5 ESSEX CHAMBERS' REPORT ON THE 2022-2023 PUPILLAGE APPLICATION ROUND

Introduction

1. The members of the Pupillage Committee for the 2022-2023 application round were Samantha Leek KC (Chair), Beatrice Collier, Jonathan Dixey, Saara Idelbi, John Goss, Peter Laverack, and Conor Monighan. Due to the volume of applications that we receive we decided to co-opt another member of Chambers to assist with the paper sift stage of the process: Cicely Hayward kindly fulfilled this role. We also were grateful for assistance from John-Paul Waite and Kate Cornell for the first round interviews.

Our Activities in 2022/23

2. Chambers is delighted and proud that Francesca Whitelaw was appointed silk in March of this year. Her appointment means that, in addition to having one of the highest ratios of female members of any set, we also continue to have the one of the highest proportion of female KCs. Chambers takes pride in its commitment to diversity and inclusion, because we believe that fostering an environment where individuals from a range of backgrounds are welcomed and supported leads to a more successful Chambers and a more representative Bar. We were gratified that our sincere attention to matters of diversity and inclusion was recognised in in November 2022 when we received a commendation as an Outstanding Set for Diversity & Inclusion in the Chambers UK Bar Awards. We were also particularly pleased to be told in feedback from this last pupillage application round that applicants had themselves appreciated Chambers' commitment to these values within the application process.

3. As we said in our 2021/22 report, we have for many years made it clear in our recruitment literature that we particularly encourage applications from black and minority ethnic candidates, and from those with non-traditional backgrounds including, in particular, those from backgrounds that are under-represented at the Bar. We are acutely conscious that the nature of our work – particularly with its emphasis on acting for the police and government bodies – can deter some talented applicants. We are keen to allay apprehensions and share information about the positive impact of our work. To that end, we continue to take part in initiatives designed to dispel some of the myths about the Bar and the pupillage process. We

hope that this encourages and empowers all applicants and ensures they have equal opportunity to put their best foot forward.

4. Our Equality, Diversity & Inclusion Team brings together staff and members of Chambers, including a representative from the Pupillage Committee. The Team continues to deliver in-house training in equality and diversity to both barristers and staff. All members of the Pupillage Committee receive fair recruitment training, and a member of the Pupillage Committee attends ED&I Team meetings and presents an analysis of the data from our pupillage application process for the ED&I Team's review.

5. Last year we expressed our recognition of the fact that inequality is an issue long before candidates start university and applying for pupillage and we undertook to review the ways that we can engage potential barristers (and/or future lawyers) from underrepresented backgrounds when they are at school. To that end we have participated in the 10,000 Black Interns scheme (for school leavers) and a work experience programme aimed at under-18s. We continue to keep this under active review.

6. We have attended virtual and physical pupillage fairs throughout the year, including Legal Cheek, the Bar Council, City Law School, and others, and members of the pupillage committee, junior tenants and pupils, take part in a large number of talks and presentations to students and potential applicants. Many of you came to see us at our booths (actual or virtual) at the Legal Cheek and Bar Council fairs.

7. We continue to use our Twitter account (@pupillages) to provide tips and useful information concerning pupillage applications and to try and encourage applications from groups that are not well represented at the Bar generally, and in the areas in which we practise. We also make use of our Instagram account @5essexcourt_pupillages (although often this ends up just featuring barristers' pets!).

8. We would also recommend "The Pupillage Podcast", created by Beatrice Collier and Georgina Wolfe in association with Middle Temple, which offers valuable tips, tricks and insights from other practitioners. It is widely available for useful information on pupillage and the Bar.

9. Once again we were nominated for awards for Best Chambers for Training, Best Chambers for Quality of Work and Best Chambers for Colleague Supportiveness in the Legal Cheek Awards 2023. We enjoyed our night out at the awards ceremony in the Banking Hall in the

City of London no end; the evening was made complete by winning the award for Best Chambers for Quality of Work.

10. Our pupillage award has recently been raised to £65,000 from September 2024, which includes a guaranteed minimum earnings component which, in the last 11 years, our pupils have consistently exceeded. Our 2022/23 pupils again exceeded the guaranteed earnings component.

Mini-pupillages, Open Evenings and a new Pupillage Mailing List

11. We did not offer mini-pupillages in this application round, partly due to the fact that online events are much more accessible than in-person ones. Instead the pupillage committee hosted two virtual open evenings — 'Inside Five' — in November 2022 and January 2023. Members of chambers and pupils delivered short talks on aspects of life in chambers, of pupillage, and of the application process. These were incredibly well-attended and we, the committee, thoroughly enjoyed 'meeting' people and answering questions from those on the call. We intend to run these again this year.

