



The Bar Council

Evidence submitted to the Bar Council's King's Counsel Working Group

November 2025 to March 2026

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1. Family law

Background

We considered what blockers exist for family law practitioners applying for silk following the increased use of arbitration and ADR. Specifically, we examined: What issues do mandated non-court dispute resolution (NCDR) present in respect of assessors/referees?

What available options, including diversification of practice, are open to family law practitioners and what are the potential blockers around diversification?

Findings

The following themes were commonly raised amongst those consulted:¹

1. Difficulty demonstrating “substantial advocacy” where many cases settle
 - A large proportion of family law matters are resolved through negotiations or mandated/directed ADR. Those consulted felt there is a lack of “substantial” contested hearings in family proceedings which would satisfy the requirement for sustained, high-level advocacy as is required for the KCA process (and where those hearings do take place, the advocacy will be conducted by leading counsel)
2. Reducing opportunities for high-profile or reported cases
 - Coupled with the above and given the nature of the work, many family law cases are private, anonymised, or subject to reporting restrictions. Those consulted felt it was harder to showcase standout work or provide publicly accessible examples of excellence

References

¹ The findings for family law are based on discussions and interviews held with 12 self-employed practitioners conducted between October 2025 and January 2026. The barristers consulted ranged in Call from 6 years to 22 years, none of whom are currently King’s Counsel (although three had made unsuccessful applications in recent years). One of those consulted has since our interview left the Bar. All of the practitioners consulted with declined to be identified by name.

- This experience differs amongst family law barristers, from financial remedy practitioners to those working on Children’s Act cases. The latter involves shorter cases that regularly make their way to the higher courts
3. Difficulty demonstrating “leadership” in a collaborative field
- The family courts encourage co-operation, settlement, and non-adversarial approaches. In view of this, it was felt that in comparison with more combative areas of law, it has been made significantly difficult in family law to demonstrate the required “leadership” or “impact” the KCA expects
4. Concerns that family law is often perceived as less complex than other practice areas
- There was a general theme that the KCA process places heavy emphasis on legal and factual complexity. Although family work (especially children’s cases) can be emotionally and factually intricate, it may not always “look complex.” As such, consultees felt that the KCA process undervalues the sophistication of family advocacy
 - This has led to further anxiety that family law does not receive equal recognition for its intellectual and social importance from the KCA process which appears to overwhelmingly favour commercial and Chancery, public and crime practice
 - For example, in the 2026 KC appointments,² nearly one-third of all appointees were members of the commercial Bar – a figure which is disproportionately higher than the number of commercial barristers practising at the Bar³
5. Weighting attached to judicial assessors

References

² Published 23 January 2026, Annex 5 – KCA monitoring statistics 2024 onward.

³ See Annex 4 – Barristers’ demographics data

- There is a concern that the KCA process relies too heavily on judicial assessors. Due to the rise of mandated/directed ADR, there is a feeling that there are fewer opportunities to garner significant numbers of judicial assessors of the appropriate caliber
 - Not only is this further impacted by the capacity of family judges to provide detailed assessments, but also that some judges may not appreciate the strategic work done by family practitioners outside the courtroom
6. Pressure in relation to pro bono requirements
- Whilst many family barristers undertake significant amounts of pro bono work, there is a lack of clarity around how to frame these experiences effectively within the KCA application form. Those interviewed did not consider these experiences to be substantially complex enough to merit inclusion on a KCA application form
7. The administrative burden of the KC application
- The process of applying for KC is notoriously time-consuming and detailed. Family practitioners, who are often juggling heavy caseloads and urgent hearings (compared with other practice areas which have more predictable caseloads), felt the time needed to complete the KCA application process was unduly challenging
8. Fear of rejection, professional impact and wellbeing
- It was expressed that because the family Bar is relatively small, an unsuccessful application would be common knowledge amongst peers, instructing solicitors and judicial assessors. Some also feared a failed attempt would affect their perceived marketability. This is in addition to anxieties expressed about the wellbeing impact of the KC process when the day job of a family practitioner can be emotionally draining

9. Perception that silk is becoming unattainable to the family Bar

- Consultees who were in the 15+ years call and had not previously applied for KC (typically those who would be of sufficient seniority to be considering silk),⁴ expressed a view that applying for KC was “not for them” and/or was “unattainable” given their area of work

10. Issues of financial dispute resolutions (FDRs) and the KCA’s approach to dealing with “private judges” as KCA assessors⁵

- There was concern around the inability of family law finance practitioners to reference private FDR work in their KCA applications. In these situations, the obvious judicial referee – often a retired high court judge or a senior silk (many of whom also sit as deputy high court judges) – would be unable to be used as an assessor because they are considered a “private judge” by the KCA. However, it was felt amongst consultees that given that (i) the FDR process is mandated in all cases by the family procedure rules and (ii) the use of the “private” FDR is strongly encouraged by the court, the impartiality of private FDR judges differs to that of a paid mediator or arbitrator⁶

11. Issues in relation to geography

- Finally, the Chair of the FLBA raised a concern that the work was becoming increasingly London-centric, meaning that members of the regional family Bar no longer had the same opportunities as before to fulfil the KCA competencies

References

⁴ 4 out of the 12 consulted.

⁵ See [Family Law, “Private Judge” and FDRs](#) in Annex 3 for examples.

⁶ See [Family Procedure Rules, Part 3](#).

Possible action

Those consulted did not have solutions to ameliorate the above findings and found the suggestion that they should “diversify” their practice as patronising, insulting or unrealistic. Consultees were instead overwhelmingly in favour of proposing changes to what evidence can be accepted by the KCA.

