



Chairperson's Guideline No: 2020/1

Code of Conduct and Rules on Conflict of Interest

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1. Introduction

The International Protection Act 2015 (hereinafter referred to as 'the Act') and the International Protection Act 2015 (Procedures and Periods for Appeals) Regulations 2017 (hereinafter referred to as 'the Regulations') set out various matters relating to the conduct of Appeals before the Tribunal. This Guideline is intended to supplement the Act and Regulations and not to supplant them. In case of conflict, the provisions of the Act or relevant Regulation shall take precedence over this Guideline; it should be read in conjunction with the duties set out in the Act and other legislation, guidelines, codes, policies or other rules applicable to the conduct of Members of the Tribunal. The Code should also be read in conjunction with any applicable conduct requirements that are established from time to time by professional regulatory bodies.

This Guideline is issued pursuant to s.63(2) of the Act and establishes the standards of conduct that govern the professional and ethical and legal responsibilities of Members of the International Protection Appeals Tribunal (hereinafter referred to as 'the Tribunal') as decision-makers of a quasi-judicial and statutorily independent Tribunal established pursuant to Section 61 of the Act.

Members of the Tribunal are defined in Section 62(1) of the Act as:

- (a) a chairperson, who shall be appointed in a whole-time capacity;
- (b) not more than 2 deputy chairpersons, who shall be appointed in a whole-time capacity; and
- (c) such number of other members, appointed either in a whole-time or a part-time capacity, as the Minister, with the consent of the Minister for Public Expenditure and Reform, considers necessary for the expeditious performance of the functions of the Tribunal.

2. Scope

The standards of conduct set out in the Code are based on and recognise two fundamental principles:

- that public confidence and trust in the integrity, objectivity and impartiality of the Tribunal must be conserved and enhanced; and
- that independence in decision-making is required in order for the principles of fairness and natural justice to be ensured.

The Code is based on the Tribunal's following values:

- independence with accountability;
- commitment to excellence and value for money;

- respect and commitment to staff and customers.

These standards address Members' responsibilities to the Tribunal itself, including colleagues and staff, to the parties who appear before them, to other parties involved in the process before the Tribunal and to the public.

Members are expected to comply with the standards of conduct set out in the Code. Although the Code cannot anticipate every possible situation, in all cases Member are expected to act honestly, in good faith, and in a professional and ethical manner.

3. Administration

The Chairperson is responsible for the administration of the Code, including any matters regarding its interpretation. Other Members are accountable to the Chairperson for their compliance with the Code. The Chairperson shall promote awareness of and compliance with the Code by Members.

Any question regarding the interpretation or application of the Code may be directed by Members to the Chairperson of the Tribunal.

MEMBERS' RESPONSIBILITIES TO THE TRIBUNAL

4. Compliance with Laws

Members shall comply with the provisions of the Act, all applicable regulations, rules and guidelines established under the Act, and all other relevant national, EU and international legislation and policy instruments that apply to their work and the work of the Tribunal.

5. Consistency

Members, in their decision-making, have a responsibility to support the institutional interest of the Tribunal in ensuring that there are no undue divergences in their transaction of Tribunal business, in particular in respect of the consistency of its decisions, while recognising that no improper influence may be brought to bear upon their adjudicative independence.

6. Confidentiality

Members shall not disclose or make known any information of a confidential nature that was obtained in their capacity as a Member. Members are reminded that all information received relating to work as a Tribunal Members is presumed to be confidential even where not explicitly stated. This includes *inter alia* disclosure outside of the Tribunal to government departments or agencies or to the general public, as well as disclosure within the Tribunal to other Members or staff, where such disclosure is not legally or operationally required.

7. Communications

Members shall not communicate with the news media or publicly express any opinion regarding:

- (i) any matter relating to the work of the Tribunal, International Protection Office, or the work of the Department of Justice in relation to international protection; or
- (ii) any matter that may create a reasonable apprehension of bias.

Members shall not communicate directly with government departments or agencies, or elected officials or their staff, regarding:

- (i) any matter relating to the work of the Tribunal, International Protection Office, or the work of the Department of Justice in relation to international protection; or
- (ii) any matter that may create a reasonable apprehension of bias.

Members shall not publish any information, opinion or otherwise, on social media regarding any matter relating to the work of the Tribunal, International Protection Office or the work of the Department of Justice and Equality in relation to international protection, whether in a personal capacity or otherwise. Any enquiries received in relation to communications with the media or general public shall be referred to the Chairperson of the Tribunal.

Any inquiries to be made pursuant to Section 44 of the Act, or otherwise to the Minister for Justice and Equality in respect of any case, shall only be made through the staff of the Tribunal.