12. As a result of this, and also taking into consideration the many hundreds of applications for mini-pupillages we receive each year, we have had a re-think as to how we are going to provide mini-pupillages. We are delighted to partner with three initiatives, all aimed at improving access at the Bar:

    a. Inner Temple's 'Pegasus Access and Support Scheme' ("PASS"). This scheme is aimed at high-achieving students from under-represented backgrounds. If you would like to sign-up, please look on Inner Temple's website – available at https://www.innertemple.org.uk/becoming-a-barrister/how-to-get-involved/pass/

    b. Middle Temple's 'Access to the Bar Award', which provides a mini-pupillage and marshalling experience to those from under-represented backgrounds. If you are interested, the relevant section of Middle Temple's website is here: https://www.middletemple.org.uk/becoming-barrister/access-bar-award

    c. Finally, we continue to support the Bar Council's Bar Placement Scheme, which provides an opportunity to sixth formers to spend time in chambers: https://www.barcouncil.org.uk/becoming-a-barrister/school-students/bar-placement-scheme.html

13. Finally, we have a pupillage mailing list. We use this to send reminders about upcoming pupillage deadlines, provide hints and tips for applications, and send encouraging messages when things get tough! If you would like to subscribe, you can do so at https://5essexcourt.co.uk/subscribe

Preparation for application round

14. In 2022/23, we recruited via the Pupillage Gateway, as we have done for many years.

15. This year the Pupillage Gateway operated on an entirely new platform rolled out by the Bar Council. Overall, this seemed to work well, although there were some teething issues and it took some time to get to grips with a different system. There was good communication and support throughout from the Bar Council, and we were pleased to hear in April 2023 about the further work that is being undertaken to improve the new Gateway system for next year.

16. We ensured that everyone involved in the application process had received Fair Recruitment Training, either delivered via the Bar Council, or by a member of chambers qualified to do so, or via appropriate self-study of the Bar Council's Fair Recruitment Guide.

Selection for first interview

17. We did not consider any applications until after the expiry of the deadline for applications. Once the final deadline had expired, one member of the Committee downloaded all application forms in anonymised form.

18. As has been our practice since 2020, we continue to remove the details of the university that the candidate has attended before the form is marked. As set out in earlier Pupillage Reports, we maintain our position that any possible benefit in knowing the university attended is outweighed by the complex factors that underlie university choices, the relatively narrow demographics at Oxbridge and some Russell Group universities, the complexity of comparing degree results from different universities, and the fact that academic achievement is just one factor in our selection process. We emphasise that we do not attach any weight to the university attended.

19. In February 2023, the Bar Council drew to our attention that candidates had initially been instructed **not** to enter any details in the 'Personal Summary' or 'Skills' sections of the form (the intention having been that these sections would not be visible to us). However, in fact, these sections were visible to us and some candidates had completed them. Following the

Bar Council's advice, we disregarded anything which candidates had entered in those sections of the form, since not all candidates would have had the opportunity to do so. We are confident that this did not affect our marking: the factors we were looking for were all specifically covered, in detail, in other parts of the form.

The consistency meeting

20. As we have done in previous application rounds, one member of the Committee selected a sample of application forms to be considered by the Committee and the co-opted member at a meeting to discuss the detail of the paper sift and to ensure consistency of marking ("the consistency meeting").

21. 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. This is on the basis that distinguishing between these "borderline" applications is the most important, and most difficult, aspect of the paper sift.

22. All members of the Committee and co-opted member independently considered these applications by reference to our selection criteria.

23. We then held a consistency meeting to discuss the approach to each of our selection criteria and their application to the "consistency" candidates.

24. At the consistency meeting we discussed the marking of each candidate focusing, in particular on the "borderline" applications to ensure that all members took a consistent approach.

The paper sift

25. Following the consistency meeting, all applications (including the "consistency" candidates) were assessed by reference to our four published criteria. These are: (a) academic record, (b) experience (legal and non-legal), (c) presentation, and (d) other factors. We did <u>not</u> 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.

26. <u>Academic ability</u>: The primary assessment was made on the basis of undergraduate degree results, though we also took account of A-Levels (or equivalent, using UCAS scores) and postgraduate degree results, GDL and BPTC results if applicable. 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). We gave no weight to GCSE results.