Whilst some of the following recommendations go beyond the working group’s remit; they have been included here to evidence the perception of the KCA process amongst family law practitioners:

i. Expand the pool of “assessors”

- Consider whether mediators and other potential professionals involved in the family law processes could act as assessors alongside family judges

ii. Widen accessibility to the process while reducing the burden on practitioners by decreasing the number of “complex cases” required for an application

iii. Broaden scope and give appropriate weight to settlement and ADR outcomes

- Treat mediation, round-table meetings and negotiated resolutions as equal indicators of excellence and recognise that negotiation, safeguarding analysis, vulnerability handling and strategic case management are demonstrative of core advocacy skills

iv. Increase the weighting of written advocacy

- Accept a wider range of documents (e.g. position statements, Scott schedules, welfare analyses) as evidence of excellence

v. Reduce the requirement for multiple long contested hearings

- Allow applicants to cite fewer hearings of greater complexity and instead recognise cumulative excellence across shorter hearings

vi. Create a dedicated family law KC pathway to acknowledge the inter-disciplinary complexity of this practice area

- This would reflect the essential skills required for excellence in family law practice and would ensure the KC criteria reflects the nature of contemporary family practice
- This could include criteria tailored towards demonstrating excellence in safeguarding, trauma-informed practice, welfare reasoning, multi-agency work, managing vulnerable clients, de-scaling conflict, working in trauma-sensitive contexts and handling of psychological, medical and multi-expert evidence

Further research

It is recommended that further statistical analysis is undertaken to establish:

12. The number of family law practitioners in the 15+ year call bracket who are not KCs compared to the number in the same call bracket who are
13. The number of family law practitioners applying for KC status over the last 10 years and their annual success rate
14. The percentage of women family law practitioners compared to the whole Bar population to consider if there is a potential correlation between the decline of women applying for KC and the greater number of women practising in this field

Family law, “private judge” and FDRs

Financial dispute resolution hearings (FDRs) were introduced on a trial basis in 1996. Following their success, they were incorporated in the revised rules governing ancillary relief cases in June 2000 (now financial remedies). FDRs were designed to enable the parties, with the assistance of the judge, to identify and seek to resolve the real issues in the case at a time and in a manner intended to limit the overall cost for the parties, reduce delays and lessen the emotional and practical strain on the family of continuing the litigation. As a type of early neutral evaluation (coming after disclosure and before substantive witness statements), FDRs take place at a wholly without prejudice submissions only hearing.

From their inception they proved to be extremely effective at resolving cases. However, by about 2010, the burden on the court list was reducing the effectiveness of the hearings. Judges (other than at High Court level) were often allocated 4 to 6 cases for a single day, indications were coming later in the day and with less detail/commitment from the bench, and settlement rates were declining. As a result, the specialist family finance Bar (with the support of several leading firms) developed the ‘private’ FDR to allow parties to select an evaluator rather than going to court. This would either be a recently retired High Court Judge or a leading silk (often one who sits part time). While the “judge” was selected by the parties and paid for by them, the process of the FDR remains as mandated by the Family Procedure Rules.

The FDR practice was endorsed by the President’s Circular: Financial Remedies Court Pilot Phase 2, 2 July 2018 at paragraphs 7 to 11:⁷

References

⁷ See [President’s Circular: Financial Remedies Court Pilot Phase 2, 2 July 2018](#), page 2.

7. I hope that the lead and other judges will take the opportunity to develop and encourage the use of “private” FDRs locally. A private FDR is a simple concept. The parties pay for a financial remedy specialist to act as a private FDR judge. That person may be a solicitor, barrister or retired judge. No additional qualification is required. The private FDR takes place at a time convenient to the parties, usually in solicitors’ offices or barristers’ chambers, and a full day is normally set aside to maximise the prospects of settlement. It takes the place of the in-court FDR.

8. At present, demand on court resources has led to instances of over-listing of FDRs. A high settlement success rate is not likely to be achieved if the district judge’s list for the day has more than five FDRs in it. This has the inevitable knock-on of far more cases being listed for a final hearing than should be so – a classic example of the law of diminishing returns. 9. Although a private FDR does require some (often quite modest) investment by the parties, this expense can be greatly outweighed by the advantages gained. The very fact of investment by the parties will signify a voluntary seat at the negotiating table rather than a sense of being dragged there. The “hearing” can take place at a time convenient to the parties, even in the evening or at a weekend, and for as long as the parties want. The private FDR judge will, by definition, have been given all the time needed to prepare fully for the hearing.

10. Anecdotal evidence suggests that private FDRs have a very high settlement rate. Of course, each settlement frees up court resources to deal, sooner and more fully, with those interim and final hearings that demand a judicial determination.

11. Usually, where the parties have agreed to a private FDR, the order made at the first appointment will record such an agreement in a recital, and will provide for a short directions hearing shortly after the date of the private FDR. That directions hearing can be vacated if agreed minutes of order are submitted following a successful FDR. If it has been unsuccessful then directions for the

final hearing can be given. An alternative is for the case to be adjourned generally while the private FDR process takes place. In that event an order in the terms of para 81 of standard order No. 1.1 would normally be made.

The overwhelming majority of finance cases listed in London now have a private FDR (including at High Court level) and the benefits are recognised by practitioners and judges alike, see for example Mostyn J in *AS v CS* [2021] EWFC 34:

Private FDRs are to be strongly encouraged. They seem to have a higher success rate than in-court FDRs. This may be a result of more time being available to the judge both for preparation and in the hearing itself. Private FDRs take a lot of pressure off the court system which is highly beleaguered at the present time. They free up judicial resources to hear cases that must be heard in court.

The system is predicated on the ongoing expertise and impartiality of the selected evaluators and while they are ‘private’ judges (in that the parties pay for their services), in practice they are often retired High Court judges, or leading counsel who sit as deputy High Court judges. Hearings last a day (sometimes two), and parties will (usually) have made without prejudice offers in advance of the hearing. Skeleton arguments and position statements are also lodged in advance and on the day of the hearing the judge will hear submissions (facts and law) and give a without prejudice and non-binding evaluation (indication). The judge will then be available to the parties for further clarification or to give indication(s) on matters that arise during the negotiation.

2. Equality, diversity and inclusion (EDI)

Background

From an EDI perspective, the working group considered whether the KCA process presents barriers to practitioners with certain protected characteristics. Specifically, consultations sought to determine whether there are ways within the existing competency framework to overcome any obstacles which produced inequalities towards certain groups.