Members are reminded that all communications, written and electronic, created in the course of their work, are currently subject to public release pursuant to the Freedom of Information Act 2014, the Data Protection Acts 1988-2018 and the General Data Protection Regulation. Members should take care to adopt a high and professional standard of written communication and ensure that no communication might embarrass the Member, the Tribunal or create an inference of bias.

Members are expected to familiarise themselves with the Department of Justice IT Policy¹ and should use information technology in the course of their work by reference to that policy only, including working exclusively through the Citrix remote access system and not using personal emails for conducting Tribunal business.

Members are expected to manage files in a manner recognising the confidentiality requirements of the Tribunal, and Members should ensure all documents created in relation to the discharge of their functions are securely stored.

Members are advised to consult the Chairperson or either of the Deputy Chairpersons if uncertain any aspect of their confidentiality requirement.

8. Expertise

Members have a responsibility to maintain the high level of professional competence and expertise required to fulfil their duties and responsibilities. Members are expected to pursue the development of knowledge and skills related to their work, including but not limited to participation in ongoing training provided by the Tribunal.

¹ Department of Justice and Equality, [Information and Communication Technology \(ICT\): Acceptable Usage Policy](#), [Mobile Device Policy](#) and [Remote Access Policy](#), which can be accessed on justice.cloud.gov.ie/hr/policies.

9. Collegiality

Members have a responsibility to perform their duties in a manner that fosters collegiality among Members and with staff and to treat them with courtesy and respect. Members are expected to assist their colleagues through the respectful exchange of views, information and opinions.

MEMBERS' RESPONSIBILITIES TO THE PARTIES

10. Conduct of Hearings

Members shall conduct hearings in a courteous, respectful and punctual manner while ensuring that the proceedings are fair, orderly and efficient.

11. Fairness and Natural Justice

Members shall comply with all procedural fairness and natural justice requirements. Members are expected to approach each case with an open mind and, at all times, must be, and must be seen to be, impartial and objective.

Members shall disqualify themselves from any proceeding where they know or reasonably should know that, in the making of the decision, they would be in a conflict of interest, or that their participation may create a reasonable apprehension of bias. In such a case, they shall immediately inform the Chairperson and provide the reason for their self-disqualification.

12. Equality and Accommodation

Members shall exercise their duties without discrimination. Members must take reasonable measures to accommodate all participants so that they may participate effectively in the appeal proceedings. Members are expected to take into account social and cultural differences and to adhere to a high standard of respect for human rights and equality.

13. Vulnerable Persons

The Tribunal ensures that all those who appear at its hearings or other proceedings are treated with sensitivity and respect. This obligation is all the more important in the case of vulnerable persons.

In examining the information provided by a vulnerable person, the Tribunal will attempt to avoid traumatising or re-traumatising them. Where it is apparent that an appellant is a vulnerable person and may experience further trauma through the hearing process, the Tribunal may conduct a case management pre-hearing in order to establish appropriate standards from all parties of obtaining evidence, with due regard to the particular facts of an appeal.

Appeals from Child Applicants are to be dealt with in compliance with [Guideline No. 2017/5](#). In particular, questioning of a child giving evidence before the Tribunal will be approached in

a sensitive manner and will take the child's age, gender, maturity and other relevant characteristics or vulnerability (e.g. mental disability) into account.

14. Members' Communications with the Parties

In the context of an appeal, unless permitted under legislation, Members shall not communicate directly or indirectly with any party, their legal representatives, a witness, interpreter or other participant appearing before them, except in the presence of, or with notice to, all parties or their legal representatives, if such communication may create a reasonable apprehension of bias.

In that regard, it is recommended that a Member does not enter the hearing room until all other participants in a hearing are present in the room and that, on conclusion or adjournment of a hearing, the Member is the first person to leave the hearing room.

If at any time during a hearing any attendee requires a short adjournment, the Member shall rise and leave the hearing room until all parties return.

All written communications from the Tribunal in the context of an appeal, including where such communication is based on a request or direction from a Member, shall be through the Tribunal registry staff only.

15. Decision-Making

Members shall make each decision on the merits of the case, based on thorough preparation, the assessment of evidence properly before the Member and the application of the relevant law. The relevant law consists of the Act, relevant EU and international legislation, the Irish Constitution, other relevant legislation, regulations, guidelines and legal principles, including the principles of natural justice, and relevant case law. A Member's decision-making responsibility shall not be delegated.

Members shall not be influenced by extraneous or improper considerations in their decision-making. Members shall make their decisions free from the improper influence of other persons, institutions, interest groups or the political process.

Members are expected to render their reasons in accordance with any standards that may be established by the Tribunal regarding quality decision-making and timeliness.

Members have a responsibility to consider the privacy interests of individuals in the conduct of proceedings and the writing of decisions, ensuring that decisions contain only such personal information as is necessary to explain the reasoning of the decision.

