

King's Counsel Appointments:

Judicial Assessors – Example Assessments

Overview

The examples provided in this document offer some guidance on format and structure of a useful assessment – whilst their tone is generally positive, it is vital that assessors serve the profession rather than set out to help the applicant. Honest, evidence-based assessments are much valued and carry weight.

These examples are designed to assist assessors in shaping their assessments and should not be replicated.

Evidence of competencies - examples

Competency A: Understanding and using the law

In Case X the Applicant demonstrated a detailed understanding of the most recent precedent in their specialism. Judgment was handed down in a case that had a significant impact on the points at issue whilst the trial was ongoing and the applicant was able to assimilate this new information and apply it accurately and persuasively to the facts in the case at hand. This included tackling head on the parts of the judgment that went against their arguments. I was impressed at the way in which they conceded points where necessary but presented compelling arguments in their favour where there was some possibility of success.

In addition, the applicant was able to consider and use case law from outside of their normal area of specialism. Whilst I do not know how much knowledge the applicant had of this area prior to this case I can say that they were confident in their use of the law in this area, applying the relevant legal principles convincingly and changing the course of the case through this novel use of the law.

The Applicant handled the changing landscape of this case with considerable assurance. It was easily at silk level.

Competency B1: Written Advocacy

The applicant's written advocacy is outstanding, which was demonstrated in Case X where they were required to provide me with a written skeleton in a case that was both legally and factually complex.

The applicant identified the key points in support of their case, conceded the bad and took the challenging points head on. This demonstrated their tactical acuteness, showed respect for the Court's time and ensured they were on the front foot on the key arguments. Admirably they also predicted the points within their own case most likely to be challenged and wove their rebuttals into their written work.

Despite the large volume of documentation involved in the case the skeleton was easy to follow and well signposted. They made use of visual prompts such as tables and diagrams which made the complex information more accessible to non-experts and which was of considerable help to me in navigating this complex case. It was clear that a large volume of information had been assimilated but the written skeleton avoided prolixity and was concise and clear with no wasted words. This skeleton was the equal of many submissions I have seen from those already in Silk.

When additional and unexpected arguments were raised by their opponent the applicant worked overnight to produce a pithy and robust rebuttal to the points made. This would have been outside of their usual area of specialism but the arguments were accurate and well researched. Whilst they didn't knock down all the arguments it was clear that they had understood the key issues and the submission was a helpful guide through these.

Evidence of competencies - examples

Competency B2: Oral advocacy

In case X the applicant was required to cross examine an expert witness whose evidence was key to the case. Their performance in this case and particularly in this cross examination was, in my view, at the level of a Silk.

The applicant was well prepared and had clearly done a significant amount of research to ensure they had the requisite level of factual understanding. This was demonstrated by the depth of their questions and their ability to probe more deeply in response to the answers given. However, they also demonstrated their ability to change tack. Part way through the cross examination the witness gave an answer that was clearly unexpected, offering the applicant the opportunity to undermine evidence previously given. At this point the applicant moved away from their pre prepared questions and used their knowledge to probe the witness on this inconsistency.

This section of the cross examination was also a masterclass in gaining the confidence of the bench. The applicant was nimble and knowledgeable in responding to my questions, the legal and factual evidence apparently at their fingertips, not allowing the interjections to put them off their stride. I was also impressed by their ability to make the (correct) assumption that the point had been made – making the inconsistency clear to me but without hammering home the point to an unnecessary degree.

In addition to the above, the applicant's oral submissions were clear and well structured, dealing with new information accurately, referring to up to date case law in response and in real time.

The applicant's cross examination was the turning point in this case and was the equal of, if not better than, their Silk opponent's.

Competency C: Working with others

It is often difficult to judge this competency from the bench, however, the applicant was polite to all users of the court as well as staff, including clerks and ushers, going out of their way to be helpful with any issues or queries. It was also clear that they worked well with their opponent, refining issues overnight at times to protect court time.

The applicant also secured the confidence of the court by conceding bad points whilst not shying away from raising points that went against their client but that needed full consideration.

Competency D: Diversity Action and Understanding

The applicant spent a significant amount of time explaining what would happen in the trial to our lay client who had severe learning difficulties, was Black and from a deprived area.

When preparing the lay client for their examination in chief the applicant spent a large amount of time with them, explaining what would happen and why the questions were important. They also took the time to learn about the lay client, understanding about their life, friends and family. This built a rapport that became incredibly important as the trial continued. At times the lay client became visibly upset and distressed but the applicant was able to use their understanding and empathy to calm them down and allow the trial to continue.

More than once I saw the applicant challenge the prosecution regarding assumptions they made, or hinted at, about the defendant based on their protected characteristics. I have no doubt that without the applicant's hard work we would have seen significant disruptions to the trial.

If knowledge of structural work

The applicant is a member of the Chambers DE&I Committee. They personally brought forward the idea of improving the offer to those on parental leave.

The idea was not welcomed at first by those who felt that the cost would be excessive. The applicant produced a paper setting out the historic numbers of those on parental leave and projections of estimated cost in the future. They also provided examples of other chambers where the policy had been successful. Prior to the key meeting the applicant spoke to a number of the key detractors, using the evidence base to persuade them of the benefit to Chambers as well as to the individual.

The policy was implemented and anecdotally I am aware of a number of individuals who have been able to return to Chambers who otherwise may not have done.

Further assistance

Please contact the KCA Chief Executive by email or telephone if you would like information or assistance. We are always happy to help

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