Findings

Those consulted did not feel that there should be a change in the KCA assessment criteria or the standard of assessing advocacy needed addressing. However, it was strongly felt that further work and research is needed in relation to EDI issues and the KCA process specifically in relation to the success rates of candidates from minority ethnic backgrounds. This is particularly clear in relation to Black candidates.

For the 2025 competition, just two of the successful applicants were Black; both were male.⁸ In the previous year there were no successful Black applicants.⁹ Overall, the success rate of applicants from a minority ethnic background is significantly lower than that of their white counterparts.¹⁰ This is part of a wider ongoing pattern with no Black silks for three consecutive years (2023-2025).¹¹ A detailed analysis as to the reasons for this, with the aim of improving the success rate of candidates from minority ethnic backgrounds is needed. This, however, does not mean a push for changes in the criteria or the standard of assessing advocacy is necessarily required.

References

⁸ See Annex 5 – KCA monitoring statistics 2024 onward.

⁹ Ibid.

¹⁰ See [Report by the KC Selection Panel to the Lord Chancellor on the Process for the Selection and Appointment of the King's Counsel 2025](#) (paragraphs 31-38).

¹¹ A breakdown of the monitoring statistics for KC Appointments 1995-2023 is available on the KCA website: [KCA completed competition statistics](#).

More broadly, discussions indicated that one of the biggest factors limiting the success of Black applicants relates to practitioners being unable to access “the right types of work” which could be used as supporting evidence in an KCA application (and indeed working with those who may be able to provide such opportunities).

The overwhelming feeling amongst consultees was that more needs to be done within the profession to ensure that applicants (particularly disabled practitioners and those from minority ethnic backgrounds) can fairly access the types of work which would enable them to develop and evidence their abilities for a KCA application. This was reflected more generally around concerns about the fair allocation of work. Therefore, it is suggested that in order for some practitioners to adequately demonstrate their abilities to the standard of excellence called for by the KCA, improved access to higher quality work is needed.

Possible action

- i. Given the recent announcement of the latest KCA competition and accompanying diversity statistics,¹² more careful consideration is needed on this focus area than was permitted by the working group’s terms of reference and timeframe
- ii. We propose that the Bar Council, Law Society and KCA look more closely at the outcomes of the recent KCA competitions and, if possible, conduct an analysis of the applications themselves. The purpose of this work will be to determine what underlying issues exist for applicants from minority ethnic backgrounds and whether these issues relate to the KCA process or to the applications practitioners submit
- iii. In the short term and pending further investigations, the KCA and Bar Council should take the necessary steps to better support applicants from under-represented groups in preparing for the silk application process. It is in the profession’s interests

References

¹² See [KCA website – the 2025 Competition](#).

to protect the KC rank by ensuring that all practitioners have equal opportunity in reaching and demonstrating the required standard of advocacy

3. Forums and assessors

Background

The nature and scope of practice at the Bar has diversified in recent years. These trends are likely to continue in the longer term, and the KCA system must recognise this evolution.

At present, the permitted range of “other forums” and judicial assessors is narrow and unclear. This creates practices which stifle innovation and growth by encouraging those in their most productive years of practice to focus on commercially unviable work, or specialisms in areas with limited potential for growth, to obtain the requisite number of judicial assessors to the exclusion of developing practices in areas of growth. This is often detrimental to the individual practitioner.

In recent years, there has been a substantial increase in regulatory, disciplinary and administrative jurisdictions. This includes medical and professional disciplinary proceedings, financial markets regulatory proceedings, sports regulatory and disciplinary proceedings and proceedings before administrative decision-making bodies determining issues such as procurement debarment, proscription of organisations, actions taken to enforce rules involving charities, and military discipline.

As fewer international clients chose to submit their disputes to the jurisdiction of the High Court of England and Wales (largely due to geopolitical considerations, the rise in competitor jurisdictions, a preference for arbitration clauses in commercial contracts and a rise in alternative dispute resolution), alternative forums provide suitable environments in which practitioners can demonstrate their capabilities.

The employed Bar

Statistically, the employed Bar is more diverse with 19% of employed barristers from minority ethnic backgrounds (compared to 15% in private practice), while almost half are women (49%) compared to 37% of the self-employed Bar.¹³

The current KCA system operates to the detriment of most employed barristers. Of the 11 employed barristers who applied for King's Counsel in January 2026, two were successful.¹⁴ The success rate of applicants from the employed Bar (18%) is substantially lower than for the self-employed Bar (30%). In 2025, of the 105 new KCs appointed, none were employed barristers.¹⁵

Only one in 50 KCs are employed barristers,¹⁶ and almost all of these were appointed whilst at the self-employed Bar and then moved to the employed Bar. There are currently two KCs who are employed by the CPS. It is worth noting that there have been employed barristers appointed to the Supreme Court, including as president. This is without having been eligible for consideration for silk appointments, indicating a failure of recognition rather than a shortage of ability

The issues to be considered in this area were discussed by practitioners across the Bar. The matter was a standing item at each meeting of BACFI and the Employed Bar Committee of the Bar Council from September 2025 to January 2026.¹⁷ Investigations focused on the KCA's definition of "other forums" and how other forums might provide opportunities for barristers to fulfil the KCA competencies whilst maintaining the position for excellence in advocacy. Additionally, work was done to

References

¹³ See Annex 4 – Barristers' demographics data

¹⁴ See [KCA website – the 2025 Competition](#).

¹⁵ See Annex 5 – KCA monitoring statistics 2024 onward.

¹⁶ See Annex 4 – Barristers' demographics data

¹⁷ BACFI is the Specialist Bar Association which represents barristers employed in commercial organisations, in the financial services sector, in professional services firms and other employed settings including government and defence. It operates independently of the Bar Council but co-operates on matters of mutual interest.

identify any blockers within the confines of any “other forums” and how they might be overcome without reform of the KCA process.

