

Sift Feedback Report

**098 Salaried Judge, Upper Tribunal, Immigration and
Asylum Chamber**

January 2019

Purpose

The purpose of this report is to provide general feedback on candidate performance in the 098 Salaried Judge, Upper Tribunal, Immigration and Asylum Chamber sift. The report describes how the panel undertook the sift for this selection exercise, information on the relative performance of candidates and what characterised stronger examples in comparison to those requiring improvement.

Competency framework

The panel assessed the evidence (self-assessment and the independent assessments) against the following competencies:

- Exercising Judgement
- Possessing and Building Knowledge
- Assimilating and Clarifying Information
- Working & Communicating with Others
- Managing Work Efficiently

Please refer to **Annex A** for full details of the competencies that were assessed at the sift.

The competencies were developed so that candidates could demonstrate the skills and abilities required for this role. The specific bullet points under each competency heading reflected the competencies that an effective Upper Tribunal Judge in the Immigration and Asylum Chamber is expected to have. This enabled the JAC panel to assess candidates in a fair and consistent way.

Sift

In looking at all the evidence to determine the grading of the candidate, the panel considered:

- whether the picture that emerged from all the evidence demonstrated that the candidate had the necessary skills to undertake this role and
- whether examples of substance, complexity, sensitivity or difficulty were well demonstrated

Progression to selection day

At the sift, the panel considered all the evidence from the self-assessment and the independent assessments to determine whether the candidate met the core aspects of the competency requirements to a sufficient standard. The candidates fell into groups demonstrating either strong evidence, sufficient evidence or insufficient evidence against the competency framework.

Candidates in the group demonstrating insufficient evidence against the competency framework, did not provide examples that met the core aspects of the competency requirements to a sufficient standard. These candidates were not invited to a selection day.

The number of candidates shortlisted for interview for a post depends on several factors including the number of vacancies. The JAC usually invites 2 or 3 candidates for each

vacancy in line with stated policy. Obviously, all candidates invited to selection day must reach the standard of being considered selectable for the role on the basis of the sift assessment. In some exercises it may not be possible to invite all candidates who have reached the required standard of competence to selection day. In this exercise however, all selectable candidates were invited to selection day.

For this exercise there were 37 applicants, of whom 18 progressed to selection day.

Additional selection criteria

For this salaried post, candidates were informed that the Lord Chancellor expected candidates to have sufficient directly relevant previous judicial experience. Exceptions would be considered if the candidate demonstrated the necessary skills in some other significant way. Most candidates met this criterion having had sufficient directly relevant judicial experience. Of those who did not, the majority found it difficult to sufficiently evidence how their experience was directly transferable to this senior judicial role. In particular, those candidates struggled to demonstrate equivalent experience for the breadth of the role of an Upper Tribunal judge and the amount of new law that would have to be assimilated in order to be effective. There was no discernible difference in the standard of self-assessments from those with judicial experience outside of the jurisdiction of immigration and asylum compared to those who have worked within the jurisdiction.

General comments on self-assessments

Strong candidates provided a well-structured, well presented self-assessment, gave detailed examples to support each competence and did not rely on assertions. They focused on a limited number of examples in each of the competencies by drawing out the specific actions or thinking process taken by the candidate in coming to a decision.

Using the name of a case in which the candidate has appeared, without further detail, is not a good example in support of a competency. It left the panel uncertain as to the candidate's role in the case and how strong an example it really was. Despite the guidance provided, some self-assessments were limited in their content and described a case without linking it to the requirements within each of the competencies. Insufficient evidence was also characterised by offering too many examples, with the result that they were brief on detail.

Consequently, self-assessments deemed to contain insufficient evidence often lacked depth or complexity, contained a preponderance of assertion, and drew on evidence with few pertinent examples to demonstrate an ability to take on the role.

Self-assessments

Key strengths and weaknesses identified in each of the self-assessment competencies.

Exercising Judgement

A key aspect of the role of a Salaried Judge of the Upper Tribunal is to handle appeals against decisions made by First-tier Tribunals. Strong candidates used 1 or 2 examples of complex cases from their judicial experience in which they explained the thinking and legal process they adopted in coming to a judgement.

Examples provided by some candidates which only drew from private practice may have been stronger had they highlighted cases from their extensive judicial experience. Insufficient evidence was characterised by simply outlining the flow of a case without evidence of what decision was taken or how it was reached.

Possessing and Building Knowledge

This competence primarily assesses 2 things, the possession of immigration and asylum law and how the candidate acquires knowledge and keeps abreast of changes. Showing knowledge by outlining their contribution to a complex case, and using a different case example, where the candidate was required to acquire knowledge rapidly or how they actively pursued professional development, would be strong evidence.

A significant number of candidates assumed that their professional or judicial background was sufficient to demonstrate the possession of knowledge and therefore focused their evidence on the building of knowledge. The candidate's background may provide context for the panel but on its own it is not clear evidence of the relative knowledge of the candidate. Some candidates found it difficult to present their knowledge in the form of evidence rather than assertion. Telling the panel how long they have practised in immigration and asylum law, that they read online case updaters, the judicial intranet, or are committed to active learning by attending courses, are all assertions and insufficient evidence. Strong evidence would be demonstrated by showing how recent learning, or research undertaken during the case affected their actions or decision, and how they consolidated or shared their learning with others.

Assimilating and Clarifying Information

Strong candidates used 1 or 2 complex cases as examples. Complexity will have been demonstrated, not simply in the volume of files, multiple witnesses or time pressures, but in cases which may be highly technical, inter-jurisdictional, of national importance, or where the outcome or impact is significant. Such candidates succinctly explain how their knowledge enabled them to focus on certain papers or sections to get to the key issues quickly, where there were gaps in knowledge or information, how it was addressed, and if, for example, colleagues or experts were used, how the candidate managed and coordinated their activity.

