

## Assessing a role-play exercise - transcript

### Voice over introduction

This programme has been designed to give viewers an insight into how a role-play may be assessed. You must have watched the role-play exercise first. The Law Society asked two sitting judges to provide a commentary on the candidate's performance. They are not assessors and the opinions expressed are their own. This commentary has not been endorsed by the Judicial Appointments Commission. The J.A.C. does not endorse any guidance on taking part in role-plays by any individuals or bodies external to the J.A.C.

*[audio from the role-play]*

**Usher** *Please stand*

**Commentator 1** One of the most striking aspects is that the candidate is being judged the moment she walks through the door. She walks into the room, everyone stands up, clearly she is 'the judge' from that moment.

**Commentator 2** In fact within the first 60 seconds or so, this candidate is going to have to demonstrate pretty well all the criteria that are required because, when she came in, the first thing that one has to do, is to demonstrate your authority.

**Commentator 1** I thought, actually, that the candidate did very well when she first entered the room. She seemed very calm and had a judicial presence about her – she wasn't thrown by the fact that everybody stood up as she entered, which I think is perhaps an unnerving experience for candidates. But, something I observed was that the candidate did not immediately establish eye contact with the parties – it's very tempting to look down at your papers as a bit of a security blanket.

**Commentator 2** One of the first things that she should have done was to have established exactly what the issues were that she was going to have to determine, because that demonstrates that she understands what it is about and also that they should understand what she is dealing with.

*[audio from the role-play]*

**Candidate** *Mr Janning, I just want to reiterate and explain to you properly, that a McKenzie Friend may give you advice on the law and may support you, but they may not speak or address the court in any way, and they may not give evidence. Is that clear?*

**Janning** Yes, yes

**Candidate** *All right. Thank you In that case, ..... (fades out)*

**Commentator 1** One of the qualities being assessed is the candidate's intellectual capacity. Actually, the candidate did well in a number of respects. For instance, she explained the role of the McKenzie Friend very clearly to Mr Janning. She responded well to the solicitor's objection about Esther, the McKenzie Friend, remaining in the room and referred to the president's guidance on the point.

Her description of what a section report was, was clear and concise, she was obviously up to date with

the law. I would expect many of these issues were referred to in the brief, but she was able to demonstrate them during the role-play and show that she had absorbed the relevant information and legal principles that applied to this scenario.

*[audio from the role-play]*

**Candidate** ...I will just say that my decision will remain the same. Esther will be allowed to remain here as Mr Janning's McKenzie Friend. I have regard to the president's guidance..... (fades out)

**Commentator 2** I agree with you there but, of course, there were one or two shortcomings as well. One of the most important things that a candidate has to do before actually going into a courtroom scenario is to make sure that they understand the brief that they have got. And here she did make one or two mistakes such as that factual mistake about the paternity of the child. I think that's a vital issue that she should have picked up.

**Commentator 1** More concerning about that issue was that she didn't then explain how the corrected information, provided by the solicitor, made any difference to what she had just said about parental control.

**Commentator 2** Well, I agree with you there, that's absolutely right

*[audio from the role-play]*

**Talbot** (interrupts) Your honour, with great respect, I would remind you that Mr Janning is not the father of the young lad Alan, the 11 year old.

**Janning** So?

**Talbot** And there is no evidence of any agreement that he should have parental responsibility for Alan. Also, the parties were not married, your honour, when Ben the younger child was born and accordingly Edward does not have parental responsibilities there either.

**Janning** What's that got to do with anything?

**Candidate** Um, I'm grateful to you for pointing that out to me Mr Talbot, I had failed to notice that position.

**Talbot** Much obliged your honour

**Candidate** Now, I can see here that an injunction was granted last September, it's still in force. And that Mrs Janning alleges that Mr Janning has ... (fades out)

**Commentator 2** Let's look at the issue of personal qualities. What do you think about the first one – integrity and independence of mind? Were they demonstrated?

**Commentator 1** Independence of mind, I think, is demonstrated by listening to both parties' arguments and then making a decision. This candidate did that well in some instances and not others.

Where it was less well done, for instance, was on the subject of the McKenzie Friend. The candidate gave her ruling before giving the representative solicitor an opportunity to make his views known. When he objected to the decision, the candidate let him speak. Once he had spoken, she said her ruling was the same. I wouldn't be surprised if a representative in that position thought his views hadn't genuinely been taken into account.

**Commentator 2** With decisiveness – I thought she was quite good at making decisions, whether they be right or wrong. She certainly wasn't frightened to do that. She dealt with issues towards the end, such as the fact that at the next hearing the mother must attend at that hearing. She dealt with that quite well.

She was also quite firm again about the McKenzie Friend, she was at least prepared to be decisive as far as that was concerned.

