5 Essex Court Pupillages
Selection Process Report 2017

Since 2012, 5 Essex Court has published a detailed report on its process for selecting pupils. Each year, the report covers the whole process, from applications to final interviews. It offers an insight into our Pupillage Committee's deliberations and contains information on the questions we ask and the answers that impress us. It provides, we hope, a useful guide for anyone seeking pupillage, whether at 5 Essex Court or elsewhere.

You can find further advice by following us on twitter: @pupillages.

Good luck with all your applications!

JEREMY JOHNSON QC
For the Pupillage Committee
4 May 2017

5 Essex Court 2017 Pupillage Application

Preparation for application round

1. As in previous years, we took part in a number of talks and presentations to potential pupils, and continued use of our twitter account (@pupillages) to continue to try and dispel some of the myths around pupillage applications and to try and encourage applications from groups that are not well represented at the Bar generally, or in our practice areas, or in Chambers particularly. We have also sought to highlight the high number of successful female members of chambers - both silks (almost 50% of our silks are women, including our previous Head of Chambers) and juniors, as well as our rankings in the Black Solicitors Network Diversity League Table 2015[1]. We do this both to showcase the existing diversity of Chambers (which our research shows is a powerful factor in the decisions of many people from groups who are under-represented at the Bar to apply to us) and to demonstrate our commitment to moving towards a demographic that is more representative of the wider community, primarily by recruitment at the pupillage stage.

2. We changed the composition of the recruitment panel by co-opting new members of Chambers to the Committee to assist in this year's selection round and to ensure that applications were considered by a cross-section of Chambers with a good mix of those who had experience of previous rounds, and those who brought fresh ideas and perspectives.

3. All members of the Pupillage Committee have attended the Bar Council's training in fair selection. All those involved in recruitment (including those co-opted to the Committee) have undergone Equality and Diversity training and have studied the Bar Council's Fair Recruitment Guide (http://www.barcouncil.org.uk/media/165213/recruitment_guidev22_18sept_merged_readonly.pdf).

4. We did not consider any applications until after the expiry of the deadline for applications. At that point we anonymised and printed off all application forms.

5. There was a significant drop in the number of applications we received this year, compared to previous years.

Selection for first interview

6. The selection process followed the same model as previous years, and what follows is very largely taken from previous reports, which remain valid.

7. One member of the Committee selected a number of applications to be considered by the whole Committee at a meeting to discuss the detail of the paper-sift and to ensure consistency. The applications were selected with the aim of securing a broad range, but with a particular focus on applications which were likely to be at the margins of those who would be selected for first interview (distinguishing between these is the most important, and most difficult, aspect of the paper sift).

[1] http://satsuma.eu/publications/DLT2015/

8. All members of the Committee independently considered these applications with reference to our published selection criteria.

9. We then held a lengthy meeting to discuss the approach to each of our selection criteria and their application to the “consistency” candidates.

10. Following the “consistency” meeting all applications (including the selection that had already been considered) were assessed by reference to our four published criteria. These are academic ability, experience, presentation and other factors. We did not allocate an overall score to each candidate. Instead, we gave box markings – consistent with the approach recommended by the Bar Council – for different factors that were designed to measure each of the four criteria.

11. Applicants were selected for first round interview according to the box markings.

12. Academic ability: The primary assessment was made on the basis of degree results. However, we also took account of A level and post-graduate qualifications, together with any other evidence of academic ability that could be gleaned from the totality of the form. We did not attach significant weight to the University attended, and we did not generally attach significance to whether the applicant had studied law as an undergraduate (save that we generally require at least a commendation on the GDL to demonstrate sufficient legal academic ability). Very limited weight was given to GCSE results.

13. We do not automatically reject candidates with a 2:2 degree. But in the absence of very compelling alternative evidence of academic ability (eg results in post-graduate examinations, or a successful career since University which demonstrates academic ability) it is unlikely that an applicant with a 2:2 will secure an interview. This year, as in the last 4 years, all those selected for interview had gained a 2:1 or first in their degree(s) (and they were evenly divided between 2:1s and firsts). There was a broad mix of law and non-law degrees.

14. Academic ability is just one of four criteria and is not sufficient to secure an interview. As in previous years there were applicants with an exceptional academic record (including very high marks in post-graduate legal studies) who were not selected because they did not satisfy other criteria (eg they had insufficient advocacy experience, or their form was not sufficiently well presented).

