

## **Post Selection Day Evaluation and Feedback Report**

**011: Fee-paid Specialist Member of the Upper Tribunal assigned to the Administrative Appeals Chamber (Disclosure and Barring jurisdiction) and First-tier Health, Education and Social Care Chamber (Care Standards jurisdiction)**

**July 2020**

## **Purpose**

The purpose of this report is to provide an evaluation of the selection days for Fee-paid Specialist Member of the Upper Tribunal assigned to the Administrative Appeals Chamber (Disclosure and Barring jurisdiction) and First-tier Health, Education and Social Care Chamber (Care Standards jurisdiction) as well as capture general feedback on candidate performance. The report describes how selection days were undertaken by both panels and candidates; including what characterised stronger and weaker demonstrations of the competencies needed to fulfil the requirements of this role.

## **Competency Framework**

At selection day, the situational questions and the competency-based questions were designed to assess the following competencies:

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

The assessment criteria were developed so that candidates could demonstrate the proficiency and capability transferable to the role from other contexts. The specific behavioural indicators under each competency were designed to reflect the aptitude and faculty that an effective Fee-paid Specialist Member of the Upper Tribunal is expected to have. This enabled us to assess candidates in a fair and consistent way.

## **Performance of candidates**

76 candidates applied for this exercise. Following the qualifying test and the eligibility sift, 24 candidates were invited to selection day. One candidate withdrew before their selection day.

The 10 highest scoring candidates were recommended by the Judicial Appointments Commission to the Senior President of Tribunals for appointment. This included one candidate who was recommended following the application of an [Equal Merit Provision](#) to this exercise.

In making these decisions the Commission took into account all relevant character checks, and all evidence provided by the candidates at selection day as well as the candidates' independent assessments and statutory consultation information.

10 candidates were assessed as 'not presently selectable'.

Four candidates who were selectable but not recommended to the Senior President of Tribunals were offered individual feedback.

## **Selection day**

### **Situational questions**

#### **Development**

The situational questions were drafted by an Upper Tribunal Judge from the Administrative Appeals Chamber and a Tribunal Judge from the First-tier Health, Education and Social Care Chamber. In common with all the selection tools developed for this exercise, the situational questions were designed to assess relevant transferable skills and to minimise the extent to which candidates might be advantaged or disadvantaged by their professional background. The JAC Advisory Group, which is composed of members of the judiciary and representatives of the legal professions and chaired by a lay JAC Commissioner, offered advice and guidance during their development.

The effectiveness of the situational questions was assessed by means of a dry run with a range of volunteers from relevant candidate groups. This provided an opportunity to trial the test material and make any necessary amendments.

#### **Structure of the situational questions**

There were 3 written scenarios with a series of questions on each scenario.

In the first scenario the candidates had to consider the appeal of a care worker who has been dismissed from work and whose name has been included in the Adults' Barred List following an incident in an elderly care home. The candidates were expected to analyse and discuss the conduct of the appellant and decide whether the appeal should be allowed or not.

In the second scenario the candidates had to consider the appeal of a registered manager of an elderly care home whose registration has been cancelled following an incident in the care home. The candidates were expected to analyse and discuss the procedural steps for cancelling a registration and consider the role of the Care Standards Tribunal.

In the third scenario the candidates had to consider the relevance of evidence obtained outside official hearing proceedings. Then, they had to discuss a judicial decision regarding the inclusion of a foreign language interpreter in the hearing. The candidates were expected to provide a detailed reasoning for their decisions with a focus on the issue of fairness.

#### **Advance preparation**

The candidates invited to selection days were asked to familiarise themselves with relevant statutes, tribunal procedure rules and case law that were provided to candidates approximately one week in advance.

## **Assessment of candidates' responses to the situational questions**

The evidence for each competency is assessed as either outstanding, strong, sufficient or insufficient. The panels then make a final overall assessment of candidates as either outstanding, strong, selectable or not presently selectable.