27. This year, all bar one of those selected for interview had gained a 2:1 or first in their undergraduate degree(s). A 2:2 is not a bar to being interviewed if academic ability is still apparent from the application, such as by mitigating factors to explain the grade, a highly graded post-graduate degree, or several years of relevant work experience after graduating. There was a broad mix of law and non-law degrees. We do generally consider a first class or 2:1 degree is demonstrative of academic ability. Nevertheless we consider all applications in full. Where candidates with a 2:2 degree provide compelling alternative evidence of academic ability, such as exceptional results in post-graduate degrees or a successful career since University that demonstrates academic ability, or explain significant mitigating circumstances, an applicant may still secure an interview where they satisfy our other criteria.

28. We encourage candidates – who may have just missed a 2:1 (or a first) due to mitigating circumstances – to break down their degree result percentages and to utilise the mitigating circumstances box to explain how their circumstances affected their degree result.

29. Academic ability is just one of four criteria and is not sufficient, in itself, to secure an interview. As in previous years there were applicants with an exceptional academic record who were not selected because they did not satisfy other criteria (e.g. they had insufficient advocacy experience, their form was not sufficiently well presented, or they had not demonstrated a genuine interest in 5 Essex Chambers).

30. Experience: We looked for evidence of experience which demonstrated that the applicant had the skills needed for success at the Bar, but, as in previous years, we were particularly interested in evidence of a talent for and genuine interest in advocacy. This is why, in the section of the Gateway form that allows a chambers to ask its own tailored question(s) of candidates, the Committee asked, as one of its individualised questions, 'Please provide a summary of your oral and written advocacy experience' and 'Describe a time when you had to persuade someone into a course of action through oral or written advocacy. Describe what made your advocacy effective'. The highest box markings were given to applicants who were able to show extensive success in mooting debating, and/or representing clients before tribunals or in some other "real life" forum, for example by reaching the final round in one or more mooting/debating competitions run by the Inns or a national competition, or representing a client on two or more occasions. Candidates who said they had organised

debates/moots or had signed up to a pro-bono representation scheme or had been "FRU trained" but did not provide any evidence of having actually undertaken any advocacy itself did not score highly under this criterion. We did appreciate that it can be difficult to gain "real life" advocacy experience, which is why we included a question that gave candidates an opportunity to tell about their persuasive ability more generally, but given the importance of advocacy to Chambers' practice areas, and given that many applicants were nevertheless able to demonstrate ability in this area, we continued to place weight on advocacy experience.

31. When looking at other areas of experience the highest box markings were given to applicants whose experience (whether legal or non-legal) demonstrated that they were well-organised, able to assimilate quantities of information, self-reliant, and possessed excellent communication skills.

32. 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 in a persuasive fashion. The vast majority of applications had at least one mistake. Many contained several errors, from answers that stopped mid-sentence, to spelling mistakes that will not have been picked up via a spell-check (their/there, practise/practice), to missing or incorrect apostrophes. We were forgiving of applicants whose forms had one or two errors but if a form contained multiple errors of grammar, syntax or spelling, low box markings were given. Other significant errors included a reference to a barrister who practises from a different set, and more than two applicants expressing a desire to practise in areas of law that 5 Essex Chambers does not do (family, crime) or applicants who told us that they wanted to help individuals hold the police to account (thereby demonstrating that they had not appreciated that, in the area of police law, Chambers does defendant work, rather than claimant work).

33. Noting that the application form is an opportunity to persuade us to offer you an interview, we were impressed by applicants who were able to write concisely and precisely, and who used specific examples from their experience to support their answers. One question which we are often asked is whether answers are best written in full prose or in bullet point format. The Committee's experience is that bullet points can be used successfully in certain parts of the form but as the application form itself provides an opportunity to showcase written advocacy, full prose (or majority full prose) is advisable when responding to the questions in the Pupillage Application Questionnaire.

34. Other factors: We were looking for evidence, anywhere in the application form, and provided within any context, which (aside from the other categories set out above) demonstrated that the applicant had the skills and potential necessary to secure a tenancy at 5 Essex Chambers. These included an understanding of the law and a desire to practise at the bar that runs deeper than relying on good grades; a demonstrable work ethic; and evidence of pushing for success whether in academia, employment or in personal pursuits. It was also very important to us that candidates were convincing on why they wanted to come to 5 Essex Chambers specifically.

35. The paper sift exercise is the most competitive stage of the process. Generally we are only able to invite approximately 30 candidates to a first round interview. This year we decided that we would try and interview up to 40 applicants, nevertheless we are highly conscious that this means that we are rejecting potentially very able candidates without giving them an opportunity of an interview.

36. For the paper sift assessors were each allocated application forms to read and score. The assessors were paired so that each pair could discuss borderline candidates that they had encountered. Each assessor then put forward a list of candidates whom they considered ought to be offered an interview. There was no maximum or minimum number of candidates that each assessor could put forward. This was to account for the coincidence of one assessor (randomly) having been assigned multiple excellent applications. The applications from shortlisted candidates were then discussed among all assessors to form a final list of candidates.