15. This year several application forms did not give details of important grades. We initially assumed that these had been deliberately omitted. We did not automatically reject these applications but we did “allocate” the lowest grade that the applicant could possibly have secured in order to proceed to their next stage of training. However, before the final selections for interview were made it transpired that this was partly due to an error in the Gateway software (and the omission not being spotted by applicants when they submitted their forms). In the light of this we took a slightly more flexible approach, but we decided not to contact each of the applicants to seek the missing details.

16. Experience: We took account of all experience which demonstrated the skills needed to succeed at the Bar, but we particularly looked for evidence of an interest in, and experience of, advocacy. The highest box markings were given to those who had extensive debating and/or mooting experience and success (with success in national and international competition naturally attracting higher gradings than an individual University moot) and who had engaged in oral advocacy in real life cases (eg for FRU). Conversely, those who said that they had "organised" moots or had been "FRU trained" without providing any evidence of actually undertaking advocacy did not score highly under this criterion.

17. Presentation: We work on the basis that the application form is itself a strong indicator of an applicant's work, demonstrating the care and attention that has been applied and the applicant's skills at using language. The vast majority of applications had at least one mistake. Many contained numerous errors, from sentences that simply did not make sense, to mis-spellings of chambers' and/or barristers' names, to incorrect use of language. Applications which were unnecessarily wordy were marked down. The best applications – as with the best written advocacy – were clearly and succinctly written in engaging and persuasive language.

18. Other factors: We were looking for evidence, anywhere in the application form, and in any context, which (aside from the other categories set out above) demonstrated that the applicants had the skills and potential necessary to secure a tenancy at 5 Essex Court. We assessed whether applicants really understood the areas of Chambers' practice and whether they really were interested in and committed to working in those areas. The principal focus was on the answer to the last question on the form – ie why the applicant was applying to 5 Essex Court. Those who made generic reference to human rights or public law or police law, or who simply block copied information from our website or legal directories without more, did not score particularly highly. The most successful applicants identified, by reference to their experience or academic studies, why they wished to practise in specific areas and why they were applying to 5 Essex Court in particular. We also compared the content of the rest of their application. Applicants who expressed a burning desire to practise human rights law, but who had only undertaken pupillages in, for example, criminal sets, did not score highly. Those who had undertaken two or more mini-pupillages in sets that do similar areas of work to us (and/or had other evidence of their interest in this type of work), and who demonstrated (by what they drew out from that experience) a real understanding and aptitude for Chambers' areas of work, were more successful.

19. Weight was given to other factors which demonstrated the applicant's potential as a pupil and, in due course, a member of Chambers. These included, for example, sporting or musical achievements which demonstrated the skills required for success at the Bar, or an understanding of the ethos and atmosphere of 5 Essex Court.

First round interviews

20. The interviews took place on 10th and 11th March 2017. They each lasted about 20 minutes. The interview panel consisted of Russell Fortt, Jonathan Dixey, Robert Cohen and Alice Meredith.

21. Each candidate was asked the same questions:
    a. A general question about the content of their application form.
    b. A legal problem question.
    c. What do you think are the biggest issues facing junior members of 5 Essex Court?
    d. What is the purpose of having a public inquiry or inquest into an event that happened several decades ago?
    e. If you were being marooned on a desert island, what luxury item would you want to take with you?

22. The first question served as an opportunity for the panel to get to know the candidate and to clarify any matters arising from their applications form. It was generally well answered. The panel were particularly pleased when candidates were able to speak with clarity and enthusiasm about details mentioned on their applications.

23. The legal problem question was designed to test candidates' legal reasoning. It was not necessary to have knowledge of any specific legislation to answer it and the panel took account of the fact that some candidates were more advanced in their legal studies than others. Candidates were asked to advise a police officer who was planning an operation to curtail the activities of an organised crime boss and part-time journalist.

24. The best answers to the legal problem:
    a. Provided a well-structured analysis of the problem with appropriate emphasis on the types of legal issue that might arise.
    b. Recognised that the police are much more vulnerable to claims for the intentional torts than in negligence.
    c. Appreciated the importance of the Human Rights Act 1998 to a situation such as this.
    d. Understood that the fact that the organised crime boss was a journalist increased the risks facing the police in respect of his human rights.
    e. Were prepared to give suitably robust advice, including advice that the operation was legally ill advised.
    f. Recognised and addressed a potential professional ethics concern arising from a police officer directly contacting a barrister for advice.

