



GUIDANCE FOR OVERSEAS JUDICIAL ASSESSORS 2023

Guidance on assessments on applicants for appointment as King's Counsel

Introduction

This document aims to assist judges and arbitrators who are based outside England and Wales and who have been asked to provide an assessment in the 2023 KC competition.

The Selection Panel is keen to receive an assessment drawing on your experience of the applicant. For the Panel to develop a rounded view of applicants it needs assessments which cannot be supportive (or not fully supportive) just as much as those which are supportive.

Background

1. The award of King's Counsel is intended to recognise excellence in advocacy in cases of substance dealt with in the higher courts of England and Wales; in arbitrations conducted under the law of England and Wales; or in tribunals, inquiries or equivalent forums.
2. Although applicants whose practice is primarily outside England and Wales are eligible to apply, provided they hold rights of audience in the higher courts of England and Wales, no applicant can be recommended for appointment unless the Selection Panel is satisfied they are or would be excellent in relation to advocacy in cases of substance dealt with under the law of England and Wales.
3. The Panel welcomes assessments from judicial assessors (including arbitrators) outside England and Wales and is grateful to those assessors for their help with the process. However, as stated above, the scheme is designed primarily to identify advocates who are excellent in relation to cases of substance before the higher courts of England and Wales. Accordingly, it would be particularly helpful if assessors from outside England and Wales could include in their assessment a sentence on the assessor's own familiarity with the levels of skill and expertise, and the standards, expected of KCs in England and Wales.
4. Information on the extent to which the requirements of oral and written advocacy in the forum from which the assessment arises are comparable with the requirements

in the higher courts of England and Wales would also be helpful if the assessor is in a position to comment on that matter.

5. Decisions on whether an applicant should be recommended for appointment are made by an independent Selection Panel comprising retired judges, practising barristers and solicitors and distinguished non-lawyers.
6. To be appointed, an applicant must demonstrate each of the competencies to a standard of excellence. The Competency Framework is at Annex A.
7. The Selection Panel bases its decisions on **evidence** of excellence drawn from the applicant's self-assessment, information from assessors listed by the applicant, and an interview with each applicant who secures one. The most important element is the evidence from assessors. The success of the KC appointment system thus depends largely on evidence from assessors with recent professional experience of seeing the applicant in practice. Evidence of performance falling short of the required standard is as important as evidence of excellence.
8. The Selection Panel must obtain the most accurate picture possible of each applicant as an advocate. The greatest help you could give is a forthright assessment even when it does not support the individual.

Confidentiality

9. Assessments will be seen only by KCA staff and the Panel. Assessments will not be available to the applicant or anyone else, during or after the competition. Applicants will not even know the name of the author of an assessment, let alone its contents.
10. Exceptionally, as part of an investigation of a complaint from an applicant, an assessment might be sought by the King's Counsel Complaints Committee. We will not supply assessments even to the Complaints Committee without your consent in advance. Assessments provided in the KC competition are exempt from the subject access provisions of the Data Protection Act.
11. Please do not let the applicant know what you have written, even if you are asked.
12. Unsuccessful applicants will receive generalised feedback to help identify areas deficient in evidence or needing improvement. The feedback will reflect evidence from some assessors, but without identifying details, so the source cannot be identified from the feedback.

Contact with applicants

13. Please do not take it amiss if an applicant did not seek your agreement to act as an assessor. Applicants are required to list a judicial and a practitioner assessor for each listed case and we tell them they do not need consent before listing a potential assessor.
14. We encourage applicants to send potential assessors as an aide-memoire copies of any written work the applicant did in the case. If you have not received copies of any written work when you would have expected to do so, please feel free to contact the applicant direct to ask for this.
15. Applicants are told that they should not lobby for support, and in particular not to send potential assessors material intended as a draft assessment. Please alert the Chief Executive (hannah.miller@kcappointments.org) if you get such an approach.

Completing the assessment form

16. The Panel appreciates that most assessors will not be able to comment on every competency. You are asked to provide evidence only on those competencies where you have useful information. If you have not observed an applicant demonstrating a competency, please say so.
17. The examples in the competency framework illustrate the kinds of behaviour the Panel has in mind. It is important that assessments include evidence, explaining why an applicant's work in relation to a particular competency was (or was not) good, rather than mere assertions about the applicant's performance. Short statements such as 'excellent advocate', without supporting evidence, are not helpful. Please comment on each competency of which you have knowledge indicating, with examples where possible, how well and to what extent it is or is not demonstrated.
18. The Panel is looking for succinct evidence, sufficient to understand the reasons for your view. Lengthy description of cases is unnecessary.
19. If you have seen the applicant in cases in addition to those listed by the applicant, please feel free to draw on those cases rather than confining yourself to consideration of the cases listed by the applicant. Where evidence is drawn from work done before 2020, it would be helpful if you could indicate that.