The Tribunal recognises that waiting for a decision may be particularly stressful for applicants, and in particular for vulnerable persons. Members shall use their best endeavours to deliver decisions affecting applicants, and in particular vulnerable persons, as soon as possible.

MEMBERS' RESPONSIBILITIES TO THE PUBLIC

16. Integrity

Members shall conduct themselves with integrity and avoid impropriety, or the appearance of impropriety.

17. Bias

Members shall conduct themselves in a manner that will not cast doubt on their ability to perform their duties objectively and impartially.

18. Gifts or Other Advantages

Members shall not accept gifts or other advantages from a party, their representatives, a witness, or an interpreter appearing before them, including hospitality or other benefits, as set out in the applicable legislation, guidelines, codes, or policies.

19. Outside Activities

Members may take part in outside activities that are not inconsistent or incompatible with their official duties and responsibilities, and that do not cast doubt on their ability to perform their duties objectively and impartially. Outside activities means activities outside of a Member's official duties in which they participate in their personal capacity, such as conferences and training seminars, volunteer activities, non-political fundraising, public speeches and interviews, teaching assignments and other paid or unpaid employment of any kind.

CONFLICT OF INTEREST

20. Introduction

- a. Ordinary Members of the Tribunal are appointed by the Minister for Justice and Equality pursuant to the terms of the International Protection Act 2015.
- b. Appointments are made on a whole-time or part-time basis.
- c. Conflicts of interest, or the appearance of such conflicts, must be avoided during the term of a Member's appointment.
- d. While certain matters may not give rise to an actual conflict of interest, there may still be good reasons why a member should not engage in such conduct in order to uphold the highest professional standards of the Tribunal.
- e. All persons appearing before the Tribunal are entitled to have confidence that their case will be dealt with in an impartial and fair manner.
- f. The Tribunal must be and must be seen to be independent and impartial in the discharge of its functions.
- g. In any case of doubt, the Tribunal Member concerned should seek the advices of the Chairperson of the Tribunal.

21. Practice as a Solicitor or Barrister:

- a. Members are free to engage in practice as a solicitor or barrister.
- b. A Member shall not:
 - Represent a client in any protection matter before the International Protection Office;
 - Represent a client in any matter before the Tribunal;
 - Represent a client in any international protection matter before any court;
 - Represent a client in any matter before any court in which the Tribunal is a party to the proceedings;
 - Represent the Tribunal in any matter before any court.

- c. A Member shall not accept the assignment to them of a Tribunal matter in which:
 - They have previously acted for the applicant in any capacity,
 - Their firm is currently acting for the applicant in any capacity,
 - Their previous firm is currently acting for the applicant, where they have been a member of such a firm within the previous 12 months.
 - They have had a previous role in the determination of an appellant's first instance application, examination of that application or consideration of any aspect of that application.

- d. A Member may determine a Tribunal case in which:
 - Their previous firm is acting for the applicant, where they have left that firm more than 12 months previously,
 - They are related, personally or by marriage, to any party appearing on behalf of an applicant, provided that both sides have been informed of the relevant fact and no objection is taken to the Member continuing to act.
 - Where an apparent conflict of interest appears but it is permissible to proceed with specific regard to the immediately fore listed criteria, a Member shall inform all parties of that potential conflict and reasons for the decision to proceed to act and where an objection arises from a party, the Member shall consider that objection and decide with due regard to all matters in this code of conduct.

22. Public Speaking, Writing or Broadcasting:

- a. A Member is free to engage in public speaking, writing or broadcasting on any topic, including international protection issues, provided:
 - a. they do not discuss any matter relating to the work of the Tribunal, International Protection Office, or the work of the Department of Justice in relation to international protection;
 - b. such engagement does not create a reasonable apprehension of bias; and
 - c. they do so in a personal capacity and make this clear at the outset of any such talk, or in writing.

- b. A Member may only write or speak on behalf of the Tribunal with the prior consent of the Chairperson.

- c. Where Members express opinions that could be seen as impinging upon their independence or impartiality, such matters may be a legitimate subject of complaint by persons appearing before them.

- d. Where a complaint is made to the Chairperson that a Member has expressed an opinion that could be seen as impinging upon their independence or impartiality, the Member shall be notified and given an opportunity to make any submission that they may wish to in relation to the matter.

23. Other Activities

- a. A Member is free to engage in any other external activities, provided they do so in a personal capacity.
- b. Similar considerations, to those in section 22, may arise where the activities could be seen to impinge upon their independence or impartiality.

24. APPLICATION

The Code applies to all whole-time and part-time members of the Tribunal, including the Chairperson and Deputy Chairpersons.



Hilka Becker

Chairperson

International Protection Appeals Tribunal

Dated the 24th day of February 2020