**Commentator 1** The direction about reports being issued before the next hearing, stating very clearly that Mr Janning couldn't have interim contact and what the reasons for that were, I thought was all done well.

On special measures though, she changed her mind. She first indicated that she wasn't going to decide that issue. After representations from Mr Talbot that it would save costs if she did, she said she would make a decision, but then she didn't actually deal with the application. So if I were one of the parties, I would have been very unclear as to whether a ruling had been made or if it hadn't – why not?

It actually demonstrates perfectly why it is important to have representations from both sides before you make a decision. Because if you decide something on the basis of one party's views, but then, having heard the counter argument, change your mind, it makes you look indecisive, so, much better to have both sides of the argument presented to you, before you decide what you are going to do, than have to correct yourself later.

**Commentator 2** Of course there was the other issue towards the end when dealing with the power of arrest and I didn't pick up that she had actually given the unrepresented father the opportunity to actually address her about it. All she did was, she just allowed him to interject, and that was all. She should have been even-handed there and done that. I don't think, perhaps, she dealt with that in the best way.

**Commentator 1** Well, talking about being even-handed, I think there was another example of that when Mr Janning complained that Mr Talbot had been using his mobile phone, as he'd clearly received a text during the course of the hearing, while he had complied with the instruction to turn it off. Now while the candidate acknowledged that, she didn't actually deal with it, she didn't address Mr Talbot directly, she didn't acknowledge that Mr Janning had made a fair point. She just left it hanging, which again I think could have left the litigant in person with the impression that the legal representative was getting favoured treatment.

*[audio from the role-play]*

**Janning** .....all this 'she's frightened' rubbish, and secondly, 'special measures', I haven't heard of it. Can you tell me what that is please? ..... *(fades down)*

**Commentator 1** She was empathetic and ensured that he could vent his feelings but, nevertheless kept control of the proceedings and successfully calmed him down.

*[audio from the role-play]*



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**Janning** *(fades back in)* ... Yet, Mr Smarty Pants here.. is there texting away, how come he is allowed it?

**Candidate** Mr Janning

**Janning** ...or is it one rule for the lawyers and another rule for fathers fighting for justice?

**Candidate** Mr Janning. Please calm down, please do not interrupt, take hold of yourself please. Sit down.

Mr Talbot, do you have anything more to add? *(fades out)*

**Commentator 1** Sound judgement I think means that the candidate is prepared to say what they know. One example of this was where the solicitor misrepresented the law and the judge corrected him. She was able to show that she was up-to-date with the law and was prepared to contradict the legal representative. That, I thought, was a good example of sound judgement, she did it politely, firmly and he accepted her ruling.

**Commentator 2** Now let's have a look at the 'ability to understand and deal fairly' criteria.

**Commentator 1** There are a number of aspects to this aren't there? The ability to treat everyone with respect and sensitivity whatever their background, for example.

**Commentator 2** This candidate was empathetic towards the unrepresented party, didn't appear to show any particular bias to one side or to the other, which is important. It's absolutely vital that there is no perception of partiality at all.

**Commentator 1** I agree. I think the candidate treated everyone with respect and sensitivity. I thought the listening with patience and courtesy was well demonstrated, with both Mr Janning and the legal representative. Particularly in the case of Mr Janning, who, as many litigants-in-person are, was clearly emotional. She was empathetic and ensured that he could vent his feelings, but, nevertheless kept control of the proceedings and successfully calmed him down.

**Commentator 2** The only issues that I'd take up are that she never really commented on the unrepresented party's comment that it was going to be six months before there was going to be a decision made about contact with his child. And that is an issue which she should have taken up with Cafcass to at least show some impartiality. She should have appreciated the fact that six months is an awful long time without a father having contact, or having it considered by a court. And what she should have done was she should have spoken again to the Cafcass officer and said, 'look is it possible for you to give some type of interim report part way through that period of time, so that we can, perhaps, have another look at it.

**Commentator 1** I think the interesting point that emerges from this, is that while the candidate was able to maintain her authority when challenged, there wasn't much evidence of her challenging others. Taking as read, information you are given administratively, without a reality check. She didn't challenge the Cafcass officer saying how long it was going to take for the report to be ready, she didn't challenge Mr Talbot about the special measures for the applicant and why they were really necessary. And she didn't challenge the absence of evidence about the domestic violence that was alleged. That point, I think, is particularly important when the lack of contact was based on allegations which he strongly disputed.

Well I think she dealt quite well with the inevitable imbalance with having a litigant-in-person who is presumably inexperienced in court procedure on the one hand. On the other hand, Mr Talbot the solicitor, who clearly does these kind of hearings all the time – I thought the candidate subtly, but effectively, addressed that imbalance by stopping periodically to explain to Mr Janning in plain language, what was going on.

