



# The Bar Tribunals & Adjudication Service

The Council of the Inns of Court

## Performance and Appraisal Policy

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## 1. Policy

Appraisal is a common feature of many working environments where it is used as an element in the measurement of effective performance. The Bar Tribunals and Adjudication Service (BTAS) wishes to establish a positive culture of advancement through assessment and feedback. It believes that all Disciplinary Tribunal (DT) members including those who act as Clerks to the tribunal, should participate in regular and continuous review of their performance while sitting.

The Bar Tribunals and Adjudication Service is committed to the principle of continuous personal development. It seeks to maintain Active Competence; where the BTAS is responsible for assuring the continued competence and actively promote and provide training.

The aim is to enable a performance and appraisal process that is constructive and evidence-based.

It is possible that members and clerks will sit on conduct or disciplinary committees or tribunals elsewhere within the professional regulation and / or administrative justice jurisdictions. They may expect to be appraised in each of those they are a member of.

## 2. Objectives

This policy forms part of a suite of policies and procedures for the recruitment and retention of Disciplinary Tribunal members and Clerks. Together with the Appointments Protocol, Recruitment & Selection Policy and the Equality and Diversity Policy, this policy provides consistency of practice, procedure, standards, documentation and vocabulary.

The performance and appraisal scheme will be expressed with clear and specific objectives that identify the needs of our disciplinary jurisdiction and the individuals who sit or serve within it. The objectives must address the need to:

- Maintain public and professional confidence in tribunal panel and conduct committee performance as a result of regular monitoring;
- Maintain standards and consistency of practice;
- Ensure individuals demonstrate the appropriate qualities and abilities for effective performance in their role;
- Identify individual training and development needs;
- Provide training programmes informed by the identification of particular needs; and

- Create opportunities for individuals to raise issues relating to procedures, training and their sitting experience.

The performance and appraisal scheme will adhere to some fundamental principles and ensure:

- That the appraisal is constructive and evidence-based;
- Openness and transparency, fairness and consensus;
- The maintenance of independence and of confidentiality;
- That timely support is provided for DT members and Clerks in the development of skills necessary for the performance of their role; and
- Where through appraisal and support the performance remains below the expected standard, that the provisions within the Appointments Protocol shall be implemented to terminate office.

In due course, periodic independent evaluation of the performance and appraisal scheme and its operation will be undertaken to ensure that the scheme is meeting these objectives.

### 3. Scope, format and administration of appraisal

The performance and appraisal policy will be comprehensive and apply to all Disciplinary Tribunal panel members and Clerks, irrespective of their professional background.

The performance and appraisal of those members who chair a Disciplinary Tribunal panel will also include additional aspects relevant to this role, for example leadership and management skills.

At the completion of every Tribunal (or other Hearing), each member and clerk of the Disciplinary Tribunal Panel convened to hear the case is required to complete and a two-part appraisal exercise:

- The first part is an opportunity for the member or clerk to reflect on and then assess their own performance at the Tribunal.
- The second part is an assessment of the performance of others – Panel Members shall assess all other members of the convened Panel, additionally the Chair of the Panel will assess the clerk.

An appraisal form detailing these assessments must be completed and submitted electronically to BTAS no later than 10 working days after the date of the completion of the Hearing.

The appraisal forms will be monitored by the BTAS Registrar as they are received, and the Chair of the Disciplinary Tribunal Service alerted to any specific concerns. On an annual basis a review will be conducted of each Disciplinary Tribunal members' and clerks' appraisals (by themselves and by others) to identify common themes. A summary of this will be produced and sent to the member or clerk for their own information and development. This summary will not disclose the identity of those who submitted assessments of the member or clerk in question to promote greater openness and frankness by all involved in the process. The Registrar will conduct the annual review of barrister and lay members and clerks, and the Chair of the Disciplinary Tribunal Service will review those for Chairs of Panels (at which time s/he will also review a sample of the Chair's recent judgments).

If at any time any concerns are identified regarding a Tribunal Panel member or clerk, a face-to-face meeting will be arranged with that individual and the Chair of the Disciplinary Tribunal Service to discuss development needs. Where appropriate, a programme of additional training or mentoring will be offered as remediation, to enable those that wish to remain on the Panel the opportunity to develop their skills as deemed necessary. Ultimately, should performance continue to remain unsatisfactory, then a recommendation will be made to the President of COIC to consider not offering a second term of office or, for the termination from office.

In all cases a satisfactory record of appraisal will be required for Panel Members and Clerks to be eligible for consideration for reappointment for a second term on the Panel.

## 4. Criteria

The appraisal process takes the form of an evaluation of an individual's performance against defined core competences, in all cases providing an objective judgment as to the extent that a given competency has been demonstrated by the panel member or clerk.

