

KING'S COUNSEL APPOINTMENTS
Review of the Consistency of the KC
Appointments Process
Executive Summary



September 2022

EXECUTIVE SUMMARY

A review of the KC selection process was undertaken to determine the following:

- Are the criteria for the selection of assessors appropriate, and clear?
- Are those criteria properly applied by the Secretariat?
- Is the approach to declaring assessments “inadequate” appropriate; and consistently applied?
- Is the approach to redaction from assessments appropriate and consistently applied?
- Is the approach to the inclusion of third-party views within assessments appropriate and consistently applied?
- Is the Selection Panel clear enough (and consistent enough) about what constitutes a case of substance, especially when dealing with Competency A (Understanding and using the Law)?
- Is the Panel clear and consistent enough about what it requires in Competency C (Working with Others) especially concerning leadership?
- Is the Panel clear and consistent enough about what it requires on Competency D (Diversity) especially so far as proactive work is concerned?
- Is the approach to questioning at interview sufficiently consistent? Should questions on the lines of “describe what you did when something went wrong” be preferred to questions on the lines of “tell me how you prepare for cross-examination”.
- Is the way the Panel records interviews satisfactory, and sufficiently consistent?

To answer the above, a review of key documentation was conducted, as well as interviews with the Secretariat and the Selection Panel. A sample of interview notes were also reviewed to check on the consistency of note taking and the questions being asked, and a couple of feedback letters were also reviewed. A summary of our findings is outlined below, under key headings.

Document Review

- The information provided to applicants is clear, transparent and informative. It is clearly aimed at helping all applicants to succeed, whilst allaying any concerns they may have about what the process entails or what they are being measured against. The criteria, requirements, how to choose assessors, examples of cases of substance, and guidance on how to complete the application is all provided. Explanations for diversity monitoring is clearly stated and there appears to be sufficient flexibility in the number of assessments required so that anyone from any practice area or working pattern can equally apply. All of these steps are in line with best practice in selection.
- There is scope to provide further information about how to evidence examples on the application – by giving applicants a model such as STAR. This may cut down the number of applicants who seek professional coaching to help them succeed.
- The amount of time an applicant has to answer questions in the interview is very short and we would recommend that this is extended to at least 3-4 minutes per question.

Selection of Assessors

- Both the written guidance on how the Secretariat chooses the most appropriate assessors, and the practice of doing so appears to be clear, appropriate, and consistently followed by all of the Secretariat. Two members of the Secretariat are responsible for selecting assessors whilst a third double checks all decisions that are made. This is a rigorous process which is taken with great care and attention in order to get the best range of assessors to provide assessments about an applicant.
- Conversations with the Secretariat revealed that a great deal of effort is put into chasing assessors to provide assessments, not just once, but as many times as required until the assessments arrive. Last year there was a 100% return on assessments that were asked for by the Secretariat. This enables the Selection Panel to have as much evidence as possible to reach balanced and objective conclusions about an applicant's competence.

Declaring Assessments as Inadequate, Redacting & Third-Party Views

- The approach to declaring assessments as 'inadequate' appears to be clear, appropriate and applied consistently by *one* individual.
- The approach to redacting information from assessments appears to be clear, objective and consistent. It aims to remove potential bias from an assessment before it is passed on to the Selection Panel.
- Third party views are redacted from assessments prior to the Selection Panel viewing them which will help to eliminate any bias. We recommend that the process for doing this is fully documented so that anyone from the Secretariat can undertake this task if required to do so.
- Currently one person from the Secretariat is responsible for undertaking all of the above tasks. This could potentially be quite an administrative burden, so there is scope to share the workload between others within the Secretariat in the future.

Moderation & Marking Applications

- The Panel individually mark three Benchmark applications and then meet for a moderation meeting to discuss the evidence and their ratings. This process is an example of best practice – it helps to ensure the consistency of marking in a standardised way by every panel member. It also helps to identify where the benchmark is for excellence in a competency and what evidence may be required to justify each of the ratings.
- Applications are marked by both a Lead and Support Grader to ensure that consistency in the process is maintained. This is another example of good practice. However, the rating that the lead grader gives is visible to the support grader which may unconsciously affect their thinking. We recommend (if the IT system allows) that this grade is masked until after the support grader has come to their own rating/conclusion.