Insufficient evidence was exemplified by outlining a case that highlighted information gaps or the weighing of information but contained limited detail of the candidate's part in the process. Words such as 'sifted', 'collated' and 'ordered', or phrases such as 'I clarified the claim', or 'I ask pointed and intelligent questions' tell the panel very little about how it was done or the impact of the candidate's actions. Some candidates used direct quotes from their appraisal rather than providing their own evidence. Quoting evidence from others is better provided to the panel by the candidate ensuring that their appraisal feedback is addressed by at least one of the independent assessors.

Working and Communicating with Others

This was the competence where most candidates provided their strongest evidence. Such evidence contained several case examples which demonstrated breadth and depth.

Examples will have included how they interact with judicial colleagues and court staff as well as those seeking justice and the different forms this might take. There were many strong examples of introducing change, such as initiating paper free courts and offices, increasing productivity or court throughput, and explaining how it was achieved where there was resistance. Encouraging collaboration was reinforced in examples where the candidate took an active role in bringing people together to resolve matters.

Valuing diversity and sensitivity to different communities and groups is an important part of this competence. Strong candidates showed how they actively engaged and empathised with individuals to shape proceedings, whereas insufficient examples focused on the initial identification of a working or communication problem and the resulting outcome, without clarifying what they had done to give the parties a fair opportunity to present relevant evidence or arguments to progress the case. Insufficient evidence was also characterised by the use of assertions.

Managing Work Efficiently

Strong examples showed how work was managed, the processes adopted, the initiation of change and how their use of technology drives improvement and efficiency. Strong candidates successfully evidenced this in a couple of well-chosen examples rather than lists of activity.

Insufficient evidence included reference to the use of sifting, diaries etc; in other words, the 'what' of managing without explaining the 'how' or 'why'.

Other examples where a candidate has received a large amount of information very shortly before a hearing that subsequently went ahead successfully is generally insufficient evidence. When presented in isolation it demonstrates that the candidate is prepared to put in the hours and prioritise tasks to ensure completion of the court workload, but is not strong evidence of efficiency.

Independent assessments

There were many strong, comprehensive independent assessments that contained some specific evidence to address each of the competencies. However, there were also a significant number where the independent assessor provided only general information about the candidates.

In a number of cases, the independent assessment did little to add any weight to the self-assessment and overall information. It would be helpful if independent assessors could provide brief, meaningful examples for each competence.

Candidates should consider those who they nominate as independent assessors. Some independent assessors had little information to provide for the candidate, particularly where their knowledge of the candidate was from a long time ago. The panel is likely to give greater weight to an independent assessor who knows the candidate and their work well, particularly in a judicial capacity in this instance, and can give specific examples to demonstrate the competencies. Comments from individuals who can provide an objective assessment of a

candidate's abilities are more likely to reinforce and strengthen other information available to the panel.

In many instances there was a clear correlation between the length of the independent assessment and the strength of the evidence, which reinforces the above points. There was evidence in some cases, that the candidate had shared their self-assessment with the independent assessor who had simply used the same evidence in the examples virtually word for word, or appeared not to have communicated with them at all. In such situations the independent assessor evidence is weakened.

There is clear guidance for independent assessors provided by the JAC and it is the candidate's responsibility to nominate an assessor that knows their work well and can give a first-hand account of their abilities.

Competencies

The sift assessed the following competencies:

1. Exercising Judgement: Demonstrates integrity and applies independence of mind to make incisive, fair and legally sound decisions

- Gives clear reasons for decisions, applying the relevant law and procedure to facts and submissions
- Makes decisions with confidence, in a timely and appropriate manner
- Demonstrates independence of mind
- Ensures fairness; demonstrates integrity and acts without bias and prejudice, especially in challenging, highly complex situations
- Communicates decisions and provides guidance with confidence, in a timely and appropriate manner

2. Possessing and Building Knowledge: Possesses a detailed knowledge of the relevant law and practice. Demonstrates an ability and willingness to learn and develop professionally

- Demonstrates extensive knowledge of the Immigration and Asylum law and procedures or the ability to acquire this knowledge
- Demonstrates a capacity to acquire knowledge rapidly, especially of complex subject matter
- Keeps abreast of changes in the law and practice
- Actively pursues continuous learning and professional development and supports others to do so

3. Assimilating and Clarifying Information: Quickly assimilates information to identify essential issues, develops a clear understanding and clarifies uncertainty through eliciting and exploring information

- Effectively assimilates and processes large amounts of complex information from multiple sources
- Identifies information gaps and focuses on the relevant issues encouraging others to do the same
- Weighs the evidence fairly in order to reach a reasoned decision

4. Working and Communication with Others: ('Others' includes judges and those involved in the administration of justice, as well as all court users) Conducts proceedings and executes other responsibilities appropriately, actively contributes to the advancement of the court centre.

- Establishes authority and demonstrates courtesy, inspiring respect and confidence in others
- Works constructively with judicial colleagues and court staff to encourage collaboration and foster positive change
- Values diversity and demonstrates sensitivity to the particular needs of different communities and groups

- Demonstrates good communication skills, showing empathy and sensitivity towards others
- Listens attentively and patiently throughout to ensure all parties, including those without representation, have a fair opportunity to present relevant evidence and arguments while progressing the case efficiently

5. Managing Work Efficiently: Works and plans effectively to make the best use of resources available

- Manages own and court time and prioritises tasks to ensure efficient completion of varied workload
- Demonstrates an ability to successfully initiate and implement change
- Demonstrates resilience, responding calmly and flexibly to changing circumstances and high-pressure situations
- Utilises available resources, embraces and encourages the use of different forms of Information Technology as appropriate