Findings

The KCA guidance for applicants states as follows:¹⁸

“The King’s Counsel scheme aims to identify those advocates best qualified to represent clients in legal disputes of particular difficulty, complexity or sensitivity in the higher courts of England and Wales or in equivalent forums.”

“To be eligible, applicants must: hold rights of audience in the Higher Courts of England and Wales and a current practising certificate; have demonstrated excellence in advocacy in cases of substance in the higher courts of England and Wales or in tribunals, arbitrations or other forums (emphasis added); demonstrate consistent excellence across each of the competencies; and, provide evidence of both written and oral advocacy in relation to developing and advancing a client’s case, although the best outcome may have been achieved through arbitration, court determination or a settlement agreement.”

Whilst it might be thought that the explicit references to “equivalent forums” and “or other forums” must include non-higher court advocacy (arbitration and tribunal based advocacy and forums where other advocacy is displayed), the criteria in the summary of revised process, the application form and the guidance for applicants and the strict requirements for judicial assessors ensures that those who practise in equivalent or other forums cannot be recognised.¹⁹

The requirements are as follows:

References

¹⁸ See [King’s Counsel Appointments: Guidance for applicants.](#)

¹⁹ See [KCA website: guidance for applicants.](#)

“5.1 Applicants will be expected to list 12 cases of substance, complexity or particular difficulty or sensitivity in which they have been engaged as advocate over the past three years. Where an applicant is unable to list 12 such cases over the previous three years, he or she may list cases from earlier”.²⁰

Consultees reported a diversity of forums in which they were able to demonstrate competencies in “non-court” settings. This includes misconduct hearings before professional bodies, tribunals (for example employment tribunals), disciplinary hearings (for example sports misconduct) and enforcement proceedings in relation to financial affairs (for example tax tribunal). Alongside this sits opportunities for all practitioners to engage in advocacy or varying types on a pro bono basis (that is something heavily promoted by Advocate).

The guidance for applicants also provides an explanation of what constitutes “cases that may present the characteristics of a case of substance” but only includes examples of cases which would normally be undertaken by a self-employed barrister. Many employed barristers do not necessarily work on “cases.” They may work on:

- i. Applications or decisions of an administrative decision maker (which may or may not be contested, but where the decision maker must be persuaded to take the action recommended and as to the correct application of the law)
- ii. Determinations not to approve the grant of a license or the imposition of a disciplinary sanction or censure or removal or restriction of permission to engage in a profession or the withdrawal of qualifications to practice, depending on the nature of their employment

References

²⁰ See [Summary of Revised Process for KC award for England and Wales](#) (page 6).

iii. Making applications to a decision maker in the public interest where the applicant is unable to speak for themselves due to age or infirmity, or whether the party concerned is not represented because it is an overseas organisation alleged to be engaged in terrorist activities and liable to proscription

Whilst ostensibly it ought to be possible for advocates in other forums to be considered, the requirement for judicial or arbitral assessors means that, in practice, there is no possibility of appointment for those who practise in “equivalent” or “other forums” precisely because of this requirement.

6.2 Applicants will be required where possible to list a judge or arbitrator from each of their listed cases

6.3 Applicants will be asked to nominate two judges from those listed, numbering them in order of preference...

6.4 The Selection Panel will select a further three judges or arbitrators from the list (in addition to the first nominated judge) for confidential written assessments...”²¹

The guidance for applicants places further restrictions on judicial assessors stating:

“Judicial assessments can only be provided by those exercising a judicial function and, consequently, mediators are not acceptable as judicial assessors.”²²

There are numerous other forums for advocacy, many of which include contested advocacy in an adversarial setting, the examination and cross-examination of witnesses and experts. Yet those who conduct those hearings are not eligible to apply

References

²¹ See [Summary of Revised Process for KC award for England and Wales](#) (page 6).

²² See [King’s Counsel Appointments: Guidance for applicants](#) (page 23).

for King's Counsel because there is no judge or arbitrator. This is despite the fact that the person before whom they are appearing is performing precisely the same role as a judge and it is becoming increasingly common for these roles to be performed by former members of the judiciary in their retirement.

Applicants are also "required to identify a practitioner against whom they have appeared or by whom they have been led, in each of their listed cases."²³ Not all hearings are inter-party and there may be no other party. For employed barristers in government and in the Armed Forces, approaching a practitioner against whom they have appeared for a reference may be a wholly inappropriate, unreasonable and impractical requirement. This could cause them to breach applicable codes of conduct pertaining to their employment. The adversary may well be hostile to their employer, a foreign government, coalition partner or enemy force.

Lastly, applicants are "required to identify at least 6 individuals who have been professional clients, clients or client proxies, in one of their 12 listed cases".²⁴ Most employed barristers have a single client: their employer. Whilst a minority of employed barristers do provide reserved legal activities to clients to their employers through SRA regulated entities, NGOs or charities.

The current KCA Competency B criteria does recognise that some applicants may have a paper or desk-based practice but that the requirement for some evidence of oral advocacy, albeit only "ideally in a contested setting," is considered by some as far too narrow and some consultees felt that it should be widened beyond the current definition.

References

²³ See [Summary of Revised Process for KC award for England and Wales](#) (page 6).

²⁴ See [Summary of Revised Process for KC award for England and Wales](#) (page 8).

Consultations in other areas

Some of those consulted had practices that were almost exclusively before professional misconduct panels (for example MPTS, police misconduct et cetera) and not before the higher courts. Some of those alternative areas did rely upon the High Court for appellate considerations, but the evidence was often provided from the first instance tribunals (often before professional panels). There were also practitioners who had deliberately undertaken pro bono work which was conducted on the basis that it provided evidence going beyond simply advocacy experience.²⁵

A further avenue of complex work is through sports resolution, which provides arbitration and mediation services. They also have a pro bono representation service. This includes representation of sportspeople which can involve hearings before quasi-judicial panels (which include former judges at all levels). Some practitioners in these circumstances are involved in disciplinary hearings representing high-profile individuals lasting several weeks. Such cases are complex and involve the examination of vulnerable witnesses.