37. Following the paper sift, the Committee reflected upon some of the broad themes that emerged from the paper sift exercise. There were as follows:

38. *Overall quality of candidates*: The quality of candidates remained very high, and, as in previous years, we found that some otherwise able candidates were not selected for interview due to gaps in their experience which other candidates had managed to fill. For example, several applicants with excellent academic achievements were not selected for interview because they did not provide evidence that they were committed to a career at the Bar and/or because they did not have any experience of success in advocacy on their form and/or because their form revealed that they had only a superficial interest in and/or knowledge of Chambers' work.

39. *Mini-pupillages*: Whilst we do look for evidence that an applicant has a properly informed understanding of what a career at the Bar entails, we did not privilege mini-pupillages over other ways of demonstrating this understanding. Thus we were not looking for any particular number or type of mini-pupillages, especially given the difficulties in obtaining them post-pandemic. However, where candidates had either one, or zero, mini-pupillages on their form we did scrutinise the form for other evidence to show that the applicant was genuinely motivated by a career at the Bar. For those who had done mini-pupillages, candidates who could not only say what they had seen on a mini-pupillage but what they had learnt from the experience did well. We cannot see why the same should not be true of any court visit (for example, attending an inquest or public inquiry hearing), even when this did not form part of a mini-pupillage.

40. *The good barrister question*: This question asked candidates why they thought they would make a good barrister and required them to identify experiences or skills which they thought would help them in a career at the Bar. By this point in the application form, applicants will already have set out their education, employment and work experience, scholarships/awards/prizes, professional qualifications and interests and recreational activities. Therefore the better answers built on responses contained in earlier parts of the form by identifying the skills and/or attributes required to be a barrister and then demonstrating, by reference back to material in the form, how the applicant could show that they possessed those skills and or attributes. The best answers managed to do this with some style, for example, one candidate said that they understood that the job 'requires intellect, common sense, strategy and sometimes a little bit of luck' and another explained that 'communication is key — something I learnt by spending most of my mini-pupillage in conference rooms'.

41. The weaker answers had one or more of the following features: they relied on generalisations, stating that the candidate had 'fostered excellent communication skills' or that their 'employment history' had improved their advocacy, rather than providing specific examples from their experience which convincingly supported the candidate's claim; they asserted without providing specific detail to support their assertion: 'I possess communication and interpersonal skills'; they selected single experiences which were too flimsy to support convincingly the claim that the candidate sought to evidence e.g. relying on one customer service incident as evidence of an ability to argue persuasively; they were not clearly structured or particularly thoughtful.

42. *Chambers-specific questions — "Why do you want to practise in 5 Essex Chambers' core practice areas?" and "Apart from the types of work that we undertake, why do you want to join 5 Essex Chambers?":* We continue to give significant weight to the questions asking applicants to explain why they want to join our set and to work in our areas of practice. The reasons why we place emphasis on the answer to this question is because, given the high number of well-qualified applicants, we want to offer pupillage to those who are genuinely interested in building a career in our set, rather than to applicants who would, in truth, prefer to practise elsewhere. Otherwise impressive candidates have been rejected because of a poor and/or underdeveloped answer to this question. As in previous years we generally found these the most helpful questions in deciding whether to offer a candidate a first round interview.

43. As in other years, the best answers to the Chambers-specific questions showed that the applicant had a genuine understanding of Chambers' work and its ethos, and was able to match their skills and/or interest and experience onto the work that we do. We do appreciate that it can be difficult to gain an in-depth understanding of Chambers from 'the outside', especially without the opportunity to do a mini-pupillage. For that reason, we do not expect an unrealistic level of knowledge, and understand that applicants are largely dependent on the research that they can do online. With this in mind we were more persuaded by answers where the candidates had plainly researched multiple sources, rather than just relying on our website. We were impressed by applicants who understood that in our police, government and inquest work Chambers' barristers almost exclusively work for public authorities (rather than for individuals).

44. In terms of the work we do, although one of our major practice areas remains police law, Chambers' work has diversified over recent years. For this reason, whereas in the past we have given lower box markings to answers which did not refer to police law, we no longer take this approach, though we do expect that one or more of our other areas of work are featured, with good supporting reasons for the applicant's interest in that area of work.

