold the seven principles identified by the Nolan Committee in its first report on standards in public life in May 1995 and subject to subsequent revision by the Committee on Standards in Public Life:

- **Selflessness:** to take decisions solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family, or their friends.
- **Integrity:** not to place themselves under any financial or other obligation to outside individuals or organisations that might influence them in the performance of their official duties.
- **Objectivity:** in making appointments, awarding contracts, or recommending individuals for awards or benefits, choices must be made on merit.
- **Accountability:** to be accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.
- **Openness:** to be as open as possible about all the decisions and actions they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.

- **Honesty:** to have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.
- **Leadership:** to promote and support these principles by leadership and example.

Terms of Appointment

Individuals serving as panel members and clerks are required to give an undertaking to abide by the Terms of BTAS' [Appointments Protocol](#) and uphold the principles of public life;

1. make themselves available for service on the Disciplinary Tribunals or Inns' Conduct Committee Panels;
2. ensure that they have a clear understanding of their responsibilities and that they meet the requirements for eligibility to serve;
3. notify BTAS if following appointment:
 - a) they are cautioned for, or charged with any criminal offence (excluding minor motoring offences),
 - b) they have been offered a caution,
 - c) disciplinary proceedings appear likely to be or have actually been initiated by a regulatory body;
4. be committed to the continuing demonstration of the competences required for the effective performance on Disciplinary Tribunals, Inns' Conduct Committees and other hearings;
5. fully participate in the appraisal process that BTAS has in operation and actively commit to achieving any personal development objectives identified during the appraisal process;
6. complete and maintain annually their entry in the Register of Interests, declaring any professional, business, or personal interests which may, or might be perceived to, conflict with their responsibilities;
7. notify immediately the BTAS of any change to their circumstance that may affect their ability to discharge their role.