

King's Counsel Appointments:

Guidance for Overseas Judicial
Assessors 2024

Guidance for Overseas Judicial Assessors

If you only have 5 minutes, read this...

The role of the assessor underpins the whole KC selection process. We need the views of those who have seen the applicant on their feet as well as working behind the scenes in preparation of a case to help us build a picture of them – information and colour it would be impossible to get through an interview alone.

However, we know this is a time-consuming process for our assessors. This guidance document aims to help assessors understand the information the Selection Panel is seeking and provide guidance on the process and where to get further help.

Key points to note

Your assessment is for the benefit of the sector and the public, not for the individual applicant.

Please give us your honest opinion of the applicant, even if it's not entirely positive – it helps us to make the right decisions and everything is kept confidential.

Let us know as soon as possible if you feel you can't provide an assessment, so we have enough time to ask someone else.

The majority of assessment requests will be sent on 3 or 7 May 2024. Some may come later or with a shorter deadline than we would like where another assessor has declined or is uncontactable.

Applicants are not mandated to approach you before listing you as an assessor. If they haven't and you need copies of their written work as an aide memoire, you can request it from them.

Don't worry if you've been approached by a large number of applicants – we may not select them all and we won't request more than six assessments from any one assessor.

Whilst we would appreciate you returning assessments to us by the date set out in the email request, if you can't do that, just get in touch.

As an assessor based outside of England and Wales it would be helpful if you could include a sentence in your assessment setting out your own familiarity of the standards expected in those jurisdictions.

Remember to tell us 'why' someone is excellent – what about the situation was beyond the 'day job' and what did they do to make you think they were excellent?

If you have knowledge of an applicant from other cases than those listed, please draw on this and note it on the form.

Don't worry if you don't have knowledge of the applicant in every competency, just fill in what you can and indicate where you have nothing to add.

Avoid comparing applicants to others in the competition or to those who have been recently appointed and please don't refer to any previous applications – each competition is considered completely afresh, with no reference to the previous applications.

If you have provided an assessment for the applicant previously please get in touch and ask for a copy – but if you've seen the applicant since we'd be grateful if you could take the time to update it.

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.** Where possible it would be helpful if the assessor could comment on the extent to which the requirements of oral and written advocacy in the forum in which you have seen the applicant are comparable with the requirements in the higher courts of England and Wales.
- 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 those applicants who secure one. The most important element in the process is the evidence from assessors who have recent professional experience of seeing the applicant in practice.
- 8.** In order to get to the right outcome, the Selection Panel need forthright assessments, even when it does not support the individual. Evidence of performance falling short of the required standard is as important as evidence of excellence.

Confidentiality

9. We understand that some assessors may have concerns about the confidentiality of the KCA process. We do not share assessments provided with applicants, nor do we tell them who we have approached to provide an assessment. Assessments provided in the KC competition are exempt from the subject access provisions of the Data Protection Act.

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. However, we will not supply assessments even to the Complaints Committee without your consent in advance.

11. Unsuccessful applicants 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. Applicants may speculate about who may have provided certain feedback but this will not be verifiable by anything said by or received from KCA.

Contact with applicants

12. KCA encourages applicants to let assessors know if they plan on listing them on their application. We do not, however, mandate this on the basis that it can allow applicants to list only the cases where they know they will receive favourable assessments.

13. KCA encourages applicants to provide assessors with any written work they did on a listed case as an aide memoire. If you have not received copies of any written work when you would have expected to or it would have been helpful to do so, please feel free to contact the applicant direct to ask for this.

14. Applicants are told that they should not lobby for support, and 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

15. The KCA process is a competency-based assessment process. In practice, this means that we need evidence of what made the applicant's work exceptional, rather than an assertion that it was. The Panel is looking for succinct evidence, sufficient to understand the reasons for your view, rather than lengthy descriptions of the case at hand.

16. Applicants are judged against a competency framework, which can be found at Annex A. This sets out the sort of examples the Panel might be interested in.

17. We recommend that applicants use the STAR approach (the Situation the applicant faced, what their Task was, what Action they undertook and what was the Result of their work) and it works equally well for assessors as a way of applying structure in a light touch way.

18. If you have seen the applicant in cases outside of those listed by the applicant, please feel free to draw on these although we would be grateful if you could indicate where this evidence is from a case older than three years.

Cases of substance, complexity, or particular difficulty or sensitivity

19. Applicants are judged on their ability to manage cases that are of substance, complexity or particular difficulty or sensitivity. The Panel is looking for the applicant to provide evidence of being able to go above and beyond the 'day job' or what would be expected of a good senior junior.

20. It is therefore helpful if assessors are able to provide their views on whether or not a case was one of substance, complexity or particular difficulty or sensitivity along with a brief explanation of why.

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 - either law in an area outside the applicant's usual specialism, or new developments in law.

22. Further detail on Competency A is included in the competency framework at Annex A but areas that evidence could cover are:

- Ability to get up to speed with new law.
- Innovative and/or novel use of the law.
- Ability to 'think on their feet' with information at their fingertips.
- Correct application of case law.
- Examples of legal rather than factual complexity.
- Up-to-date knowledge correctly applied.

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. For this reason, there are separate boxes for Competency B1 and Competency B2 in the assessment form.