Cases of substance, complexity, or particular difficulty or sensitivity

(Part 2, Q.2)

20. Please explain briefly why a case was or was not of substance, complexity, or particular difficulty or sensitivity.

Competency A – Understanding and Using the Law

21. Understanding and using the law requires applicants not only to have up-to-date legal knowledge and to use it accurately, relevantly and effectively, but also to become familiar with new areas of law quickly and reliably. It is important that applicants should to the extent possible provide evidence in their self-assessment of their ability to deal with new areas of law, or new developments in their specialist field.
22. It is particularly useful for the Panel to have evidence about applicants' ability to deal with "new law" – either law in an area outside the applicant's usual specialism, or new developments in law. Experience shows that there is often a shortage of evidence on this aspect from assessors.

Other jurisdictions

23. If you deal with a case in which the law was not that of England and Wales, or which included elements of law from any jurisdiction other than England and Wales (including in the British Isles), please make this clear on the form.

Competency B – Written and Oral Advocacy

24. Advocacy may be in written or oral form but must relate to developing or advancing a client's or employer's case to secure the best outcome in the dispute. That outcome may, for example, be secured through arbitration, court determination or a settlement agreement. Oral advocacy includes advocacy in a court or tribunal, mediation, arbitration or in negotiation.
25. The Panel looks both at the written (Competency B1) and oral (Competency B2) aspects of advocacy in deciding its view of the competency overall. The outcome for Competency B overall is not reached through aggregating or averaging the scores for the two aspects but reflects the Panel's judgement on the applicant's written and oral advocacy taken together, bearing in mind the relative importance of the two elements of advocacy in the applicant's practice.
26. It is helpful for assessors to separate comments on written advocacy (Competency B1) from those on oral advocacy (Competency B2).
27. On Competency B2 (Oral advocacy) it would be helpful if assessors could state what aspects of an applicant's oral advocacy they have seen (e.g. legal argument; cross-examination of lay witnesses) and how much they have seen in total of the applicant's oral advocacy.

Competency C – Working with Others

28. Working with Others covers establishing productive relationships with others involved in the case; leading the legal team; and demonstrating the behaviours expected of advocates in their dealings with others involved in the case. This includes high standards of professionalism and appropriate collaboration with and respect for all others involved in the case.
29. The “working with others” competency encompasses working constructively with the judge or arbitrator and court staff, as well as with fellow advocates and clients.
30. It is particularly useful to have any evidence about the extent to which applicants demonstrate the leadership behaviours expected of silks. This is an area where there is often a shortage of evidence from assessors.
31. This competency also requires applicants to uphold the standards of behaviour expected of advocates so as to secure the confidence of the court and of fellow advocates. The Panel needs to be alerted to any failings in this regard, with evidence. Examples of failings in this area may include such actions as rudeness to court staff or more junior colleagues or persistent late disclosures.

Competency D – Diversity Action & Understanding

32. The diversity competency aims to ensure that all those recommended have a good understanding of diversity and inclusion issues, demonstrate appropriate professional behaviour, **and** are proactive on diversity and inclusion matters. The competency is not of itself intended to promote the appointment of under-represented groups. Accordingly, being a member of an under-represented group is not of itself evidence (or even an indication) that an individual meets the standard required.
33. The Panel understands that many judicial assessors may not be well-placed to comment on the diversity competency. It is perfectly acceptable to leave that section blank. However, where an assessor **does** have relevant evidence – engagement with outreach programmes, actions in chambers, working with charities or the way in which an applicant dealt with any particular needs of an individual party or witness in court – the Panel finds it useful.

Overall rating – (Part 4)

34. You are asked to give an overall rating of the applicant’s suitability for appointment as silk based on their demonstration of those competencies on which you can comment. Please do not rate an applicant as “Clearly ready for appointment” unless you have seen them perform very well in a case in which a silk might appropriately have been instructed. Subject to that, there is no need for a lower rating simply because your own knowledge of them is limited.