Possible actions

i. Consultees have recommended the modernisation, in the public interest, of the eligibility for the KC award to better reflect the transformation of practice which has undergone at the Bar since the reintroduction of the scheme in 2004. This can be done by:

- Allowing a wider range of forums for advocacy to be used to demonstrate KCA competencies: advocacy in any forum in which the decision maker is

References

²⁵ The Advocate website contains a 7 page [Guide for KC Applications](#). It specifically cross refers the work that can be done with the KCA competencies and contains a foreword from the KCA CEO: "Every year, at KCA, we see valuable evidence provided in relation to pro bono cases... Whatever the gap that needs filling, there is likely to be a way that pro bono work can provide it."

both legally qualified and exercising an independent decision-making capability should be permitted

- Drawing eligible judicial assessors from a more diverse pool to include legally qualified decision-makers from a range of forums in addition to the current judicial assessors
- Greater flexibility as to the number of judicial, practitioner and client assessors for specialist practitioners including those who are employed, particularly in respect of barristers in government or the Armed Forces

“Other Forums” – examples of forums which could satisfy the KCA competencies

The two examples below illustrate how a modified appointment system could work in practice.

Advocacy before the Bank of England Enforcement Decision Making Committee (EDMC)

The EDMC decides on contested enforcement cases relating to prudential regulation and financial markets, critical infrastructure, and the fitness and propriety of those who control these institutions. The EDMC was created by the Court of the Bank of England to ensure a functional separation between the bank’s investigation and its decision-makers in contested enforcement cases. The bank may impose a financial penalty, restrictions on activities, suspension, or a public censure. It may also prohibit an individual from working in the regulated financial services sector.

Sir William Blair is the current Chair of the EDCM. He was President of the Board of Appeal of the European Supervisory Authorities and is a former High Court Judge, as Judge in Charge of the Commercial Court, before retiring from the judiciary in November 2017. He is Chair of the Qatar Financial Centre Regulatory Tribunal. Other panel members include Harry Matovu KC, a barrister in practice at the

English Commercial Bar, Philip Marsden, Professor of Law and Economics at the College of Europe, Dame Clare Moulder DBE, former partner at Linklaters and a retired High Court Judge (KBD), who since retiring in 2022 has continued to sit in the Commercial Court hearing complex commercial disputes.

A panel of at least three members hear each contested enforcement case. A legally qualified member of the EDMC is always selected to lead the panel. There are usually two hearings in a contested enforcement case. At the first hearing, the EDMC hears the representations from the bank's counsel as to whether a statutory warning notice should be issued to a firm and/or individual setting out the action the bank proposes to take against them. It will consider the evidence the bank relies upon in support of the action it proposes to take and will order disclosure of that evidence and any evidence which might undermine that decision.

The recipient of a warning notice has the right to make written and oral representations in relation to the warning notice at a subsequent oral representations hearing. Counsel for the bank is entitled to respond to those representations. The EDMC members may question the parties whether in response to particular submissions or more generally. The recipient of the warning notice is invited to respond to the submissions made by counsel for the bank. Where it may be necessary for the determination of the case, the EDMC may ask the recipient of the warning notice or counsel for the bank staff to address them in further written submissions after the hearing. The EDMC will then decide whether to issue a decision notice indicating its findings and sanction.

Applicability of the KC competency framework: The EDMC is an expert body considering highly complex matters of fact and financial services regulatory law and the cases before it concerns failures in respect of systemically important institutions. Counsel for both the bank and the recipient of the warning notice are usually leading experts in matters of financial service regulatory law who may be employed or self-employed advocates. The hearings are adversarial and written and oral advocacy is required. Expert evidence is frequently deployed. Potential equivalents of judicial assessors are the chair and members of the EDMC.

ICE Futures misconduct disciplinary hearings and appeals before the Authorisations, Rule and Conduct Committee (ARC)

The Intercontinental Exchange (ICE) operates ICE Futures (formerly known as the International Petroleum Exchange), a London-based recognised investment exchange, supervised by the UK Financial Conduct Authority (FCA). It is a market for futures and options contracts for crude oil, interest rates, equity derivatives, natural gas, power, coal, emissions and commodities. Some 50% of the world's crude and refined oil futures are traded on the platform. RIEs have responsibilities to maintain orderly markets, to protect investors, to maintain integrity and to deter misconduct. Market misconduct may include price distortion, which may have a significant impact on worldwide commodities prices with geopolitical consequences.

ICE may bring disciplinary action against member firms who are liable for the acts of their employees, agents and other representatives, registered individuals and traders. Sanctions it can impose include fines, suspension or curtailment of a right to enter the market, expulsion from membership of the exchange or permanent removal of the right of access, an order for compensation without limitation and an order for restitution where a profit has been made or a loss avoided. There is no

maximum penalty for market manipulation and false or misleading impressions or failures of control because of the potential seriousness of such misconduct.

ARC misconduct hearings are convened to determine allegations of misconduct and sanction before the chair and panel members. The chair would normally be a recently retired senior legal practitioner with expertise in financial markets regulation. Hearings are both adversarial and inquisitive and involve written and oral advocacy and the calling and cross-examination of witnesses. ICE and the member (or the person concerned) may call witnesses to give evidence and may be questioned by the panel itself. The representative of the ICE is permitted to examine and cross-examine any person who gives evidence.

Applicability of the KC competency framework: The ARC Committee is an expert body which considers highly technical trading infringements and the application of regulatory law as it applies to financial markets. The cases it considers have grave consequences for the member firm and the individual traders. Cases of market manipulation affecting the price of geopolitically significant commodities may have global impact. Counsel for both the ICE and the member are usually financial markets experts who may be employed or self-employed advocates. Expert evidence is frequently deployed. Potential equivalents of judicial assessors are the Chairman and members of the ARC Disciplinary Hearing Panel.

4. Pro bono work

Pro bono and the employed Bar: Background

As part of the terms of reference, the working group was asked to consider what barriers may exist for employed barristers seeking to provide pro bono work as evidence in a KCA application. Organisations leading pro bono activity and employed barristers were consulted as part of this process.