Outstanding evidence included:

- Identifying and correctly applying the relevant legislation to the issues of regulated activity, vulnerable person, relevant conduct and cancellation of registration
- Identifying what harm is risked and recognising that actual harm was not caused
- Recognising that professional misconduct is not the same as harm
- Discussing the matter of appropriateness in relation to conduct
- Correctly identifying all of the procedural steps to cancel a registration
- Correctly identifying the role of the Care Standards Tribunal and its power to admit evidence
- Discussing the significance of the evidence obtained outside official hearing with consideration of the issues of fairness, impartiality and the overriding rule
- Identifying the appropriate steps in raising the evidence with the appellant
- Recognising the complexities of assessing language fluency in court proceedings and identifying the issue of fairness
- Recognising that requiring all communication at the hearing to be in the foreign language is not a sensible option and explaining why
- Outlining the process of challenging unilateral decisions by the judicial member and recognising the importance of the overriding objective

Strong evidence included:

- Identifying professionalism vs harm
- Recognising the issue of appropriateness
- Considering whether the ECHR might apply
- Identifying most of the procedural steps to cancel a registration and the role of the Care Standards Tribunal in the process
- Discussing the issues of fairness, impartiality and the overriding rule
- Identifying most of the appropriate steps in raising the evidence with the appellant
- Recognising most of the complexities around language fluency and explaining why the communication in the hearing should not be only in the foreign language
- Identifying most of the reasons why the judge's decision might not be appropriate including the overriding objective
- Explaining the process of challenging the judge's decision

Sufficient evidence included:

- Considering the issue of professionalism
- Recognising the scope of the Safeguarding Vulnerable Groups Act (Appeals)
- Identifying the basic procedural steps to cancel a registration.
- Discussing some of the powers of the tribunal in relation to the evidence obtained
- Considering some of the issues relating to fairness and impartiality
- Identifying some of the steps in raising the evidence with the appellant
- Discussing the issue of language and some of the reasons against having the hearing only in the foreign language
- Considering some of the steps in challenging the judge's decision including the overriding objective

Insufficient evidence included:

- Failing to distinguish between the relevant conduct and the regulated activity
- Failing to distinguish between the lack of professionalism and the risk of harm
- Failing to identify the basic procedural steps to cancel a registration
- Failing to consider the issues of fairness, impartiality and the overriding rule
- Failing to discuss the steps in raising the evidence with the appellant
- Considering that the issue of language is a matter only for the judge to decide
- Deciding to adjourn the hearing when facing a difficult issue
- Failing to analyse sufficiently the reasons for not continuing the hearing in the foreign language

### **Competency based interview**

Each candidate then had a competency based interview. Here the panel was seeking further evidence and examples from the candidate of the required competencies and in the context of the role of a Specialist Member of the Upper Tribunal. The competency based interview assessed the competencies not sufficiently covered during the situational questions.

### **Working & Communicating with Others**

Outstanding evidence included:

- No candidates provided outstanding evidence of this competency

Strong evidence included:

- Giving fluent and clear responses in a methodical way throughout the interview

- Demonstrating an ability to listen attentively, consider other opinions and be non-judgemental
- Showing sensitivity towards vulnerable people with attention to fairness
- Checking understanding by lay people of specialist area
- Recognising different cultures and showing insight and respect towards others

Sufficient evidence included:

- Giving confident responses which sometimes were lacking structure and focus
- Providing sufficient examples of showing sensitivity to a vulnerable person after some prompting from the panel
- Demonstrating sufficient relationship building skills albeit through routine examples

Insufficient evidence included:

- Inability to provide specific examples in answer to the competency questions
- Lacking sufficient details even after prompting from the panel
- Failing to show focus, clarity or logical thought process

## **Managing Work Efficiently**

Outstanding evidence included:

- Demonstrating an outstanding approach in managing a busy workload
- Demonstrating a well thought through strategy of prioritising tasks and limiting distractions
- Demonstrating an ability to utilise IT in an efficient and secure manner
- Demonstrating creativity and innovative thinking in adapting to remote working processes

Strong evidence included:

- Demonstrating resilience and effective management of changing circumstances
- Demonstrating a strong focus on priorities
- Showing ability to adapt to new IT systems and finding effective ways to work from home

Sufficient evidence included:

- Giving an insight into ability to plan and manage a busy day with satisfactory evidence of balancing and prioritising tasks
- Showing proactive approach to adopting new ways of working using IT

Insufficient evidence included:

- Inability to give a confident and detailed account of juggling and prioritising conflicting tasks
- Inability to explain sufficiently any recent improvement of IT skills

## **Assimilating & Clarifying Information**

Outstanding evidence included:

- Demonstrating an ability to carefully weigh up a large amount of conflicting information
- Assimilating information from different resources to make a decision
- Consideration of risks, information governance procedures and interest of key stakeholders

Strong evidence included:

- Demonstrating an ability to review lengthy pieces of information and summarise relevant points
- Assimilating incompatible information to reach reasoned decisions

Sufficient evidence included:

- Giving a brief but satisfactory account of ability to summarise information and make decisions.

Insufficient evidence included:

- Inability to give a clear account of successfully managing a large amount of information
- Failing to demonstrate sufficient analytical skills.