



Applying for Silk - Event for the Employed Bar

26 February 2024

Accompanying notes

Slide 2 - The Employed Bar

Around 20% of all barristers are employed barristers and we know that more than half of that group work in the public sector (eg for the CPS, the Government Legal Department, or local government), with a further quarter working in Solicitors firms

The employed bar is more diverse than the self-employed bar. Women make up 49% -compared with 37% of the self-employed Bar and 19% of employed barristers are from an ethnic minority background. A higher proportion of employed barristers have a disability (9.3%) as compared with the self-employed Bar at 6.6%, and it is more common for employed barristers to be a primary carer for children under 18 at 35.8% compared with 28.8% among the self-employed Bar.

Employed barristers are underrepresented at KC level, at only 2.6% compared to 14% of self-employed barristers.

We also know that lawyers with protected characteristics are, proportionately, less likely to take Silk, and through outreach and events such as this are working to tackle this discrepancy - to ensure that the playing field is as level as possible and that no employed barrister feels that Silk is somehow 'not for them'.

Slide 3 - Overview of the King's Counsel Selection Process

The panel never 'carry over' information about applicants, judgements are based purely on the evidence provided for the particular round.



Slide 4 - Excellence

There are no quotas – any applicant who reaches the required standard will be interviewed.

Successful applicants will be able to demonstrate **consistent excellence** rather than occasional sparks of brilliance.

Slide 5 – List of Cases

Applicants can provide fewer than 12 cases – there is more on this in the ‘Misconceptions’ slide. If applicants need to go back further than three years, they should explain why – bearing in mind that the further back they go the higher the likelihood that assessors’ memories may have faded.

Both the case and the applicant’s role in it must have been substantial. Cases should not be run of the mill (which may have important consequences for the immediate client, but may present limited legal or other professional challenge) but rather those which present unusual, novel or unforeseen complexities or have consequences beyond the case, eg:

- A substantive appeal before the Court of Appeal;
- A case that has been reported in a series of law reports;
- A test case on a point of law, or one that sets a precedent;
- A serious, demanding or sensitive criminal case involving, for example, a fatality, or complex forensic evidence;
- A contested case determining the removal of a child from one or both parents;
- A case on which the employment of a workforce of a significant size depends;
- A planning or other public inquiry of national importance or raising complex issues of law.

However, the fact that a case includes one or more of the features above will not necessarily make it a case of substance. The question of



substance is a matter for the judgement of the Selection Panel, informed by the views of the assessors from the case.

The panel are looking for **breadth and depth of practice**, and successful applicants have built evidence to demonstrate this breadth and depth, e.g. through pro bono work.

Applicants should also bear in mind the need for consistent evidence – providing fewer than 12 cases can make that more difficult if there is not good reason for providing fewer

Slide 6 – Assessments

Judicial Assessors

- Judicial assessments can only be provided by those exercising a judicial function, eg High Court or more senior judges. Arbitrators and tribunal chairs are acceptable if there was no Judge involved and **if** they have had enough exposure to your work to assess against all of the competencies.
- Assessments from a mediator are not acceptable as judicial assessments but could be used as a practitioner assessment. Coroners are independent judicial office holders and so could be listed as a judicial assessor.
- if the nature of the applicant's practice makes naming 6 unique judicial assessors impossible because the significant cases are all heard by a very small number of judges, that should be explained on the application form

Practitioner Assessors

- Barristers – leading or opposing counsel – KCs if possible

Professional Client Assessors

- The panel understand that it may be difficult to provide six client assessors; if this is the case, any shortfall should be explained on the application form.
- Applicants should also refer to the guidance which states:



- If you are an employed advocate you are expected to list at least one assessor who is a partner or representative from your employing firm. If you are unable to do this, please provide an explanation.
- If you are instructed by different individuals in your employer's business, you may list each of them as a client assessor.
- CPS will often offer a slightly different style of client assessment, which the Panel are aware of and comfortable with.

Slide 7 – Other Information Required

Description of Practice

The panel would like to know here if, for example, you sit on the Attorney General's Panel Counsel; you have experience of appearing in the higher courts; there are other, substantive cases you may not have listed but which are important in your career; you have changed streams, etc...please tell them.

Slide 8 – Competencies

Competency A - if you have used other areas of the law, or researched a new and developing area of the law and applied it creatively, the panel are interested. If your case has been argued in the appeal court (whether you appeared or not) and your argument was successful, they would like to know that. Law from other jurisdictions is also relevant.