45. We were not impressed by answers that simply parroted back text from our website or the directories as we felt that this did not show a genuine interest in Chambers. This year, as in years past, we received applications from candidates who presented themselves in their responses to these questions as committed to a practice in public law or human rights, but whose form in all other respects communicated an interest in commercial law, or in crime. These candidates did not score as highly on these questions as others whose form overall was consistent with an interest in tenancy at 5 Essex Chambers.

46. We would like to emphasise that these are two different questions: we were not impressed by candidates who could not find anything to say about why they wanted to join 5 Essex Chambers other than the kinds of work we do. Together these questions allow applicants to explain in some detail why they want to join Chambers and also what they might hope to contribute to Chambers.

47. *Extenuating circumstances*: A number of candidates declared extenuating circumstances. We take these at face value and we do not expect you to provide medical evidence or set out details which would make an applicant feel uncomfortable to disclose. Equally, it may be difficult for us to understand how a particular mitigating circumstance has affected the contents of an applicant's form if the candidate provides only limited information or the extenuating circumstances are expressed in very general terms.

The data

48. This year the data which we were able to download from the Gateway did not allow us to obtain meaningful equality and diversity statistics regarding our applicants without significant further work on the application forms themselves, something that we will be investigating with the Bar Council.

First round interviews

49. This year, in order to be able to offer more candidates first round interviews given the exceptionally high quality of applications we received, we decided to convene two interview panels and we decided that first round interviews would be 15 minutes long (rather than 20 minutes as in previous years).

50. 40 candidates were selected for first round interview. The interview panels comprised: Samantha Leek KC, Kate Cornell and Peter Laverack, (panel 1) and John-Paul Waite, Beatrice Collier and Conor Monighan (panel 2). Each panel interviewed 20 candidates.

51. The interviews took place on Friday 24 March, Sunday 26 March and Thursday 30 March 2023 via Zoom. Each interview was scheduled for 15 minutes. We were able to be flexible with scheduling, fitting in around applicants' other commitments. All applicants to whom we offered interviews were able to attend. One candidate withdrew from the application process prior to interview.

52. The Committee decided to conduct first round interviews remotely because we felt that it had worked well during the pandemic. The Committee's view was that rather than requiring

candidates to travel to London for a 15 minute interview it would be more convenient and just as effective for them to undertake it remotely. Our experience in the pandemic, when there was no alternative to remote interviews, was that the interviewing panel was able successfully to assess the merits of each candidate via a remote link and that, importantly, candidates were able to present themselves well. This year, this remained our experience: we were pleased that the remote interviews were effective and efficient.

Interview format

53. Each candidate was asked the same four questions:

    a. Question(s) arising from the application form (approximately 2.5 minutes);

    b. 'Elevator pitch' (approximately 1.5 minutes)

    c. Legal reasoning question (approximately 5 minutes);

    d. Advocacy question (approximately 5 minutes);

54. In relation to the time estimates, the interview panel was acutely aware that all candidates needed to be given a fair opportunity to fully answer all questions. To promote this, the interview panel was advised to ensure that a candidate did not spend too long answering one question — candidates do not know how many questions they will be asked, so it would be unfair to expect them to curtail their answers accordingly. To ensure a level playing field, the interview panel told the candidate in advance approximately how long they had to give their answer, and gently stopped candidates after the allocated time for each question had elapsed.

55. Each candidate was also asked a non-assessed question: whether the candidate had any questions for the interview panel.

56. Candidates were assessed by reference to four overarching criteria: (a) legal knowledge, (b) presentation, (c) motivation, and (d) communication and interpersonal skills.[1]

The initial questions arising from the application form

57. The purpose of the initial questions was twofold: first, to put the candidate at ease and second, to allow the interview panel to investigate anything of interest and/or to clarify any matters arising from the candidate's application form. For example, in relation to the latter, where a candidate's experiences tended to suggest a dominant interest in practice areas

[1] https://5essexcourt.co.uk/join-us/pupillage#:~:text=5%20Essex%20Court%20looks%20to,and%20our%20core%20practice%20areas.

outside Chambers' core practice areas, this was an opportunity for candidates to explain their reasons for applying to us and why they felt that their experience would be beneficial to our practice areas.

58. The initial questions are a good way for candidates to show clear and concise presentation, along with excellent communication and interpersonal skills. As always, the best candidates answered the question asked succinctly and with well-chosen examples, where appropriate, (rather than just giving the panel information in an unstructured and unfocused way).

Elevator Pitch

59. This question required candidates to be able to express in a short period of time (about a minute) why they wanted to practise from 5 Essex Chambers. The limited time available meant that applicants who had researched Chambers thoroughly, and who had given proper thought in advance to this issue, were able to speak with conviction and precision. Those who had only given it superficial thought before coming to interview were markedly less structured and more 'waffly' in their answers.