35. The different ratings are designed to focus clearly on whether the applicant should be appointed. The Panel realises many advocates, although extremely effective juniors, have not fully demonstrated the qualities for appointment to silk. They should be rated “Possibly ready for appointment”, or “Not yet ready for appointment”.

Explanation of Overall Rating (Part 5)

36. Please briefly summarise the reason for your overall rating. It would be particularly helpful to know approximately how much (if any) exposure you have had to the applicant’s oral advocacy.

Views of others (Part 6)

37. Your assessment should be based solely on your experience of the applicant in professional life, rather than the “general view” of the legal community. However, if you have consulted others, please identify whom you consulted, the nature and extent of their experience of the applicant, and how far their experience coincides with or differs from yours.

Comparisons with other applicants

38. Assessments should deal only with the individual applicant, rather than compare the applicant with others in the competition. Material comparing an applicant with others is redacted before the Panel sees the papers.

Previous assessments

39. If you have provided an assessment of an applicant in a previous KC competition, and have not seen them since, we will be happy to re-use that assessment. However, if you have more recent experience we would appreciate a fresh assessment. We can, on request, send you a copy of a previous assessment.
40. Because each competition is self-contained, Panel members should not know of previous applications, so please help by not referring to any.

Information for Assessors

41. For each applicant you will have an email or letter with the applicant’s details and a link to the assessor site. This contains details of the case(s) extracted from the application form, provided by the applicant. The applicant’s name is in the email and on the site. Your details will also appear.



42. You can complete the assessment form by logging into assessors.kcappointments.org using the details in the request email. If you would prefer to complete a Word version, please contact the Secretariat. You can complete the form in typescript or by hand (although it helps a lot if you use a computer or typescript).
43. We have helpful, anonymised, assessments from the past, and you can see them as well as specimen assessments. Just ask the secretariat.

Returning completed assessment forms

44. It would help if you could return your assessment(s) by the date specified in the letter. We can almost always extend time, but if you need more, please let us know as soon as possible.
45. On-line forms will be received automatically when you click "Submit" on completion of your assessment. Assessment forms completed on the Microsoft Word form can then be emailed to assessments@kcappointments.org.
46. Completed hard copy or printed out assessments can be sent by post.
47. Forms submitted electronically will receive an automated response. We will acknowledge forms received through other channels unless you ask us not to do so.

Contacting us

48. Please contact the KCA Chief Executive by email or telephone if you would like information or assistance. We are always happy to help. Further information about the appointment process as a whole is also on kcappointments.org.
49. Our contact details are below. If your enquiry relates to a particular applicant, please give the applicant's name and ID.

King's Counsel Appointments

16 Red Lion Square, London WC1R 4QH

Telephone: 0207 831 0020

Email: assessments@kcappointments.org

or: hannah.miller@kcappointments.org

April 2023

King's Counsel Competition for England and Wales 2023 - Competency Framework

The Panel will judge how far an applicant meets the competencies as described by the passage in italics. The examples below intended to assist applicants, assessors and others. Consideration of the demonstration of the competency is not limited to the examples quoted. To merit recommendation for appointment all competencies must be demonstrated to a standard of excellence in the applicant's professional life. In general the Selection Panel will be looking for the demonstration of the competencies in cases of substance, complexity, or particular difficulty or sensitivity. Competency B (Written and Oral Advocacy) *must* be demonstrated in such cases.

A. Understanding and using the law

Has expert, up-to-date legal knowledge, uses it accurately, relevantly and effectively, and becomes familiar with new areas of law quickly and reliably.

Examples:

- ✓ Is up to date with law and precedent relevant to each case dealt with, or will quickly and reliably make self familiar with new areas of law.
- ✓ Draws on law accurately for case points and applies relevant legal principles to particular facts of case.
- ✓ Makes effective use of case law and other sources in addressing legal issues which are not decided or settled.
- ✓ Shows depth of understanding of the legal principles and issues involved in a case.

B. Written and oral advocacy

Subject to the advocate's duty to the court, develops and advances client's case to secure the best outcome for the client by gaining a rapid, incisive overview of complex material, identifying the best course of action, communicating the case persuasively, and rapidly assimilating the implications of new evidence and argument and responding appropriately.

The Panel will be looking both at the written and oral aspects of advocacy. Oral advocacy includes advocacy in a court or tribunal, mediation, arbitration or negotiation.