Findings

1. All the employed barristers interviewed in relation to this focus area were 20 years call or over, and therefore well within the seniority scope for KC consideration. This group included a mixture of in-house corporate, commercial, regulatory and law firm employed barristers across a mixture of practices.²⁶ For several of those interviewed, they were either the only barrister or one of a very small number of barristers in their respective organisations
2. In discussing existing pro bono opportunities, those consulted felt that their employers understood and supported volunteering and pro bono work. None of the individuals knew whether their institution had signed up to the pro bono pledge, but in most cases, this was not considered relevant where organisational support for pro bono work was evidenced by employers providing large programmes of voluntary work.²⁷ Indeed, some larger firms have teams dedicated to their own pro bono legal forum. However, in many cases, employers provided limited paid time off for voluntary or pro bono activities (usually just a few days) with some organisations offering options for unpaid leave subject to business needs

References

²⁶ Representatives from the military were not canvassed for this purpose due to their unique challenges regarding advocacy practice. This type of employment, however, must be considered as part of the broader piece of work.

²⁷ Information regarding institutions who have signed the pro bono pledge can be accessed online: [The In House Pro Bono Pledge - National Pro Bono Centre](#).

3. In most cases, the pro bono work being undertaken was of a lower level predominately involving non-court-based activities such as completing forms or written advisory work. This is primarily due to employer conflicts and work commitments of employed barristers who have reached the seniority level expected of a KC. While some organisations offer processes for conflict waivers, the cases available which have no conflict issues arising are few. For example, for pro bono cases which risk crossovers with employees, organisational and client interests or the nature of a firm's business, many employed barristers would be unable to act. Likewise, some of those interviewed expressed concerns about providing "legal advice" externally due to insurance concerns. Whilst they were aware of organisations like Advocate providing insurance cover, some consultees were reluctant to engage where they might encounter employment issues
4. The key blockers identified by those interviewed included:
 - An inability to commit to external pro bono activities due to overarching responsibilities in terms of time commitments to employers and clients of their employers – a challenge which significantly increases for employed barristers reaching the appropriate level for seniority for a KCA application (for example, managing director or general counsel)
 - Limited options to take paid or unpaid time away from work due to business needs and/or the need to be able to react to an employer's priorities
 - The reputational and ethical considerations when the barrister's sole "client" must be their employer. As outlined above, this is in addition to the limitations of risk around conflicts to work on pro bono cases of an appropriate level of complexity for KCA applications which would be within the individual's skill set
5. Given the highlighted challenges, none of the barristers felt that the types of pro bono cases that they could feasibly undertake (outside of their skill sets)

would be capable of carrying the appropriate level of advocacy, even if done in conjunction with organisations such as Advocate. Cases that would meet the required level would demand significant investment of time and would need to be within an employed barrister's skill set. In such instances, there would be a conflict of interest with their employer, and it is often therefore not feasible to expect senior employed barristers to undertake those cases

Suggested action

6. All interviewees expressed the view they could strongly demonstrate all KCA competencies in their course of their employment, with the exception of advocacy under its current form of assessment. The key issue identified was the lack of recognition of their extensive forms of non-court-based advocacy. For example, the written and oral submissions made to law makers (often internationally), regulators of varying types (including central banks), parliamentarians, boards and executive management
7. The key ask from these conversations was that the KCA shift the future focus of the forms of "advocacy" which could be used for KCA applications

Discussions with pro bono organisations: Background

8. In addition to consulting with employed barristers on the usability of pro bono work for KCA applications, the working group also met with individuals and organisations leading the pro bono activities available to barristers from across the Bar
9. Bar Council Vice Chair Heidi Stonecliffe KC (HSKC) attended a meeting between Lord Goldsmith KC, Deborah Smith (Goldman Sachs) and Sarah Oliver Scemla (Director and Assistant GC Bank of America) to discuss the delivery of pro bono work by in-house practitioners.²⁸ This was particularly

References

²⁸ Meeting attended on 17 December 2025.

pertinent to the issue of whether employed barristers could supplement work with pro bono oral advocacy in order to satisfy the KCA competencies.

Discussions were had around several potential barriers which take the form of suggestions for the Bar Council's consideration

Findings

10. Insurance

- It was suggested that a roundtable meeting of 10-15 practitioners should be organised with a specific focus on pro bono work. It would be beneficial to include practitioners who are currently general counsel. Consideration should be given to Bar Council involvement to ensure that the interests of the profession, particularly the employed Bar, are raised and considered
- The round table should be planned imminently as those at the meeting would seek involvement from the Solicitor General to allow issues around insurance (and indeed conflicts of interest) to be ventilated at a high level

11. Senior stakeholder buy-in

- It was recognised that it was more challenging for an individual practicing in-house to take on pro bono work if it was done on sole initiative. Thus, senior stakeholder buy-in is essential
- Discussions were had as to how to overcome the mindset of some firms around losing billable hours to voluntary work. In the meeting, agreement was reached that there needed to be more expansive demonstration and raising awareness around the value of pro bono work

12. Conflict

- HSKC specifically raised the issues of conflict for in-house employed barristers and how this might act as a barrier for them in expanding their expertise via pro bono work

- Lord Goldsmith KC expressed a willingness to speak about this issue with the new head of the Solicitors Regulation Authority (SRA) and the Solicitor General
- Lord Goldsmith KC was also keen to encourage BACFI to be involved in further meetings. This would allow issues around conflict to be set out clearly alongside discussions on how things could be progressed and improved
- Discussion was had around potential Bar Council input on a “How to conduct pro bono work without conflict” guide for employed practitioners with further assistance from the Bar Council on disseminating it. A similar guide for solicitors is currently available on the Law Society website²⁹

13. Working outside a skillset or practice area

- Discussion was had with respect of practitioners who were hesitant to conduct work outside their specialist area of practice and whether this brought them into conflict with their code of conduct
- Consideration could be given, in conjunction with the Bar Council, to publicise the courses and training modules offered by organisations such as Law Works³⁰
- Consideration may also be given to the Bar Council providing mentoring to practitioners who may wish to undertake pro bono work outside of their specialisms and whether SBAs may be able to support this

References

²⁹ [Introduction to pro bono | The Law Society.](#)

³⁰ [LawWorks](#) is a pro bono group for solicitors which runs specialist training for practitioners wanting to develop pro bono work outside their skill set.