The legal reasoning question

60. Prior to their interview, each candidate was provided with a copy of *DE v The Chief Constable of the West Midlands Police* [2023] EWHC 146 (KB). Candidates were asked to read the case, with no further instructions provided.

61. During the interview, candidates were then asked the following question:

> "*Imagine that you're a barrister in conference with a senior police officer. She has heard about DE but not read it. She asks you: in what circumstances will it be lawful for my officers to arrest suspects in order to impose bail conditions?*
>
> *You have five minutes to advise your client..*

62. The strongest responses were those in which the candidate:

    a. Structured their answers;

    b. Analysed the law clearly;

    c. Applied the law to the facts;

    d. Reached considered conclusions, bearing in mind the facts, the law and the public interest.

63. The individual panellist leading this question was advised to prompt each candidate if they struggled or went off-topic with the following questions where appropriate:

> "*Let's assume that the arresting officer did reasonably suspect that the suspect had committed the offence, so we're now concerned with the necessity of arrest.*"

The advocacy question

64. For the advocacy question applicants were given a proposition and invited to argue *for* the proposition; and then were asked to argue *against* the proposition. The proposition was as follows:

> *"Law students' assessment by way of exams should be abolished in favour of written coursework and mock court advocacy exercises".*

65. Candidates were given two and a half minutes to argue for that proposition, and then two and a half minutes to argue against it. This question was designed to test candidates' ability to argue an issue without notice. No detailed knowledge of the law was needed.

66. The best candidates:

    a. Structured their answers clearly;

    b. Were able to construct an argument with two or three distinct points to support the conclusion they were advancing;

    c. Were able to set out both sides, with each side being internally consistent;

    d. Were articulate and controlled in their expression despite being under pressure.

67. The weaker presentations:

    a. Were unstructured and rambling;

    b. Did not refer back to the question;

    c. Could only identify one good point in support of each side, or one good point and some weak ones, overlooking better arguments which could have been made;

    d. Did not reach any conclusions.

68. The panels paid particular attention to candidates' communication and interpersonal skills, motivation, legal knowledge, presentation and persuasiveness, as applicable to the question

being asked. Each candidate was briefly discussed immediately after their interview or during the next break. No firm decisions were made until all candidates had been interviewed. At the end of the process, panels 1 and 2 discussed the candidates whom they had interviewed amongst themselves: each member of panel 1 stated their preferred candidates and advocated for any who were not assessed as highly by other panel members; the same took place within panel 2. The panels were aware that between them they would be looking to put around 10 candidates forward for a second round interview, but the Committee was clear that there was no fixed number of places for a second round interview, so each of panel 1 and panel 2 put forward those candidates whom they considered merited a second round interview and in the event we selected more than the anticipated 10.

69. Of the 40 candidates interviewed, we selected 14 candidates to progress to a second round interview.

Second round interviews

70. The interview panel comprised: Beatrice Collier, Jonathan Dixey, Saara Idelbi and John Goss.

71. The interviews were held in-person on Sunday 16 April 2023 between 9:30 am and 6:00 pm. Candidates were advised to arrive at least 40 minutes before their 30-minute interview slot in order to prepare the advocacy exercise.

Interview format

72. The interview took the following format:

    a. Advocacy exercise (approximately 10-12 minutes).

    b. Situational question (approximately 3 minutes).

    c. Policy question (approximately 4 minutes).

    d. Hypothetical legal problem (approximately 5 minutes).

    e. Final question (approximately 2 minutes).

    f. Opportunity to ask questions of the interview panel.

The advocacy exercise

73. The advocacy exercise involved an application on behalf of a defendant for relief from sanctions pursuant to CPR 3.9. Forty minutes prior to their interview, candidates were

provided with the papers — comprising instructions to counsel (just over 2 pages), N244 Application Notice (5 pages), and a witness statement from the instructing solicitor (2 pages) — and all the relevant legal material they would need for the exercise (limited to rule 3.9 from the CPR and the headnote from the leading case *Denton v TH White Ltd* [2014] 1 WLR). One member of the interview panel acted as the judge.

74. By way of brief background, the claimant sought to bring a claim against the defendant police force for damages for assault and personal injury on the basis of an allegation that he had been assaulted by a police officer. The police officer had been called to the scene of pub fight, where the claimant had been pointed out to her by a witness named Vera Doggett as being the person who had assaulted the victim (a member of the bar staff). The officer had used her baton when arresting the claimant. However it transpired to be a case of mistaken identity, as the victim confirmed that it was not the claimant who had hit him. The defendant's solicitor had filed and served a witness statement from the police officer concerned in time, but, due to various different difficulties that the solicitor had encountered, had not filed and served three further statements, from Ms Doggett, from PC Shah who had been working with the arresting officer at the relevant time, and from a former partner of the claimant who wasn't present at the incident in the pub but who stated that assaulting a police officer was exactly the sort of thing that the claimant would do.