- All panel members were clear and consistent about what constituted a case of substance.
- There was a great deal of consistency between panel members about what they are looking for within Competency A – Understanding and Using the Law. The panel did not feel that if their legal expertise was from a different practice area to that of the applicant, that it was in any way detrimental to an applicant’s chance of success.
- There was good consistency between members of the Selection Panel regarding what Competency C - Working with Others comprises of. However it was evident that assessors may be less aware of the leadership aspect of this competency. Further examples could be provided within the competency framework, particularly regarding dealing with conflict, and using different styles of leadership for different situations. This will also help applicants when completing their self-assessment and preparing for interview.
- There was excellent consistency between members of the Selection Panel regarding Competency D – Diversity. All commented that it was both about the understanding of diversity issues within the profession *and* proactivity in what the applicant has personally done to promote diversity/inclusive thinking or practice.
- We recommend that the competency framework examples for Diversity and the descriptors are updated and include the term ‘inclusion’ to ensure that it is up to date with current terminology and thinking in the legal profession. Suggestions have been provided.
- After the panel pair have graded and discussed their scores and come to a final rating, there is another moderation meeting with the whole Selection Panel to discuss all of the applicants, their ratings and evidence against the competencies. It serves as another check for consistency and possible bias in the process, which is in line with best practice.

Interviews & Note Taking

- Interviews are conducted in pairs with a legal and lay panel member, typically with the Legal member asking questions on competencies A and B, and the Lay member asking questions for competencies C & D. Panel members have various different approaches to taking notes during the interview. Some type up notes, some hand write and then type, and others dictate their notes. From the sample of interview notes reviewed, it appeared that some write up more than others, but on balance, the overall quality of note taking was very good and ratings were justified, with evidence to support them. The use of technology could be better utilised to make note taking or discussions easier in the future.
- The types of questions asked were predominantly competency based or about a particular aspect of a case or comment within the applicant’s self-assessment. We noticed some hypothetical questions which tend to be less reliable and valid in providing evidence – these were more evident for Competency C Working with Others. The number of overall questions asked per competency varied, and at times the volume of questions asked seemed quite high, given the little time available during the interview. This may need further clarification during any interview training.

- The post interview final moderation meeting is used as another checkpoint to discuss all evidence and ratings for each applicant, and form a decision about whether to recommend appointment to KC. The Panel perceived this to be a very thorough and rigorous meeting where evidence and possible biases are challenged by all members. There appear to be no issues of hierarchy and all panel members (lay and legal) are respectful and will equally challenge the views of others.

Feedback

- The feedback to unsuccessful applicants appears to be consistent and evidence based, and should help them understand where to improve or develop in the future. There does not appear to be any bias in the comments provided and care is taken to ensure that no assessors can be identified. This is in line with best practice recommendations.

What works well and what could be improved

- The selection panel were very complimentary about the Secretariat and the support they provided. They were also very respectful of each other and felt comfortable challenging each other's views and potential biases. They made some suggestions for improvement which included a review of the heavy reliance on assessments in the process, training for the panel, a formal IT induction for new members, and clarification of the rating scale.

Recommendations

- A range of recommendations were identified to further enhance the consistency, rigour and objectivity of the KC selection process. These included: having a formal induction for new panel members, further simple additions to the competency framework, advice on question types and probing, additions to the applicant guidance, a review of the rating scale, and annual Panel training. Ideally more time could be given to the interview and time in between interviews to ensure that there is sufficient time for full discussions to take place.

RECOMMENDATIONS

Recommendations have been made throughout the report, and the majority are listed again below, under key headings. We have not provided recommendations on how to change the KC process but have focused on improving the consistency of it.

Applicant & Assessor Guidance

- Consider extending the closing date for complaints to 90 days due to Covid or disability related reasons.
- Elaborate on the STAR model as a way of evidencing examples for both the application and interview.
- Provide a second specimen assessment for Client Assessors.