Examples (Written advocacy):

- ✓ Writes arguments accurately, coherently and simply, and in an accessible style.
- ✓ Presents facts and structures arguments in a coherent, balanced and focused manner.
- ✓ Deals effectively with necessary preliminary stages of legal disputes.
- ✓ Gains and gives an accurate understanding of complex and voluminous case material.
- ✓ Appreciates aspects of the case that are particularly important, sensitive or difficult and appreciates the relative importance of each item of evidence.
- ✓ Prepares thoroughly for the case by identifying the best arguments to pursue and preparing alternative strategies.
- ✓ Anticipates points that will challenge an argument

Examples (Oral advocacy)

- ✓ Deals responsibly with difficult points of case management and disclosure.
- ✓ Presents facts and structures arguments in a coherent, balanced and focused manner.
- ✓ Assimilates new information and arguments rapidly and accurately.
- ✓ Immediately sees implications of answers by witness and responds appropriately.
- ✓ Listens attentively to what is said paying keen attention to others' understanding and reactions.
- ✓ Accurately sees the point of questions from the tribunal and answers effectively.
- ✓ Gives priority to non-court resolution throughout the case where appropriate, identifies possible bases for settlement and takes effective action.
- ✓ Prepared and able to change tack or to persist, as appropriate.
- ✓ Deals effectively with points which challenge an argument.

C. Working with others

Upholds the standards of behaviour expected of advocates and acts so as to secure the confidence of the court and of fellow advocates; establishes productive working relationships with all, including professional and lay clients, the judge and other parties' representatives and members of own team; is involved in the preparation of the case and leads the team throughout.

Examples:

- ✓ Behaves in a consistent and open way in all professional dealings.
- ✓ Establishes an appropriate rapport with all others in court and in conference.
- ✓ Able to adapt leadership style depending on the situation and personalities involved.

- ✓ Advances arguments in a way that reflects appropriate consideration of perspective of everyone involved in the case.
- ✓ Where appropriate, refers to authorities adverse to the client's case and to arguments which unrepresented parties could properly advance.
- ✓ Is meticulous in making full and frank disclosure whenever appropriate.
- ✓ Helps the client focus on relevant points and is candid with the client.
- ✓ Explains law and court procedure to client and ensures the client understands and can decide the best action.
- ✓ Keeps lay and professional clients informed of progress.
- ✓ Is prepared to advance an argument that might not be popular and to stand up to the judge but does not make assertions or allegations which are unsupported by a proper factual basis or (where appropriate) by instructions from clients.
- ✓ Responds to the needs and circumstances of client (including client's means and importance of case to client and bearing in mind duty to legal aid fund) and advises client accordingly.
- ✓ Meets commitments and appointments.
- ✓ Accepts ultimate responsibility for case when leading the team.
- ✓ Motivates, listens to and works with other members of own team.
- ✓ Aware of own limitations and seeks to ensure that they are compensated for by others in team.
- ✓ Able to manage conflict effectively, treating others with respect and finding a way forward that, if not mutually acceptable, is well reasoned and explained.
- ✓ Able to take key decisions with authority and after listening to views.
- ✓ Identifies priorities and allocates tasks and roles when leading the team.

D. Diversity Action & Understanding

Demonstrates an understanding of diversity and cultural issues, respects the needs and cultural wishes of others and is proactive in addressing the needs of people from all backgrounds and promoting diversity, inclusion and equality of opportunity

Examples:

- ✓ Is aware of the diverse needs of individuals resulting from differences in gender, sexual orientation, ethnic origin, age and educational attainment and physical or mental disability or other reason, and responds appropriately and sensitively.
- ✓ Is aware of the impact of diversity and cultural issues on witnesses, parties to proceedings and others as well as on own client, and adjusts own behaviour accordingly.
- ✓ Takes positive action to promote diversity, inclusion and equality of opportunity.
- ✓ Is proactive in creating a diverse and inclusive culture and proactively strives to make a difference.
- ✓ Understands needs and circumstances of others and acts accordingly.
- ✓ Confronts discrimination and prejudice when observed in others; does not let it pass unchecked.
- ✓ Acts as a role model for others in handling diversity and cultural issues.

E. Integrity

Is honest and straightforward in professional dealings, including with the court and all parties

Examples:

- ✓ Does not mislead, conceal or create a false impression.
- ✓ Honours professional codes of conduct.
- ✓ Where appropriate refers to authorities adverse to the client's case.
- ✓ Always behaves so as to command the confidence of the tribunal and others involved in the case, as well as client.
- ✓ Acts in professional life in such a way as to maintain the high reputation of advocates and King's Counsel.

KCA February 2023