75. The application for relief from sanctions was in order to ask the court to grant the defendant permission to rely at trial upon the statements of the three further witnesses whose statements had not been filed and served by the date stipulated by the court's directions.

76. The strongest advocates:

    a. structured their submissions and signposted what they were going to say. This was particularly important in this exercise because the test for relief from sanctions is a tripartite one, and there were three witness statements, each with their own particular facts, to which the tripartite test had to be applied, so that there was, in principle, a lot of ground to cover;

    b. were precise and concise (demonstrating an understanding that less is often more);

    c. made good eye contact, spoke fluently, at an appropriate pace, and modulated their speech to remain engaging;

d. directly addressed interventions from the judge and were able to resume their submissions smoothly after doing so;

e. recognised their strongest and weakest points (or responded to the judge's indication in relation to the latter), and thus spent more time on their better arguments (e.g. a number of candidates appreciated that the reason for one of the statements being late was particularly weak and therefore in connection with this statement did not spend much time on the second limb of the test — the reason why the default occurred — and chose to focus most of their submissions on the third limb of the test — all the circumstances of the case);

f. recognised situations in which they needed to clarify and/or take further instructions (and either requested a moment to check their written instructions or advised the judge that they would need to take further instructions);

g. Gave their submissions a conclusion, rather than just stopping.

77. The weaker presentations:

a. were, in many respects, the converse of the above: they lacked structure, did not convey momentum and direction, were long-winded and/or repetitive, and tended to use overly complex language;

b. revealed that the candidate had not understood that the court was likely to regard some of the statements as being of more value to the just disposal of the claim as a whole than others, and therefore was likely to be more open to persuasion on some than others;

c. were aggressive/combative in tone or, at the other end of the spectrum, unsure of their own position;

d. made unexpected concessions in response to intervention from the judge or, conversely, kept pressing a point with vigour despite it being clear that the judge had heard and understood the point, but didn't consider it to be particularly strong;

e. over-stated the facts or, of particular concern, went beyond their instructions – it is appropriate for an advocate to check their papers before answering a question. While the silence can feel deafening, and you will no doubt feel overly-conscious about the time you are taking, it is *far* better to take the time to check than to mislead the court. The duty to the court is mandatory across the Bar, but, as 5

Essex Chambers represents public authorities, we focus on this (even at the recruitment stage) because the court (and indeed the general public) expects the highest professional standards of us and our clients;

f. were uncertain about what to do with medical information regarding one of the witnesses which they had been told in their instructions should not be revealed to the court.

The situational question

78. The situational question was: "*On a day-to-day basis, what do you think is the most challenging aspect of acting for public authorities and what will you do to mitigate that?*"

79. This question was aimed at testing the candidates' knowledge of one of the major areas of Chambers' work, of the profession, and their motivation to succeed at 5 Essex Chambers, during and beyond pupillage.

80. Summary of key themes candidates identified:

a. Challenges: the need to understand the potential for setting a precedent and be clear about the wider implications of the position taken in any one case; that you may personally disagree with the client's stance; appreciating and managing the reputational considerations of the public authority; a higher level of scrutiny than perhaps is applied to private litigants; dealing with a lot of litigants in person.

b. How to mitigate: having a thorough grasp of the duty of candour (identified by a number of candidates); being punctilious and persistent about seeking instructions; ensuring that integrity is always apparent.

81. The strongest answers: demonstrated an awareness of the particular importance of being fair and being seen to be fair, were able to distinguish a public authority client from a non-public authority client, understood that litigation involving public authorities has the potential to have an impact beyond the confines of the case at hand, both in terms of how other similar cases are treated and in terms of the reputation of the public authority and gave sensible and practical answers to how to mitigate the challenges identified, for example by reference to the duty of candour.

82. The weakest answers revealed a lack of understanding of how public authority clients may have different priorities and requirements from, for example, commercial clients, or

individuals, gave generic answers, and/or did not demonstrate the candidate had reflected on the challenges that could arise.

The policy question

83. The policy question was as follows:

> "*Some barristers have recently signed a declaration that they will not prosecute climate change protestors, despite the cab rank rule. Were they right to do so?"*

84. It was designed to explore candidates' awareness of a current issue within the legal profession and to test their understanding of the cab rank rule; it did not matter whether the candidate answered that they were right to do so, or not. All candidates were able to identify that the reason(s) for the cab rank rule — and its potential limits — lay at the heart of the question.