**Commentator 2** Overall she didn't do too badly quite honestly for a first go.

**Commentator 1** Overall I think this candidate did very well on that criterion yes.

Moving on to the fourth capability – authority and communication skills. This again has a number of elements to it. The first perhaps being the ability to explain procedure and any decisions reached, clearly and succinctly to everyone involved.

In this role-play, clearly it's especially important where there is an unrepresented party, to make sure that he knows exactly what is going on and what has been decided. I think the candidate did well in explaining what the solicitor's applications were about, for example, what the power of arrest actually meant in plain English, and she checked that Mr Janning understood her explanation, that was done well.

**Commentator 2** Perhaps she wasn't particularly even-handed in allowing him to address her on certain issues.

**Commentator 1** I think there were another couple of occasions where Mr Janning, as an unrepresented party, was perhaps at a disadvantage. In those situations it's incumbent on the judge, I think, to assist the unrepresented party.

Two examples: on special measures, the judge didn't really explain to Mr Janning what they were or why they were being sought; nor did she ask him to express his views on whether they were appropriate in this case.

Another example was towards the end, when the candidate gave directions for the subsequent hearings, which were very decisively delivered, but, she didn't give Mr Janning an opportunity to comment on whether they were achievable and explain to him what the consequences of those directions were.

**Commentator 2** But I don't think that this is a party who has got any complaint about the way that he has been dealt with. I don't think he can say that he has been dealt with unfairly.

**Commentator 1** I wonder if that's right. When he hears the decision that is made, he thinks it is unfair. When he attempts to appeal, he is turned down flat. So I just wonder whether the candidate could have recognised that being aggrieved at the decision she's just made, explaining how he should appeal, but then immediately turning down his appeal, will do anything except create the impression that the odds are stacked against him.

**Commentator 2** Well I agree with you there. Perhaps she should have explained it better. What she should have done, of course, was to have stressed yet again, that he ought to go and seek legal advice as soon as possible.

What about the ability to inspire respect and confidence? When I look at that particular skill, I saw that she was polite throughout, she clearly indicated that she was respectful of the parties and in particular the unrepresented party. Whether she gave confidence or not I don't really know, because, one of the problems with unrepresented parties is that, unless they get a decision that they are going to agree with, then they are not going to be particularly happy.

I thought also, that she did show that she had an ability to maintain authority when she was challenged, and she was challenged quite regularly through those proceedings, because she kept her cool all the time. It is so easy and so tempting, when you are faced with a situation like that to really, lose your temper a bit, it's human nature to do that, but she didn't. She did maintain authority, even when she was challenged by him with his interjections and the odd expletives that he came out with. So I thought she did that particularly well.

**Commentator 1** I think so too. There were a couple of occasions where one sensed that the litigant-in-person was testing her. I think, perhaps, the candidate could have nipped in the bud, rather earlier than she did, Mr Janning's repeated use of inappropriate language. For example, he referred to her at least twice as 'love' or 'your ladyship' and the opponent as 'smarty-pants' before asserting her authority. And the important thing to remember is that the assessors are looking for demonstration of the qualities. So, this was an exaggerated case, but she could have made clearer and sooner her intervention.

**Commentator 2** It's just a question of showing to those who are sitting in judgement of this candidate, that that candidate has picked up that particular point and dealt with it. In a real scenario, it's a judgement call for you – how you actually deal with it. Sometimes it can inflame if you dive in too quickly.

**Commentator 1** I think this candidate dealt well with the business before her. She got through all the decisions she had to make within the 30 minutes allowed for the role-play and dealt with unexpected applications as they arose.

Perhaps, once or twice, that was at the price of proper procedures, such as allowing the other party to voice their views on an issue that had arisen and on other occasions, such as special measures, she didn't expressly rule on the topic, having said that she would.

**Commentator 2** Overall, I think she dealt with matters quite expeditiously. She had decisions to make, and she made those decisions, whether they be right, or wrong. Those are decisions she is going to have to live with.

**Commentator 1** This candidate did pretty well on all these qualities that she was required to demonstrate, clearly there were flaws and we have pointed those out. But, overall, I think she did demonstrate that she had the potential.

**Commentator 2** I'd say that she demonstrated that she was pretty unflappable in the face of a lot of slings and arrows that were coming her way.

**Commentator 1** I agree. She kept calm and controlled and she did the job that she was supposed to do. Those I think are going to be all very important to those who are assessing performance.

**Commentator 2** Although this isn't a decision that we have to make about this candidate's future, I think we are both agreed that she did quite well in the circumstances.

*[audio from role-play]*

**Candidate** ...Now, does either party wish to address me any further?

*Mr Janning slumps back in his chair*

**Talbot** No

**Candidate** Thank you. That concludes today's hearing.

*The usher appears*

**Usher** *Please stand.*

*The candidate judge bows and leaves the court room*

**End**