5. International

Background

The working group considered what blockers exist for barristers practising in international law when applying for silk.

Two overlapping points were explored: (1) Whether there is an opportunity for international work, including work before international tribunals, to be included within an application to the KCA; and (2) whether there are any blockers to using international qualified referees (both judicial and professional) and appearances before international tribunals in a KCA application. If there are, what are the reasons for them and what might be possible to overcome them?

Presently, the KC selection panel receives judicial assessments in relation to cases before European and international courts and arbitration. Many recommended applicants receive assessments from judicial assessors who are not judges as commonly understood (such as arbitrators). Where an applicant's primary practice is outside the courts in England and Wales, particular attention is given to the question of whether the applicant has established their excellence in relation to the higher courts of England and Wales. The greater any differences in the law and procedure of the jurisdiction in which the applicant generally practices, the more difficult that is likely to be.

The evidence of most value for KCA application comes from an assessor with good knowledge of what is expected of silks in the higher courts in England and Wales and if it relates to proceedings which are “reasonably analogous to proceedings in those courts”.³¹

References

³¹ See [Report by the KC Selection Panel to the Lord Chancellor on the Process for the Selection and Appointment of the King's Counsel 2024](#) (paragraph 16).

Findings

1. All barristers consulted with, whether practising in civil or criminal international law, identified similar potential concerns that needed careful consideration when applying for silk. These included:
 - Being likely to have fewer cases to rely on as evidence
 - Their caseload typically involves working on a small number of large matters at any one time
 - In some instances where oral advocacy is limited, extra weight was placed on written advocacy; and
 - For some, there was a limited opportunity for witness handling
2. The civil and EU practitioners consulted recognised that work before international courts, tribunals and arbitrations could be included within a successful application for silk. Their feedback was that the KC Selection Panel recognised and responded appropriately to the evidence on which practitioners in these fields could rely on
3. They noted the KCA selection panel is aware of concerns in relation to the number of assessors available to those who do international work. From experience, this tends to arise primarily in the judicial category of assessors. The KCA selection panel has specifically noted that some applicants have been involved in a single large case which could potentially impact on their exposure to a wide range of assessors. Accordingly, the KCA selection panel has recognised that applicants may not be able to name a judicial assessor from each of their 12 listed cases. Fewer than 6 judicial assessors were provided by 5 applicants in 2024 and four in 2025³²

References

³² See [Report by the KC Selection Panel to the Lord Chancellor on the Process for the Selection and Appointment of the King's Counsel 2024](#) and [Report by the KC Selection Panel to the Lord Chancellor on the Process for the Selection and Appointment of the King's Counsel 2025](#) (paragraph 5 and paragraph 21).

4. In such cases, they had been advised that the KCA panel's concerns are to ensure it can get sufficient evidence from judicial assessors to make a well-informed decision about the applicant, and to be satisfied that the applicant has a good reason for listing fewer assessors. Where there was a shortage of evidence from judicial assessors, particularly in respect of written and oral advocacy, the panel had considered whether the evidence from other assessors, particularly practitioners, was sufficiently strong to compensate for the shortage
5. This picture is further supported by the consultation process we carried out
6. Applicants for silk with civil and EU practice rely on references relating to their international work provided by:
 - Retired high court judges and KCs who sit as arbitrators
 - Current judges in international courts who were called to the Bar of England and Wales or practiced in other common law jurisdictions
7. Moreover, those consulted indicated that EU practitioners are using cases from international courts, including the CJEU, for silk applications. They did not find it difficult to demonstrate how their evidence of competences relates to English law when the UK was a member of the EU. There is limited concern in relation to the post-2021 period as a large body of UK law continues to be based on, and identical to, EU law. Consultees recognised the need to demonstrate either experience before the English courts, or at the very least that a set number of cases (usually not less than three) before EU courts which deal with English law issues could be discussed before the panel
8. Her Excellency Joanna Korner CMG KC (ICC) provided some helpful insight into the work conducted in the ICC by practicing barristers in England and Wales.³³ She was aware of several silk practitioners who appeared before the

References

³³ In discussion with HSKC, week commencing 9 February 2026.

ICC but, like herself, had obtained the KC mark some years ago and prior to the implementation of the current selection process. Her view was that in more recent years there was, sadly, a perception that international work did not provide sufficient evidence to satisfy the KCA competencies

9. She expressed the view that those appearing before the International Court of Justice (ICJ) appeared to have more success in applying for silk than those appearing before the ICC. She had not been asked to provide an assessment to any practitioner since her appointment to the ICC save for one individual who was applying for the award of honorary KC
10. Recently she had a member of the Bar of England and Wales before her in a trial and would have been inclined to provide an assessment as he was very good. She was not aware if her predecessor had provided any assessments nor was she aware of any other judges at the ICC being approached
11. She also expressed the view that those at the English Bar specialising in international tribunals might have difficulty in providing 12 judicial assessors. This is because trials in the international courts take several years and, although there are some gaps in proceedings, timetabling of international cases mean it is often difficult for barristers working on those cases to take on domestic work as well
12. She also mentioned that she viewed the work in the ICC as sufficiently analogous to trials in England and Wales which could provide good evidence of an adversarial nature. She expressed that there was more weight attached to written submissions in the ICC which was viewed as a positive development in terms of the progress of a case
13. Overall, her own view was that the requirement for 12 assessors should be relaxed and would benefit those who practice before international criminal tribunals

Possible action

Consultees have suggested that it would be useful if judges in the CJEU and other international courts could be further informed about the criteria used by the KC Selection Panel. This could be done by updating or expanding the available guidance for overseas judicial assessors, including clarifying how to link the competencies to the KC Selection Panel's requirements.