The competences against which the performance of the individual is appraised will be in the following areas:

- a. Working within a Legal Framework.
- b. Analysis and Decision-Making Skills.
- c. Collaborative and Communication Skills.

- d. Integrity and impartiality.

Chairs of Panels will also be appraised against competences in the following areas:

- e. Maintaining Effective Control of the Hearing.
- f. Additional Communication Skills.

Clerks and Chairs of Panels will also be appraised against competences in the following areas:

- g. Drafting Skills.

To make the appraisal exercise effective but deliverable, judgments will be given using a numerical scoring system as follows:

- i. Requires significant improvement.
- ii. Requires some improvement.
- iii. Competency met.
- iv. High degree of ability demonstrated.
- N/A. Competency not able to be demonstrated.

A brief narrative explanation is required whenever a mark of 1 or 2 is awarded.

## 5. BTAS Competency Framework for Panel Members and Clerks

Framework for all tribunal panel members and clerks.

Core Competence	Performance Indicators
<b>Working within a Legal Framework</b>	<ul style="list-style-type: none"> <li>• demonstrated an understanding of the legal framework, the legal tests to be applied and the rules of procedure</li> <li>• demonstrated knowledge and understanding of the Code of Conduct and the Sentencing Guidance</li> <li>• demonstrated an understanding of the panel’s function in relation to public protection, maintaining the public interest, declaring and maintaining proper standards of conduct</li> <li>• balanced public protection and public interest against other issues appropriately</li> </ul>

Core Competence	Performance Indicators
<b>Analysis and Decision-Making Skills</b>	<ul style="list-style-type: none"> <li>• clear evidence of having read and understood the contents of the file</li> <li>• demonstrated the ability to analyse large volumes of written, complex material</li> <li>• understood the evidence presented</li> <li>• able to make an objective assessment of the evidence and identify key issues</li> <li>• able to express their thinking in a clear, logical and balanced way, identifying relevant points from both parties and using the evidence in a fair and balanced way</li> <li>• actively and constructively participated in discussion and structured decision-making having regard for the legal test, proportionality, the Code of Conduct and Sentencing Guidance</li> <li>• able to consider the balance of evidence without bias or prejudice</li> <li>• able to make decisions within an appropriate timeframe</li> </ul>
<b>Collaborative and Communication Skills</b>	<ul style="list-style-type: none"> <li>• was attentive throughout the hearing</li> <li>• able to refer to relevant sections of the file</li> <li>• listened attentively to the views of colleagues</li> <li>• treated the views of others with respect able to constructively challenge the views of others and arrive at a shared, balanced view</li> <li>• able to compromise and accept the majority view if necessary</li> <li>• able to express her/himself clearly and succinctly</li> <li>• asked clear, concise and relevant questions in an appropriate manner</li> </ul>
<b>Integrity and Impartiality</b>	<ul style="list-style-type: none"> <li>• able to act with integrity and discretion</li> <li>• was sensitive to issues of equality and diversity when examining the evidence, during discussion and decision making</li> <li>• adopted an objective approach avoiding bias or prejudice</li> </ul>

## 6. Additional framework for Panel Chairs

Additional indicators applicable to those who chair a tribunal panel include:

Core Competence	Performance Indicators
<b>Maintaining Effective Control of the Hearing</b>	<ul style="list-style-type: none"> <li>• demonstrated an understanding of the legal framework, the legal tests to be applied and the rules of procedure</li> <li>• demonstrated knowledge and understanding of the Code of Conduct and the Sentencing Guidance</li> <li>• demonstrated an understanding of the panel's function in relation to public protection, maintaining the public interest, declaring and maintaining proper standards of conduct</li> <li>• balanced public protection and public interest against other issues appropriately</li> </ul>
<b>Additional Communication Skills</b>	<ul style="list-style-type: none"> <li>• facilitated discussion and structured decision-making</li> <li>• ensured all members actively participated in discussion and decision-making</li> <li>• valued the contribution of members</li> <li>• demonstrated courtesy toward all participants</li> <li>• ensured the views of the panel were accurately reflected in the determination</li> </ul>
<b>Drafting Skills</b>	<ul style="list-style-type: none"> <li>• the determination is well reasoned and reflects The Code of Conduct, Disciplinary Regulations and Sentencing Guidance</li> <li>• the determination reflects the collective views of the panel</li> </ul>

## 7. Additional Framework for Panel Chairs and Clerks

Additional indicators applicable to those who chair or clerk a tribunal panel include:

Core Competence	Performance Indicators
<b>Drafting Skills</b>	<ul style="list-style-type: none"> <li>• the determination is well reasoned and reflects The Code of Conduct, Disciplinary Regulations and Sentencing Guidance</li> <li>• the determination reflects the collective views of the panel</li> </ul>