25. Weaker answers to the legal problem:
    a. Lacked structure.
    b. Focused on negligence and gave little attention to the possibility of a claim for assault.
    c. Required significant prompting to address the Human Rights Act aspects of the scenario.
    d. Did not understand the significance of the boss's work as a journalist.
    e. Failed to recognise the potential ethical issue.

26. The question relating to junior members of 5 Essex Court was used to assess candidates' commitment to us. It was surprisingly badly answered. Nevertheless, it was striking that the candidates who gave the best answer to this question tended to be amongst the best candidates overall. Stronger answers gave nuanced answers which reflected the complexity of Chambers' practice. For instance, rather than generically referring to cuts in funding, better candidates appreciated that the impact of this on junior members of 5 Essex Court might be to increase the numbers of litigants-in-person they face. Weaker answers to this question were extremely general or barely relevant. We were disappointed when candidates mentioned Brexit but with no reference to our work.

27. The question relating to public inquiries or inquests into historic events was reasonably well answered. We used it to assess candidates' knowledge of a core area of our practice, and their ability to argue for a point of view. The panel were impressed when candidates gave structured and concise answers which demonstrated a good knowledge of the issues arising. Weaker answers to this question tended to include:
    a. References to the importance of recent public inquiries or inquests which were not into historic events without recognising this.
    b. Bald assertions that all inquests or public inquiries help with 'closure' without any explanation or context.

28. The desert island question was included to give candidates the opportunity to talk about a less serious and non-legal issue. No candidate gave an answer to this question which altered the panel's overall view of them. In general, the best answers demonstrated breadth of interests and character. Musical instruments were the most popular items.

29. Finally, each candidate was asked, "Do you have any questions for us or, more importantly, are there any questions which you wish we had asked you?"

30. As in previous years this question proved to be very important. It gave several candidates an opportunity to update us on achievements that had arisen after they had submitted their application forms. It also allowed candidates to draw our attention to aspects of their previous experience that were especially relevant to Chambers' practice areas.

31. Of the 32 candidates that were interviewed, 11 were put through for a second round interview. The decision as to which candidates should go through to the next round was unanimous.

32. Eleven candidates were invited for second round interview.

Second round interviews

33. The interviews took place on 11th, 12th and 13th April. They each lasted for about 25 minutes. The interviewing panel comprised Jeremy Johnson QC, Alan Payne, Kate Cornell, Georgina Wolfe and Robert Cohen.

34. Each candidate was assessed by reference to four criteria: legal knowledge, presentation, motivation and communication and interpersonal skills.

35. Initial questions: The initial questions were candidate-specific and were based on the candidate's application form and/or their performance in the first round interviews.

36. Advocacy: We provided candidates with a set of instructions, and brief case papers, based on the Supreme Court decision in Isle of Wight Council v Platt [2017] UKSC 28 (concerning the offence of failing to ensure that a child attends school regularly), asking candidates to decide whether, on the facts, to seek to argue that no offence had been committed and, in any event, to advance mitigation. The instructions raised suggested grounds on which it might be argued that no offence had been committed. Most of these were utterly hopeless.

37. The exercise was designed to test:
    a. Overall advocacy ability.
    b. Judgment – whether the candidates were selective in the points they advanced and focussed on the stronger arguments.
    c. How candidates structured a fairly basic legal argument and plea in mitigation.
    d. The candidates' persuasive skill
    e. How candidates dealt with an ethical issue raised in the instructions.

38. Some candidates sought to raise and develop every point that had been suggested in the instructions. This did not demonstrate good judgment.

39. The best candidates either proceeded straight to mitigation, or raised just one point as to whether the offence had been committed and dealt with it succinctly, persuasively and with a clear structure. Although we felt that in real life t would probably have been wiser to proceed straight to mitigation, we were impressed by candidates who took the more ambitious road of arguing that their client was not guilty and were able to do so compelling (but not where they raised truly and transparently hopeless submissions which risked distracting from the mitigation).

40. There was an ethical point that had been raised: the prosecutor had misled the Court in a way that was favourable to the Defendant. The only wrong way to deal with this was to advance and rely on the false point without revealing the true position. More than one candidate did that. For those who had not undertaken the BPTC we made some allowance. One candidate said, before embarking on the advocacy, that he would have had a conference with the client, explained the position and that the options were either not to raise the point or to explain the true position and then address that, giving advice as to the pros and cons of each option and then taking instructions. We thought

that was exactly right (although, unfortunately, the candidate then forgot to deal with the point in the way in which he had been instructed). One candidates made up facts that were not in the instructions. Conversely, one made a reasonable assumption (that the defendant was not a lawyer) but then (obviously realising as he said it that that was not absolutely clear on the papers) appropriately volunteered that he did not have explicit instructions on that point.