It would also be useful to consult further on international criminal work. Successful applicants have used cases before the ICC to support their applications. As set out above, they are in a minority, not least of all because of the duration of cases and the emphasis on written advocacy. A recommendation from Her Excellency Joanna Korner CMG KC was that the number of assessors should be revisited to better allow those practising in this area to submit a successful application. Further guidance from the KCA on how applicants can evidence international work in their applications would also be of benefit.

6. Corporate, commercial and Chancery litigation

Background

There are a range of practice areas within the commercial and Chancery Bar, some of which afford more opportunities to access relevant experience of oral advocacy.

There is a general perception that commercial and Chancery self-employed practitioners spend less time in court than many of their peers, with fewer opportunities for juniors to obtain oral advocacy experience. In fact, the position varies a great deal across practice areas with some juniors carrying out advocacy regularly before courts and tribunals in a range of jurisdictions.

It should also be recognised that:

1. Some self-employed juniors who struggle to get meaningful experience of oral advocacy have to take active steps to secure it
2. There are real efforts being made by Bar leaders, SBAs and the judiciary to help juniors get experience
3. For self-employed commercial and Chancery practitioners, there is no (or no obvious) problem with the evidence or categories of referees which can be used for the KCA process

Findings

1. The issue of a lack of oral advocacy before the higher courts is perhaps most acute for those practising in the following areas:³⁴
 - Tax – It was previously the case that juniors at the tax Bar spent large amounts of time working on written opinions or supporting KCs with written work. That has, to an extent, changed with juniors appearing more frequently before tribunals

References

³⁴ This is not an exhaustive list and may well not reflect everyone's practice or the impact of changes that have been made in recent years to help juniors to get advocacy experience.

- Trusts, pensions, or company law – The general perception is that there are fewer opportunities for juniors to gain the regular experience required for the KCA process. This may be the case for barristers who do a large amount of non-contentious or transactional work
 - High-value or complex commercial litigation and international arbitration – In early years, juniors often spend time working on long-running cases with limited opportunity to deal with oral advocacy
2. The view of those consulted is that the current KCA system enables self-employed commercial and Chancery practitioners to access the KCA process if individuals plan appropriately to develop practices which enable them to demonstrate the excellency required for KCA applications. Generally, with the support of their clerks, junior self-employed barristers at the commercial as well as Chancery Bar can achieve this and obtain references from a sufficiently broad cohort of referees
 3. Those who discussed their experiences pointed out the following areas available to self-employed commercial and Chancery practitioners:³⁵

i. The willingness of KCs to share advocacy with juniors

- The commercial court guide encourages KCs to ensure that junior counsel has a chance to participate in oral argument. This is an important recent development and there are signs that it is having a positive impact³⁶
- These initiatives and changes have been instigated with a great deal of support from the Lady Chief Justice³⁷

References

³⁵ The below comments are based on discussions with anonymous commercial and Chancery practitioners – both KCs and juniors - in the period November 2025 to January 2026.

³⁶ See: [Practice Guidance for the Commercial Court and London Circuit Commercial Court: Junior Advocacy Courts and Tribunals Judiciary](#) and the [Commercial Court Guide](#) at D.7.1, E.1.4, J.8.7, J.13.3. This approach is also adopted in other specialist courts (for example the [Patents Court Guide 2022](#) at 5.3, 7. 3A, 12.9A, 19.1)

³⁷ [Encouraging greater participation of junior counsel in courts and tribunals hearings.](#)

- It should also be noted that this is not simply a feature of court work. In international arbitration, counsel and law firms (especially US firms) frequently share advocacy across teams of leaders and juniors
- ii. The need to explore opportunities to do pro bono work (specific to commercial and Chancery self-employed practitioners)
 - There are a number of cross-Bar pro bono bodies (for example Advocate or FRU) which offer all barristers the chance to develop court-based oral advocacy skills. Some SBAs also offer commercial and Chancery barristers oral advocacy opportunities in the higher courts. A good example is the Chancery Bar Association's 'CLIPS' scheme, where barristers provide free legal assistance to litigants-in-person appearing in the Judges' Applications List (where High Court Judges hear urgent applications for interim remedies such as injunctions).³⁸ Another example is the Commercial Court and London Circuit Commercial Court pro bono scheme³⁹

Sharif Shivji KC, Chair of Advocate, commented:

"Pro bono work can be extremely valuable when applying for silk. It can provide strong evidence across all of the key competencies and, in particular for commercial practitioners, can offer crucial evidence in areas where a barrister's day-to-day practice may not otherwise provide sufficient material. We know of many commercial practitioners who have relied heavily on pro bono work in successful KC applications and who may not have been successful without it. We have prepared [a] guide on pro bono work and KC applications, which goes through each of the competencies and explains how our work can assist. I should

References

³⁸ [Chancery Bar Litigant in Person Support Scheme.](#)

³⁹ [The Commercial Court and London Circuit Commercial Court pro bono scheme.](#)

also highlight that many juniors seek pro bono cases in the higher courts for advocacy experience, and because we operate a first-come first-served model they are able to select cases that fit with their overall practice and address any gaps in their KC application.”⁴⁰

iii. Flexible approach and early planning

- A common theme expressed by consultees was the need to proactively develop a practice which is outside an individual’s core practice areas, particularly where core areas offer limited opportunities for regular advocacy experience
- This approach is most effective when supported by clerks and reflects the importance of barristers proactively building experience for silk applications from an early stage
- It is recognised that this approach may involve taking on cases of lower financial value which are more likely to reach a final hearing. One senior silk recalled turning down an opportunity to work on a long-running and heavy case in favour of doing a number of smaller regulatory cases which offered the opportunity of regular advocacy

Suggested actions

There are no recommendations for any form of change in the current approach to the KCA application process from barristers representing this practice area.

References

⁴⁰ Comments from Sharif Shivji KC in his capacity as Chair of Advocate (January 2026).