Competency B – evidence could come from arbitration, court determination, settlement agreement or oral advocacy in a court or from a tribunal, mediation, or arbitration. An example of good written advocacy could be that a case was won purely on the strength of your written evidence. On oral advocacy, it might be that you encountered a tricky situation and dealt with it on your feet.

Competency C – this is not just about leading a junior but about 'living leadership'. Examples could be taking charge of a difficult situation; moving



a case forward when the odds are stacked against it; motivating others and supporting morale within your team; offering development opportunities to younger colleagues.

Competency D – applicants do not have to rely on cases for this competency, and you can bring in evidence from other areas of your life and work, to include in your self-assessment. This is not about reeling off stats! But about understanding challenges that groups may face in accessing the law both as a profession and as the user and demonstrating what you have done to widen access and participation.

Slide 9 – Pro Bono

Pro bono work can be a useful way of bolstering your evidence across the competencies. That might be an applicant taking a case outside of their specialism, which can help in the understanding and using the law competency, or perhaps they have managed vulnerable witnesses or lay clients, which speaks to diversity action and understanding. Whatever the gap that needs filling, there is likely to be a way that pro bono work can provide it.

Slide 10 – Competency Based Processes

Some examples of competency-based answers might be:

- “I demonstrated my ability to find novel ways of applying the law in X case where I was able to present a new interpretation of Y legislation, which was accepted by the judge who found in my client’s favour” **as opposed to** “I am able to find novel ways to use the law”
- “I am experienced in going up against established silks, such as in the case of X where I...” **as opposed to** “I am more successful than X who is already a silk”

We know that some applicants may downplay their actions and use ‘we’. The panel are looking for specific information about what you did in a particular situation



Slide 11 – The ‘STAR’ Approach

No additional notes for this slide

Slide 12 – The Interview

The interview is not determinative but is one part of the process and builds on evidence from the self-assessment and assessors.

Applicants need not be nervous; it is not a cross-examination and the panel will make you comfortable.

Slide 13 – The KC Process and the Employed Bar: Some Common Misconceptions

The panel understand that there are reasons why applicants may not be able to provide **twelve cases in the past three years** and do not wish to disadvantage those who, for example, have taken a career break, parental leave or have been in long inquiries over the previous three years. Having fewer than twelve cases is not a bar to application, although it is possible that fewer cases may not cover the breadth of evidence required. You should make it clear in your application why you are unable to provide twelve cases. It may be worth considering whether there are any cases from slightly outside of the three-year window that could be included. However, bear in mind that the further back you go, the less assessors are likely to remember of the case.

They also understand that, given the nature of the work, it is potentially more difficult to satisfy the **oral advocacy** criteria as an employed barrister.

The panel must have some evidence of oral advocacy - if the applicant's area of work does not include a lot of oral advocacy (eg planning) that is fine, but having no evidence of oral advocacy is an issue.

The panel needs to see a balance between written and oral advocacy, and the outcome for Competency B reflects their judgement on the written and oral advocacy taken together, bearing in mind the relative importance of the two elements of advocacy in the applicant's practice. As mentioned earlier,



undertaking pro bono work can provide advocacy opportunities, in particular.

Feedback has been that some applicants genuinely feel they need a **coach** in order to be able to succeed in the KC competition and we appreciate that this might particularly be the case for employed barristers, who may have fewer mentors who have been through the process, or access to support from Chambers. The panel understand that there is a need for additional guidance and are producing additional resources which will provide the same information and help level the playing field. There should be no need to pay for a coach to help with an application; the panel have seen that it certainly does not guarantee a successful outcome and can usually tell when one has been involved. The best way to prepare is to spend time thinking about the examples you have from your cases (listed and unlisted).

Slide 14 – There is no barrier to reapplication

The panel makes no judgement on applicants who have reapplied and, overall, does not question any applicant's motivation to apply; they are simply interested in the evidence provided. Applicants (and this is seen particularly with women) do not need to explain or justify why they have applied for Silk.

There is already a wealth of information and guidance on the website, which is being updated in time for the 2024 competition to address common concerns and 'Mythbust' misconceptions – some of which have hopefully been covered here. But we want to hear from you as to what would be most helpful to cover in the guidance.

The KCA secretariat are always happy to speak to applicants and answer questions on any part of the process, at any time. Do get in touch.