41. We did not concern ourselves with modes of address and it did not have any impact on our assessment, not least because several candidates had not done the BPTC. but it was disappointing that many candidates did not know how to address a District Judge in the Magistrates' Court ("Sir" or "Madam"). Modes of address are pretty basic, and we would hope that most candidates (whether pre or post BPTC) who know that they are likely to be asked to do an advocacy exercise, would take the trouble to learn the basic modes of address for the different levels of the judiciary.

42. Legal knowledge and ability to assess and consider policy considerations: We asked whether the Lord Chancellor was right to reduce the discount rate from 2.5% to -.75%.
43. It was disappointing that a significant number of candidates were not aware of the issue. It was relatively recent, had been extensively reported in all the mainstream and legal press (including in the legal section of The Times just 2 weeks before the interviews) and it has a very significant impact on personal injury litigation which is one of our practice areas (both in its own right, and in the context of private law civil actions against the police).

44. Even those who were aware of the point did not evidently understand the basic impact of the discount rate and the policy arguments that arise. We did seek to help and prompt candidates where they were not aware of the background. One of the best answers was from a candidate who was not aware of the issue at all, listened carefully to the explanation, asked appropriate questions, took a moment to assimilate thoughts and then provided a summary of the key consequences of the decision and the arguments that could be advanced on each side of the debate.

45. Ability to argue a point of view: We asked candidates whether undercover police officers who have allegedly misconducted themselves should be given anonymity in the undercover policing inquiry. We then asked candidates to argue the opposite point of view.

46. Some candidates simply assumed the outcome of the inquiry, saying that they should be given anonymity (because the officers had been acting lawfully and reasonably in the course of their duties), or that they should not be given anonymity (because their conduct had been so outrageous).

47. The best candidates (for those arguing against anonymity) focussed on the open justice principle, the fact that this is a public inquiry, the importance of transparency and accountability, the need to restore trust, the fact that defendants in criminal proceedings, and police officers in disciplinary proceedings, are not granted anonymity, the entitlement of victims to know their identities, the possibility that more victims would come forward and more misconduct would come to light (there us a nuance here about cover and real identities which no candidate covered) and the need carefully to scrutinise

allegations of risk (if identities are revealed) and mechanisms by which that risk might be managed short of anonymity.

48. The best candidates (for those arguing in favour of anonymity) argued that the names of the individual officers were not relevant to any issue in the inquiry, that the inquiry could do its work without the names being revealed, that undercover officers had performed difficult and dangerous work and might be at risk if their identities were revealed, and that it would be difficult to recruit undercover officers in future if their anonymity could not be guaranteed. Given we felt that risk to the officers and their families was one of the main issues, we were surprised at how few candidates touched on this.

49. Ability to succeed at the Bar: We asked "we have 11 excellent second round candidates. Why should we select you for pupillage?" The question was designed to allow candidates to showcase their skills and experience and to demonstrate why they should be selected for pupillage. By far the best structure and approach, and what we had hoped for (although in the event it was applied by only one candidate) was to go through each of our selection criteria and demonstrate how, with relevant examples, the candidate met the criteria to a very high level. Several candidates gave quite superficial answers and could have done far better given the wealth of material they had available to draw on (as evident from their paper applications). Some candidates made glib references to being proficient at making cups of tea or cake. This would have been fine as a light hearted comment in the context of a detailed and careful response to the question, but unfortunately that context was not always there. For several candidates, their answer to this question was a missed opportunity.

50. Final question: We asked "The EU decides to offer all UK citizens dual nationality with one other EU state. Would you [accept the offer] [advise a friend to accept the offer] and, if so, which state and why?"

51. This question was designed to allow candidates to show a bit of character and to end the interview on a light note. Only one candidate advised declining the offer and gave a thoughtful answer based on the nature of nationality. For the record, Ireland and Greece were the most popular choices amongst the others, with Croatia also making an appearance.

52. We offered all second round interviewees individualised feed-back which was provided within a week of the interviews. This was well received.

53. Selection: Applying our selection criteria we narrowed the field of 11 down to 4, and then selected 2 candidates to whom offers were to be made, and 2 reserve candidates. The candidates to whom offers were made both accepted.