Competency Framework

- For C – Working with Others, we recommend that further examples are provided within. These could include the following (for example):
 - Effectively deals with conflict when it arises.
 - Uses a range of leadership styles depending on the situation/people involved.
 - Inspires and motivates others to achieve their goals/potential.
- For D – Diversity, we recommend that the descriptor and examples are expanded further to include ‘inclusion’ as well as diversity. The Bar is striving for more diversity and for inclusive practices and culture within chambers. Examples could include:
 - Takes positive action to promote diversity, *inclusion* and equality of opportunity.
 - Is proactive in creating a diverse or inclusive culture.
 - Proactively strives to make a difference in relation to diversity and inclusion.

Grading Applications/Moderation

- If IT systems permit, it would be beneficial to hide or mask the Lead Grader rating from the Support Grader to avoid any possible bias.
- We strongly recommend that applicants are not searched for on the internet prior to the offer stage.

Selection Panel Induction & Training

- Ensure that any training on Bias in Selection includes:
 - An overview that there can be gender and cultural differences in how an applicant writes up their self-assessment.
 - The dangers of looking up applicants on the internet prior to grading/interviewing them as it may lead to unconscious bias creeping into decision making.
 - To be wary of the horns effect, particularly if the panel suspects that an applicant has received 'coaching'.
 - Full discussion about different types of bias that can affect decision making – halo/horns effect, primacy effect, affinity bias, herd effect, mid-point/central tendency bias, contrast effect etc.
 - Be careful not to compare candidates against each other.
 - Clarity about the rating scale and when a 0 is used, or a 5, and for which competency. The scale itself could be revised altogether.
- Include formal Induction Training as part of the process for new panel members so that they can come up to speed before the moderation meeting. This gives them the opportunity to ask any questions in a safe environment. The Induction could include:
 - All the material that the Chair and Secretariat already cover in their induction briefing.
 - A live demonstration of how to use the IT grading system so that all members feel comfortable using it.
 - A full explanation of the rating scale and what ratings can/can't be awarded for each stage of the process to avoid any confusion at moderation stage.
 - Information such as the applications will come in batches, so that members can plan their diary accordingly.
- Continue having annual benchmark moderation meetings before grading, but also provide annual 'Inclusive Interview Skills' training as a panel. Ensure that this covers effective question types, biases to avoid, how to probe a candidate using the STAR model, how many questions to ask in the time allocated, and note taking.

Interviews

- Have one document as a 'Selection Panel Guide for Interview' that provides a checklist of points to cover during the interview, how to put candidates at ease, how to probe effectively, and a bank of approved interview questions per competency.
- We recommend using case specific questions or competency-based questions during the interview to maintain consistency, and avoid using hypothetical questions.
- IT could be better utilised to aid with note taking at interview or during moderation meetings. Full training would need to be provided if this change were to be made.
- Ensure Selection Panel Interview/Bias Training is undertaken annually.

- We would recommend extra time is given for the interviews. In order to get the best out of the applicant, could interviews be extended to 3-4 minutes per question? Could more time also be provided in between interviews to classify and evaluate evidence and discuss it?
- The Selection Panel Guide for Interviews should include questions to avoid such as double headed or multiple-choice questions. Include information about different types of bias and how to avoid it (see Appendix B for examples).

Secretariat Process

- Ensure there is a written process for dealing with/redacting third party views from assessments.
- There is scope for certain tasks (such as reviewing, redacting, checking assessments and Panel notes/write ups) to be shared out amongst a few members of the Secretariat rather than be left to one person to do.

Diversity & Inclusion

- Restrict the use of colloquial phrases throughout all paperwork and interviews, and be mindful to use inclusive, more neutral language.
- Reword interview guidance that refers to 'testing gut feelings against the evidence'.
- Ensure that adjustments are made for interview if applicants/panel members require it and be more proactive in asking about reasonable adjustments.

Monitoring

- It would be interesting to see what competencies different groups of applicants are failing or succeeding on compared to other groups, to see if there is a pattern emerging. This could inform any future changes to the process or guidance documents.
- Continue with the diversity monitoring, harsh/leniency monitoring, and any adverse impact analysis that is currently being undertaken.