

King's Counsel Appointments:

Practitioner (Opponent) 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 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, showing respect for the Court's time and ensuring 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 the Judge 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.

When unexpected information arose from a cross examination 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.

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 were 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 change tack and 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 the judge's 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 the judge 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.

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

Whilst it is difficult for me to comment on the full scope of this competency the applicant worked well with me throughout the case. They brought to my attention, and apologised for, an issue of missed disclosure even though it undermined their case. They also worked well with me in narrowing the issues to put before the court, compromising where it was sensible to do so rather than doggedly sticking to bad points.

I also had a pupil with me during the case. The applicant took the time to speak with them, providing insight into their own area of specialism, which is niche. I also noticed the excellent rapport the applicant seemed to have with the court staff, always engaging politely and obviously having spent time to get to know them over the course of this and other trials.

Competency D: Diversity Action and Understanding

The applicant was keenly aware of the needs of those involved in this case. The applicant had taken the case pro bono.

Both the defendant and a number of the witnesses were vulnerable, requiring adjustments throughout the trial. These were discussed with me and the judge and adjustments such as regular breaks and interpreters were put in place. As an example, the defendant, at one point, objected to the questions of the prosecution during cross-examination of one of the defence witnesses. The court was adjourned to allow time for the defendant to have a break. Whilst I do not know the exact details of the conversation I do know that the applicant spent considerable time during that adjournment with the defendant who returned to the court calm and engaged.

The applicant was respectful to all of those involved in the case and had clearly spent a significant amount of time understanding their client's cultural background and the needs arising from this. Without their understanding and early intervention to ensure that both their client and witnesses were well supported throughout the process the case would not have run as smoothly as it did.

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 guidance

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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