85. The strongest candidates:

    a. identified / engaged with the purposes of having the cab rank rule (e.g. it ensures access to independent expert legal representation / protects barristers from being criticised for taking on unpopular cases or clients);

    b. recognised the differing nature of potential criticisms which the barristers might face (the cab rank rule is part of the Code of Conduct; many of them would never in reality be instructed to prosecute as they were not criminal practitioners);

    c. offered counter-positions in defence of the barristers (the connection between the cab rank rule and 'access to justice' is limited in any event as it does not bind solicitors or direct access barristers; it is not always honoured by barristers; and the nature of the threat which the climate crisis represents is so overwhelming that refusing to prosecute is a morally justified response).

    d. demonstrated that they had read the recent legal debate and commentary.

86. Weaker candidates showed a more shallow engagement with the issues raised which resulted in thin and short answers.

The legal problem

87. The hypothetical legal problem was as follows:

> "*I am going to describe a hypothetical scenario.*

I would like you to tell me what are the main legal issues that arise from the facts.

Here is the scenario: a police firearms officer, PC A, carries out a vehicle stop. He thinks he sees the driver of the car reach for a weapon and shoots them dead. No weapon is found and some (though not all) bystanders say they heard the driver shout 'Don't shoot'. The officer says he did not hear this.

It transpires that due to a mistake made by another police officer, PC A has been given information about the wrong car. But for that mistake, he would not have stopped this car. Understanding how that mistake occurred will require very sensitive intelligence to be considered."

88. This problem question was designed to explore the candidates' ability to identify the various legal issues that arise from the scenario.

89. The strongest candidates were able to identify the likely causes of action, types of proceedings and parties. They identified that there would be an inquest into the death of the driver, possibly criminal proceedings against PC A for a homicide offence; possible civil proceedings against the Chief Constable (assault/battery, Article 2, negligence, data protection); and possible misconduct proceedings against the officers involved. The better candidates also were able to identify that due to the sensitivity of the intelligence which was integral to an understanding of what had occurred there may need to be a claim for Public Interest Immunity and/or other measures taken to avoid risks arising from disclosure of that information.

90. Weaker candidates considered only one type of proceedings, and/or did not clearly identify the potential causes of action or recognise that the sensitive intelligence would require particular treatment.

91. The interview panellist leading on this question was advised to prompt candidates if they became stuck and to guide them toward issues that they would not otherwise have considered, such as the different types of legal proceedings that might follow.

The final question

92. The final question was: "*What would you contribute to Chambers apart from work?*"

93. This was a chance for candidates not only to show us what qualities, interests, or attributes they have which would make them a valued member of our chambers, but also for them to demonstrate what they knew about Chambers. We were impressed by answers which communicated that the applicant had taken the time and trouble to find out about Chambers and was genuinely keen to practise at 5 Essex Chambers.

94. Candidates were also given a chance to ask any questions of the Panel. We did not mark candidates on their questions (or lack of them).

The deliberation process and offers made

95. We were extremely impressed with the standard of the second round candidates, and we spent a significant time after the final interview discussing who we should offer pupillage to and reviewing the references for our top candidates.

96. We asked for references for a number of our second round interviewees. We are always grateful for the timeous receipt of those references. It gives us the opportunity to cross-check anything in the applications, in the event we want to clarify something with the candidate and is also an opportunity for us to see the candidate through the eyes of someone who knows them well professionally. Candidates should consider who is likely to be able to speak compellingly and in detail about their application: we were less impressed by referees who could not (or did not) comment on skills relevant to the legal profession at all. It is also helpful to ensure that referees will be available towards the end of the application process: we had to send some chasing emails to candidates when referees did not respond initially.

97. We confirmed one pupil to start in 2024, and will recruit a second in the 2023/24 round.

Conclusion

98. We hope that this explanation of our application process helps to demystify the process and is of some assistance to those who are considering applying to 5 Essex Chambers in 2024. As we have set out above, we welcome applicants from all backgrounds. It should also be clear from reading this report that we particularly encourage applications from those who are committed to Chambers' ethos and to our areas of practice.

99. We look forward to seeing some of you at our online Open Evenings which will take place in the Autumn, to receiving your applications and to meeting those of you who are successful in getting through to the interview stage. We never forget how much time and effort is

required to apply for pupillage, at a time when candidates are simultaneously studying and/or working and therefore wish you the very best of luck and perseverance.

SAMANTHA LEEK KC

On behalf of the Pupillage Committee

November 2023