26. Further detail on Competency B1 is included in the competency framework at Annex A but areas that evidence could cover are the applicant's ability to:

- review information, including at pace, and identify key points.
- boil down information to just what is relevant.
- write persuasively.
- develop strategy according to the needs of the case and setting.
- translate complex legal language into something accessible for a lay person.

27. Further detail on Competency B2 is included in the competency framework at Annex A but areas that evidence could cover are the applicant's ability to:

- change tack in response to new information and/or challenges.
- produce succinct and well-constructed arguments.
- demonstrate excellent interaction with the bench, listening and taking cues.
- ensure understanding of clients, witnesses and others and use that to improve outcomes.
- take only necessary points.
- recognise the need to flex style according to audience, settings and reactions of others – including mid-case.
- deal with tricky case management issues.
- recognise things that have gone wrong and how to improve.

28. 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

29. 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.

30. Further detail on Competency C is included in the competency framework at Annex A but areas that evidence could cover are the applicant's ability to:

- demonstrate the leadership expected of a silk.
- secure the confidence of the court and of fellow advocates. Any failings in this regard should be notified to the Panel with supporting evidence.
- handle vulnerable witnesses/ clients.
- deal with conflict.
- be polite and respectful towards people at all levels and in all roles.
- adapt their style.
- act with frankness and integrity – take adverse arguments and disclose appropriately.
- be organised, meet deadlines and prioritise well.
- be an excellent team leader.
- build diverse, well-rounded teams.

Competency D – Diversity Action & Understanding

31. The diversity action and understanding 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.

Evidence for this competency might come from outside of the applicant's court work, for example it may include work on committees or projects within chambers, or from outside their professional life entirely.

32. The competency is not in 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. Further detail on Competency D is included in the competency framework at Annex A but areas that evidence could cover are:

- Awareness of diverse needs of individuals.
- Dealing with diverse clients and/or witnesses.
- Building diverse teams.
- Confronting discrimination/ behaving as a role model, for example setting up initiatives, being the first in an area to do something.
- Leading initiatives to improve diversity, including evidence of outcomes.

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34. The Panel understands that some judicial assessors may not be well-placed to comment on Competency D, in which case they should leave this section blank. However, where an assessor **does** have relevant evidence – such as the way in which an applicant dealt with the particular needs of an individual party or witness in court – the Panel finds it useful if this is included.

Overall rating – (Part 4)

35. 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 him/her 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.

36. The ratings are designed to provide a clear view on whether the applicant should be appointed as silk – the Panel is aware that there are many extremely effective juniors but who do not fully demonstrate the qualities required of a silk at this time. Such applicants should be rated as "Possibly ready for appointment", or "Not yet ready for appointment".

Explanation of Overall Rating (Part 5)

37. 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)

38. Your assessment should be based solely on your experience of the applicant in professional life, rather than the "general view" of the legal community or of others who have seen the applicant's work but have not been approached for an assessment. Such comment can provide an applicant with an effective 'extra' assessor to the disadvantage of other applicants and will be redacted before the Panel sees the papers.

39. 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

40. Assessments should deal only with the individual applicant, rather than compare the applicant with others in the competition or those who have been recently appointed. Material comparing an applicant with others is redacted before the Panel sees the papers.

Process for Assessors

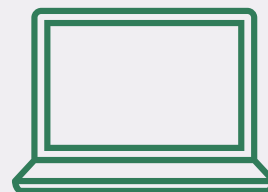


41. You will receive an email containing details of all applicants for whom you are being asked to provide an assessment along with a submission date. The email will also provide you with a link to access the assessor site.

If you are unable to provide an assessment please let us know as soon as possible so that we can approach an alternative assessor in good time.



42. We appreciate the time and effort assessors put into supporting the KC process and whilst we would greatly appreciate a response by the date in the email please do not hesitate to contact us (assessments@kcappointments.org) if you need more time.



43. The details you will need to complete the assessment, including case details, are available in the assessor site where you can also complete the form. If you require technical support please contact the Secretariat.

44. Previous assessments: If you have previously provided an assessment for an applicant you can request a copy of this. However, if you have seen the applicant again since the submission of the previous assessment we would be grateful if you could consider updating it. The Panel will not be made aware of any previous applications so please do not refer to them in your assessment.

45. We recommend completing your assessment(s) via the online form. If, however, you are unable to do this please contact the Secretariat to request a Word version of the form.

46. Forms completed online will receive an automated response. Word forms will be acknowledged by email.

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Contacting us

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 available on our website:

www.KCappointments.org.

Our contact details are below. If your enquiry relates to a particular applicant, please give the applicant's name and ID when you get in touch.

Telephone: 0207 831 0020

Email: assessments@KCappointments.org or hannah.miller@KCappointments.org

King's Counsel Appointments

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The KC Competency Framework

The Panel will judge how far an applicant meets the competencies as described by the passage in italics. The examples provided are 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:

- Acts a role model and leader within and for the profession.
- Behaves in a consistent and open way in all professional dealings.
- Establishes an appropriate rapport with all others in court and in conference.
- 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 take key decisions with authority and after listening to views.
- Identifies priorities and allocates tasks and roles when leading the team.

D. Diversity action and 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 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 and equality of opportunity

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 March 2024